



**CITY OF SEWARD
City Council
Committee Meeting
Agenda**

Monday, June 9, 2025

7:30 PM

Council Chambers at the Municipal Building

NOTICE IS HEREBY GIVEN that a meeting of the City Council of the City of Seward, Nebraska will be held at 7:30 PM on Monday, June 9, 2025, in the Council Chambers, 142 N 7th Street, Seward, Nebraska in which the meeting will be open to the public. The Mayor and City Council reserve the right to adjourn into Closed Session as per Section 84-1410 of the Nebraska Revised Statutes. An Agenda for such meeting, kept continually current, is available at the Office of the City Clerk, 537 Main Street, Seward, Nebraska, during normal business hours. Individuals requiring physical or sensory accommodations, who desire to attend or participate, please contact the City Clerk's Office at 402.643.2928 no later than 3:30 PM on the Friday preceding the Council Meeting. City financial claims and related invoices will be available for Council member review, audit, and voluntary signatures at the meeting location beginning 30 minutes prior to the scheduled meeting time.

CALL TO ORDER

DISCLOSURE OF OPEN MEETINGS ACT & OTHER NOTIFICATIONS

This is an Open Meeting of the Seward Planning Commission. The Seward Planning Commission abides by the Nebraska Open Meetings Act in conducting business. A copy of the Nebraska Open Meetings Act is displayed on the north wall of this meeting room facility as required. Disclosure of meeting recording processes is posted in the Meeting Room. A participant sign-in sheet is available for use by any Citizen addressing the Commission. Presenters shall approach the podium, state their name & address for the record and are asked to limit remarks to five minutes. All remarks shall be directed to the Chair who shall determine by whom any appropriate response shall be made. The Seward Planning commission reserves the right to adjust the order of items on this Agenda if necessary and may elect to take action on any of the items listed.

ROLL CALL

CONSENT AGENDA

MINUTES

1. Consideration of Approval of Draft Minutes of March 10, 2025

City of Seward Planning Commission

Minute Record March 10, 2025

The City of Seward Planning Commission met in regular session at 7:30p.m. March 10, 2025, in the Council Chambers at the Municipal Building at 142 North 7th Street, Seward, Nebraska. Upon roll call the following Commission Members were present: Clarence Kotera, Ron Wallman, Jake Miller, Ron Niemoth, Scott Seevers, and Ron Jackson, Other Officials present: Building and Zoning Director, Tim Dworak, City Engineer, Michael Oneby, and Administrative Assistant, Sara Van Cura.

Absent members were: Dan Ellis, Sue Bowen, Lacey Koch, Traci Menke

All proceedings hereafter shown were taken while the convened meeting was open to the public. The meeting with the Planning Commission was called to order by Chairperson Wallman at 7:30 p.m. He requested that all individuals speaking during the public hearing limit their comments to five minutes.

Minutes

Consideration of Approval of Draft Minutes of January 13, 2025.

Moved by Commission Member Seevers; Seconded by Commission Member Kotera to approve the minutes.

Aye: Kotera, Wallman, Miller, Niemoth, Seevers, Jackson.

Nay: None.

Absent: Ellis, Bowen Koch. Motion carried.

1. Public Hearing 7:30pm: review the application to transfer the special use permit located at 511 Bradford St to Andy Wiltz, allowing an outdoor dog exercise area.

Chairperson Wallman opened the public hearing.

Dworak stated the alps dog retreat is being sold to Andy Wiltz. Three years ago, when we approved the doggy daycare one of the stipulations was a special use permit for the owner. We have the same conditions as we had for Scott.

Andy Wiltz, 2696 West 160th Terrace Stilwell Kansas, 66085, stated he's been in the business for about 10 years and currently owns nine Doggy Daycare. I diversified into a poop scooping company, doggy bakery, and collar and leash store. Keeping it the Alps, not changing the hours, will follow the same stipulations as what Scott has been doing, and the three managers are staying on. They have 401k, health benefits and vacation and even the part time high schoolers will have vacation. Currently we have over 200 employees. The three core values are have fun, do the right thing, and keep going. Do the right thing. Will participate in Seward activities like the 4th of July and Christmas parades.

Commission Member Kotera asked where the doggy daycare is going in the future.

Wiltz stated that it continues to grow.

Commission Member Seevers stated when Scott came in he mentioned a turf park area.

Wiltz stated he just saw the plans for that, and does not have an answer for that.

Mark Suhr, 1920 N 4th St, stated he owns the properties at 442 Jackson St, 135, 141, 145 N 5th Street. He owns the business with six windows across the street from the dog park. He has deep concerns of ongoing and disruptive parts, both with the indoor and outdoor areas. Clients can hear them, clients can hear them over the phone, and through webinars while I'm presenting. We installed triple pane windows, trees and bushes. They should do something on their side to buffer the sound. Better steps to mitigate the sound from indoor and outdoor.

Chairperson Wallman asked Mark what times of the day are the worst.

Suhr responded it's sporadic.

Commission Member Seevers asked if you find it more disturbing from the indoor barking or the outdoor exercise area.

Suhr said he doesn't usually pay attention, but today there were seven times, and it was about 50-50.

Commission Member Jackson asked what percentage of often the dogs disturb your day.

Thomas Suhr says about 50% of the day is disrupted.

Commission Wallman stated that Mr. Suhr entered his written concerns into the record which include limiting outdoor play hours, additional sound barriers, sound proofing, stronger noise enforcement.

Scott Dinslage, 1869 154th Rd Garland, stated reasonable changes to sound absorption can be done.

Commission Member Kotera asked if you control the amount of dogs that are in facility to a certain number.

Dinslage said no, he should be only hearing the dogs from that back area where we expanded to. He stated that we do not use the outdoor yard in the winter, if it's too hot, too cold or raining.

Commission Member Miller asked how many days yearly dogs are participating outside.

Dinslage stated that probably around 7 months, but not all day.

Commission Member Miller asked for the set hours for the outdoor area.

Dinslage stated play time begins at 830 to 930 for a small group of dogs, then larger groups are 930 to 10. A few custom plays for dogs that don't do well in groups around 11 to 1. Then we do that again in that afternoon.

Commission Member Miller asked 8-5 how many hours are the dogs are outside.

Dinslage stated 4 hours at most when dogs are present outside.

Commission Member Kotera has the problem with the noise ever come up before?

Dinslage stated ya there are reasonable measures.

Thomas Suhr, 2035 Star street, stated he works across the street. He hears the dogs almost every day, specifically to nicer days. The noise is a nuisance. We do have city codes that prevent nuisances.

Commission Member Miller asked for an 8 to 5 day would it be about half the day.

Thomas Suhr stated that's more of a one to two hour nuisance. That's its not all day.

Commission Member Seevers asked, for you point of view is this something you would be comfortable with some sort of mitigation, or do you feel this situation is this not solvable.

Thomas Suhr stated there's avenues to take to lessen it.

Chairperson Wallman stated that the Planning Commission would have the ability to make recommendations or alternations to the transfer of that permit to make them conditional to approval.

Jonthan Jank, Seward County Chamber and Development Partnership, stated generally speaking, we continue to grow and amenities like this are really important.

Chairperson Wallman suspended the public hearing.

Commission Member Kotera moved to approve the transfer of the special use permit to Andy Wiltz; seconded by Commission Member Seevers.

Chairperson Wallman stated this is a business we need to preserve and grow. We also have some credible concerns, from a business that has been here for generations. Wallman asked Wiltz his comments on his facilities that you own, how many have outdoor play areas.

Wiltz stated 8 out of the 9 have outdoor play area. The west Hollywood does not. We had a 5 year SUP and then went to a 10 year SUP. Our Kansas City locations are on their 2nd set of 10 SUP.

Chairperson Wallman asked in Wiltz's tour of the facility, have you seen anything from a noise abatement standpoint, is there anything you would do.

Wiltz stated being in the building, he didn't notice anything exceptionally loud.

Commission Member Seevers asked if there's any interest in being private equity backed.

Wiltz stated he's approached weekly, but he's not interested.

Commission Member Jackson asked what are reasonable accommodations for the outside part.

Wiltz stated limited the daycare time.

Commission Member Kotera asked in your other facilities, what is the proximity to other businesses is it similar to here in Seward.

Wiltz stated that yes, our fencing will close to the sidewalk, then sidewalk, street, and on the other side of the street is a business.

Commission Member Miller asked if location more in residential or commercial.

Wiltz stated both. It depends on the zoning requirements.

Commission Member Miller asked if you would expand the outdoor hours.

Wiltz stated we are not expanding the hours.

Chairperson Wallman stated he would entertain a motion to amend the transfer of the special use permit to limit it to two years.

Commission Member Kotera and Commission Member Seevers are in agreement with the two-year renewal timeframe.

Chairperson Wallman stated that the motion now is to approve the transfer of the special use permit with the addition of a two-year renewal.

Aye: Kotera, Wallman, Miller, Niemoth, Seevers, Jackson.

Nay: None.

Absent: Ellis, Bowen Koch. Motion carried.

2. Public Hearing 7:30pm: review a text amendment to the City of Seward Unified Land Development Ordinance; Article 4 Zoning District Regulations; 410-4.8 Vacation of Streets and Alleys.

Chairperson Wallman opened the public hearing.

Dworak stated the current 410-4.8 vacation, when we vacate an alley or street, our zoning returned whatever the zoning district was to the center of the right-of-way. State statute allows the city to vacate the street or alley to retain it and convey all of the street or alley to one party. We could have two different zoning districts. We could have half the alley or street a different zoning district.

Chairperson Wallman closed the public hearing.

Commission Member Seevers moved to approve the text amendment to the City of Seward Unified Land Development Ordinance; Article 4 Zoning District Regulations; 410-4.8 Vacation of Streets and Alleys; Commission Member Niemoth Seconded.

Commission Member Kotera stated that easements would still be retained.

Dworak stated those are still retained.

Chairperson Wallman stated let the record show this is an appropriate change to simplify the code.

Aye: Kotera, Wallman, Miller, Niemoth, SeEVERS, Jackson.

Nay: None.

Absent: Ellis, Bowen Koch. Motion carried.

3. Administrative Item

4. Reports

5. Agenda Items

6. Upcoming Events

Meeting adjourned 8:48 p.m.

Sara Van Cura
Administrative Assistant

DRAFT

PUBLIC HEARINGS

1. Public Hearing 7:30pm: TIF application by Two Creek Holdings LLC for 1151 South Street - Parcel ID 800083555.

City of Seward Planning Commission
142 N 7th St. Seward, NE 68434

Staff Report
Tim Dworak, Building/Zoning &
Code Enforcement Director
402-643-2928 opt 3 opt 1

<u>APPLICATION TYPE</u>	<u>FINAL ACTION?</u>	<u>DEVELOPER/OWNER</u>
Tax - Increment Financing Application		Two Creek Holdings LLC, Mike Lewis
<u>PC HEARING DATE</u>	<u>RELATED APPLICATIONS</u>	<u>PROPERTY ADDRESS, ZONING DISTRICT</u>
June 9, 2025		1151 South St, UC Urban Corridor

ADJACENT ZONING DISTRICTS/USE:

- North, UC, Commercial – Two Creek Holdings LLC, Dustin Dobesh
- South, UC, Commercial – Merle’s Greenhouses Inc.
- East, UC, Residential – Delray & Patricia Werth
- West, UC, Commercial – Rodenbaugh Properties LLC (Burn’s Body Shop)

BRIEF SUMMARY OF REQUEST

Two Creek Holdings is proposing a paint supply and tool equipment wholesale facility.



APPLICATION CONTACT

Mike Lewis, 402-270-5392
1870 266th Rd, Seward, NE 68434

ANALYSIS

The TIF application has been reviewed. Andrew Willis will be on hand to review the redevelopment plan and agreement.

APPROXIMATE LAND AREA:

0.82 acres or 35,545 square feet +/-

LEGAL DESCRIPTION:

ADMINISTRATIVE REPLAT OF LOTS 7-10, BLOCK 37, HARRIS, MOFFITT AND ROBERTS ADDITION

Prepared by

Tim Dworak

City of Seward Building-Zoning-Code Enforcement Director

Tax-Increment Financing Application

CITY OF SEWARD, NEBRASKA COMMUNITY REDEVELOPMENT AUTHORITY (CRA)

537 MAIN STREET – P.O. BOX 38 – SEWARD, NE 68434-0038

1. Applicant Information

Two Creek Holdings LLC ^{47-~~XXXX~~} 388 4366
Business Name Federal Id #

Mike Lewis 402-270-5392
Contact Person for Applicant Cell Phone

1870 26th Rd Seward NE 68434
Street Address City, State, Zip

Mailing Address (If different) City, State, Zip

402-643-6430 402-643-6430
Bus. Phone Bus. Fax

mike_lewis@stpjsupply.com
Email

Business Organization: Proprietorship Corporation Partnership LLC
 Other, please explain: _____

Ownership: List all Officers, Directors, Partners, Owner(s), Co-Owners and/or Stockholders.

Name	Title	Ownership Percent
<u>Michael Lewis</u>	<u>Pres</u>	<u>50%</u>
<u>Staci Lewis</u>	<u>Sec</u>	<u>50%</u>
_____	_____	_____
_____	_____	_____

2. Imagine Nebraska Act

- a. Have you filed or do you intend to file an application to receive tax incentives under the Imagine Nebraska Act for this project? Yes No
- b. If an application has been filed, has it been approved? Yes No
- c. Does your application include, or will it include, as one of the tax incentives, a refund of the city's local option sales tax revenue? Yes No

3. Project Description

a. What type of business does this project involve (i.e. industrial, commercial, residential, etc.): Paint Supply + tools equipment wholesale

i. If the project involves housing, please give a description of intended tenants, type of household (families/elderly/etc.), income levels, impact on the schools and/or community, etc.:

ii. If the project involves retail business, please give a description of the retail business, how the community would benefit from this retail business, the impact on similar existing retail businesses, etc.:

we do 99% wholesale Statewide sale, we do not ~~have~~ complete locally

iii. If the project involves industry, please give a description of the type of industry, impact on the environment, impact on the community, similar existing industries in town, etc.:

b. What is the estimated number of new jobs this project will create? 1-2

c. What is the pay scale and benefits package for these positions?
50-75K

4. Proposed Project Site

Seward AM&P Addition Block
Site Address 37 Lots 6 ALL 7-10 Current Owner

Legal Description:
Seward AM & P addition Block
37 Lot 6 ALL Lots 7-10

If current site owner is not the applicant, please list the arrangement to build:

5. Physical Description of the Proposed Project

Please include square footage, size of property, description of building materials:

4960 square Ft - Steel Buildings

Site Plan Attached? Yes No

6. Land Use:

a. Is the property located in a blighted or substandard area? Yes No

b. If property is to be subdivided, please include copy of planned division:
Copy Attached? Yes No

c. Current Zoning of the property: Urban Core iADP

d. Is the proposed project a permitted use on the property? Yes No

What permits would be required?

e. Please describe any other relevant information relating to zoning, permitting, or similar land use issues:

Needs Front Set Back Adjustment

7. Relocation

a. Will any residences or businesses need to relocate because of this project? Yes No If yes, please explain.

b. Will any housing units be eliminated by this project? Yes No If yes, what is your plan to create equivalent replacement housing units?

8. Estimated Project Costs

a. Land Acquisition, if applicable: \$ 60,000⁰⁰

b. Site Development (itemize below): \$ 31,600⁰⁰ (Totalled)

i. Survey \$ 2,000⁰⁰

ii. Demolition: \$ 5,000⁰⁰

iii. Grading: \$ 5,000⁰⁰

iv. Site Preparation: \$ 21,000 water & sewer

Site Plan \$ 3,000

c. Building Construction Cost: \$ 323,000

d. Other Site Improvements (explain concrete) 40,000

e. Equipment: \$

f. Architectural and Engineering Fees: \$ 3,500

g. Legal Fees: \$

h. Financing Costs: \$

i. Broker Costs, if any: \$

j. Contingencies: \$

k. Other (explain): \$ 418,100

Total: \$ ~~378,100~~

9. Please attach the following documentation

- a. Construction Pro Forma. Attached? Yes No
- b. Annual Income and Expense Pro Forma (with appropriate schedules). Attached? Yes No
- c. Applicant's Corporate/Business Annual Financial Statements for the last three years. Attached? Yes No
- d. Business Plan for the proposed project. Attached? Yes No

10. Estimated Tax Increment

- a. Total estimated assessed valuation of Real Property at completion:

\$ 410,000

Please also describe how you arrived at this value (e.g., discussions with County Assessor, previous construction projects, etc.):

From property Adjustment Property Located At 237 South 12

- b. Latest property valuation before construction (from Property Tax Statement): \$ 57,075
- c. Estimated increase in real estate valuation: \$ 355,925
- d. Estimated new real estate tax generated annually: \$ 5136.34

11. Proposed Source of Financing

- a. Equity: \$ 150,000
- b. Bank loan: \$ 200,000
(please provide conditional approval or commitment letters, if applicable)
- c. Tax Increment Financing: \$ 77,045
- d. Other (please describe): \$ _____
- e. TOTAL FINANCING: \$ 410,000

12. Name and address of architect, engineer, and general contractor:

Dan's Construction - YORK NE
Behlen Engineering
Michael Lewis - GENERAC

13. Project construction schedule:

- a. Construction start date: 1 Aug 2024
- b. Construction completion date: 1 July 2025
- c. If project is phased:
Year _____ / _____ % Complete
Year _____ / _____ % Complete

14. Municipal reference (if applicable).

Please name any other municipality wherein the applicant, or other corporations the applicant has been involved with, has completed development within the last five years:

N/A

15. Amount of TIF request:

\$ 77,045
\$ 7,045

16. Application Fee Paid:

A nonrefundable application fee equal to the lesser of: (a) one percent of the requested TIF indebtedness; or (2) One Thousand Dollars and No/100 shall be submitted with the application.

Note: If the Application is approved, the applicant is not entitled to receive the requested TIF amount. The actual amount of the TIF Indebtedness will vary depending on multiple factors including without limitation lender interest rates, identification of eligible expenditures, and additional information identified in the redevelopment project approval process.

17. Describe eligible costs for which tax increment financing will be used.

Please provide a detailed breakdown of proposed eligible uses and costs of each use, including any available bids or cost estimates for such work (include attachment if necessary):

- 4000 - Square Concrete For Parking
- 991000 - 8.50 per ft quote
- 3000 - Drawing + Architect + Site Plan Prep
- ~~5000~~ - Sewer + Water Hook up
- 21000⁰⁰ - Electric Cost to Lot 3 Phase
- Survey Cost / Replat: \$ \$
- 5000 - Dirt work For site
- Architect Cost + Site Plan. \$ \$
- 2600 - Site survey

18. Statement of necessity for use of tax increment financing (include attachment if necessary):

a. Is your project economically feasible as designed without tax increment financing? If no, please indicate how tax increment financing is necessary for the economic feasibility of your project.

Having the TIF money make this project doable. without TIF the project would be a stretch.

b. Would you locate your project in the redevelopment area without Tax Increment Financing? Explain.

I would consider a much smaller version of the building instead with TIF a larger foot print.

19. List any other long-term public benefits your project will bring to the City, or any other information relevant to this application.

Addition growth for the tenant business which leases; ST PJ Supply Inc employes 21 people and will continue to expand.

Clean up the Area similar to the project across Street

237 South 12
1701 Main Street

The above information is accurate to the best of my knowledge and belief. The above information is provided to help the City to evaluate the feasibility of the use of tax increment financing. I/we further authorize the release of all personal and business credit information to the City of Seward and acknowledge this information upon submission will be considered a Public Record.

Signature: 

Printed Name: Michael Lewis

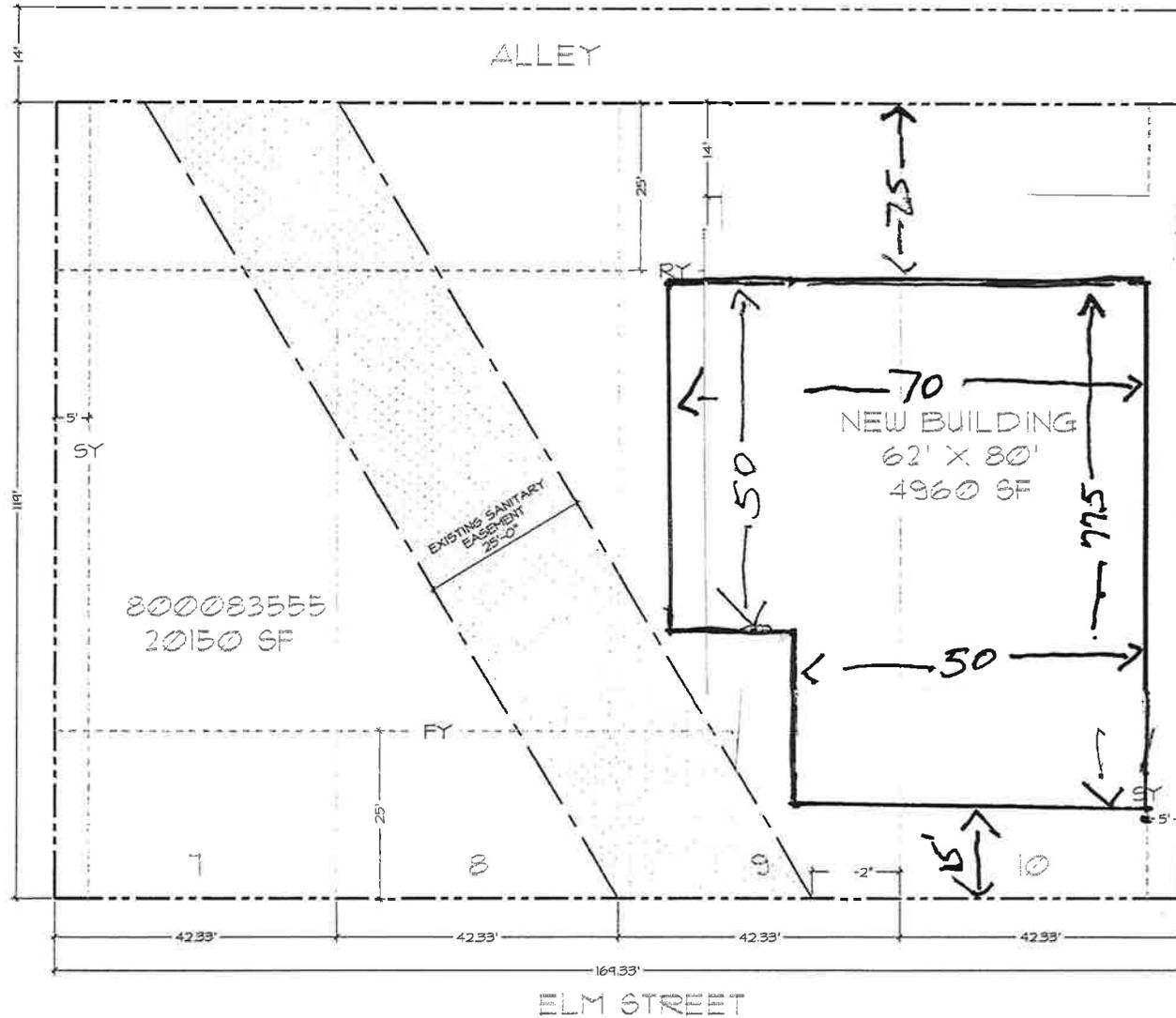
Title: President Date: 4-24-2025

Site PLAN

ST. PJ SUPPLY CO NEW METAL BUILDING

PRELIMINARY NOTES:

- 62' X 80' NEW METAL BUILDING ON EXISTING LOT
NEW METAL BUILDING = 4960 SF
- PARCEL ID: 800083555
- SHE: 40-10-2 SITE DEVELOPMENT REGULATIONS
SETBACKS FOR LC ZONING
5' SIDE YARDS
25' FRONT YARD
25' REAR YARD
- SFC 410-12.3
SUPPLEMENTAL DEVELOPMENT FOR OFFICE OR COMMERCIAL USE
B) NO STREET-FACING FACADE MAY HAVE A CONTINUOUS
LENGTH OF 50 FEET OR OVER WITHOUT AN OFFSET IN BUILDING
ELEVATION EQUAL TO A DIMENSION OF AT LEAST 5 FEET
- REQUEST:
1) REDUCE REAR YARD SET BACK FROM 25' TO 14'
- 2) REQUEST TO HAVE A STREET-FACING FACADE WITH A
CONTINUOUS LENGTH OF 82 FEET ON EVEN ELEVATION.



1. PROPOSED BUILDING LOCATION
SCALE: 1/8" = 1'-0"

St. PJ Supply inc.
Professional Engineer
 License No. 0000000000
 P. E. License
 State of Nebraska
 10/15/2018

Location:
 SEWARD H.M. & R. ADDITION BLOCK
 37' LOT 4-5, #LOT 8 & ALL LOTS 7-10

Parcel ID: 800083555
 ST. PJ SUPPLY CO
 ELM STREET
 SEWARD, NE 68434

Date: 2/24/2025
 Page: 1
 Revision: P1



Two Creeks Holdings LLC
Profit & Loss
 January through December 2024

	Jan - Dec 24	Jan - Dec 23
Ordinary Income/Expense		
Income		
Rental Income-St. PJ's	145,000.00	130,000.00
Total Income	145,000.00	130,000.00
Expense		
Merles Land Lots 4-10		
Interest	2,165.79	2,784.48
RE Taxes	608.36	0.00
Total Merles Land Lots 4-10	2,774.15	2,784.48
Kralik Acerage-Rental House		
Depreciation	0.00	7,557.98
Fees	0.00	2,327.25
Insurance	0.00	1,336.00
Interest	0.00	14,855.55
Propane/Utilities	0.00	1,260.44
RE Taxes	0.00	6,990.15
Repairs/Maintenance	0.00	6,263.45
Total Kralik Acerage-Rental House	0.00	40,590.82
Seward Rental House		
Fees	0.00	-0.27
Total Seward Rental House	0.00	-0.27
Seward Commercial Buildings		
Accounting	3,035.00	3,355.00
Amortization Loan Fees	146.70	147.00
Automobile Expense	724.37	505.29
Bank Service Charges	0.00	872.00
Depreciation Expense	11,723.83	11,721.00
Donation	0.00	2,350.00
Interest Expense	37,546.57	35,387.71
Labor	1,750.00	493.99
Meals and Entertainment	7.11	59.27
Office Supplies	0.00	29.95
Repairs and Maintenance	9,989.06	0.00
Small Tools and Equipment	1,999.30	81.64
Storage	2,001.94	4,270.00
Tax Financing Expense		
TIF Shortages	855.48	0.00
Total Tax Financing Expense	855.48	0.00
Travel Expense	56.45	709.69
Utilities	900.00	75.00
Total Seward Commercial Buildings	70,735.81	60,057.54
Total Expense	73,509.96	103,432.57
Net Ordinary Income	71,490.04	26,567.43
Other Income/Expense		
Other Income		
NE PTC Refunds	2,364.00	3,050.00
Interest on Shelby Contract	1,702.24	1,992.26
Buildings Sold		
Basis on Building Sold	0.00	-600,385.06
Buildings Sold - Other	0.00	610,000.00
Total Buildings Sold	0.00	9,614.94
Total Other Income	4,066.24	14,657.20

2:47 PM

03/03/25

Accrual Basis

Two Creeks Holdings LLC
Profit & Loss
January through December 2024

	<u>Jan - Dec 24</u>	<u>Jan - Dec 23</u>
Other Expense		
NE PTET Taxes	7,741.00	11,113.00
Total Other Expense	7,741.00	11,113.00
Net Other Income	-3,674.76	3,544.20
Net Income	<u>67,815.28</u>	<u>30,111.63</u>

Two Creeks Holdings LLC
Profit & Loss
 January through December 2022

	Jan - Dec 22
Ordinary Income/Expense	
Income	
Rental Income-Kralik Acerage	11,319.11
Rental Income-St. PJ's	110,000.00
Total Income	121,319.11
Expense	
Merles Land Lots 4-10	
Interest	1,334.90
RE Taxes	417.23
Total Merles Land Lots 4-10	1,752.13
Kralik Acerage-Rental House	
Depreciation	20,154.60
Equlpmnt Rental/Tools	2,109.94
Fees	64.54
Insurance	2,562.50
Interest	20,002.79
Labor	6,500.00
Propane/Utilities	2,400.45
RE Taxes	7,022.82
Repairs/Maintenance	16,727.99
Total Kralik Acerage-Rental House	77,545.63
Seward Commercial Buildings	
Accounting	2,100.00
Amortization Loan Fees	147.00
Automobile Expense	450.55
Depreciation Expense	11,669.30
Donation	300.00
Interest Expense	8,688.95
Meals and Entertainment	252.80
Office Supplies	132.89
Repairs and Maintenance	175.00
Small Tools and Equipment	6,784.00
Tax Financing Expense	
TIF Shortages	303.56
Total Tax Financing Expense	303.56
Travel Expense	900.17
Total Seward Commercial Buildings	31,904.22
Total Expense	111,201.98
Net Ordinary Income	10,117.13
Other Income/Expense	
Other Income	
Nebraska Income Tax Refund	1,591.00
Interest on Shelby Contract	1,804.35
Total Other Income	3,395.35
Net Other Income	3,395.35
Net Income	13,512.48

Return to:
Blevens & Damman
129 N. 5th Street
Seward, NE 68434

CORPORATION WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that Merle's Greenhouses, Inc., a Nebraska corporation, herein called the grantor, whether one or more, in consideration of One Dollar (\$1.00) and other valuable consideration received from grantees, does grant, bargain, sell, convey and confirm unto grantee, Two Creeks Holdings, LLC, a Nebraska limited liability company, the following described real property in Seward County, Nebraska

Lots 4, 5, 6, 7, 8, 9, and 10, Harris, Moffitt & Roberts Addition, City of Seward, Seward County, Nebraska, EXCEPT the following portion of Lot 6 condemned by the City of Seward, Nebraska, for street and traffic purposes: beginning at the Northwest Corner of Lot 6 in Block 37 in that addition; thence Easterly on the North line of that Lot 21.1 feet; thence Southwesterly to a point on the West line of that Lot 17.1 feet Southerly measured along the West line of that Lot, from the Northwest corner thereof; thence Northerly 17.1 feet to the place of beginning, which exception contains .004 acres, more or less.

To have and to hold the above-described premises together with all tenements, hereditaments and appurtenances thereto belonging unto the grantor and to the grantor's assigns, or to the heirs and assigns of the grantor forever. And grantor does hereby covenant with the grantees and with the assigns and with the heirs and assigns of the survivor of the grantees that grantor is lawfully seised of said premises; that they are free from encumbrance; that grantor has good right and lawful authority to convey the same; and that grantor warrants and will defend the title to said premises against the lawful claims of all persons.

Date:

Earl Graves
Earl Graves 7-7-22

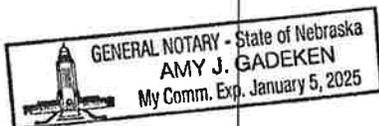
Earl Graves
Earl Graves, President of Merle's Greenhouses, Inc.,
A Nebraska corporation

State of Nebraska, County of Seward -- ss.

The foregoing Corporation Warranty Deed was acknowledged before me on 7/7/2022 2022, by Earl Graves, President of Merle's Greenhouses, Inc., a Nebraska Corporation on behalf of the Corporation.

[Signature]

Notary Public



Return to:
Blevens & Damman
129 N. 5th Street
Seward, NE 68434

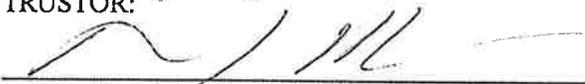
ACKNOWLEDGMENT

Two Creek Holdings, LLC, a Nebraska limited liability company (referred to as "Trustor"), under that certain Deed of Trust dated July 7, 2022, ("Deed of Trust"), to be entered into among Trustor, Gregory C. Damman ("Trustee"), and Merles Greenhouses, Inc., a Nebraska corporation, ("Beneficiary"), hereby acknowledge that it is understood that (a) the Deed of Trust to be executed by Trustor is a trust deed and not a mortgage; and (b) the power of sale provided for in the Deed of Trust provides substantially different rights and obligations to the Trustor than a mortgage in the event of a default or breach of obligation.

Trustor acknowledges that this Acknowledgment was made prior to the execution of the Deed of Trust.

Executed and delivered this 7 day of July, 2022

TRUSTOR:



Michael Lewis, Authorized Member
Two Creeks Holdings, LLC

DEED OF TRUST

THIS DEED OF TRUST is made as of July 7, 2022, by and among, Two Creeks Holdings, LLC, a Nebraska limited liability company (referred to herein as "Trustor"), Gregory C. Damman, Attorney at Law, ("Trustee"), whose mailing address is 129 N. 5th St., Seward, NE 68434, and Merle's Greenhouses, Inc., a Nebraska corporation (referred to herein as "Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, Trustor irrevocably transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions of this Deed of Trust, the real property (the "Property") legally described as follows:

Lots 4, 5, 6, 7, 8, 9, and 10, and the East Half (E1/2) of vacated Twelfth Street adjoining Lot 7, Harris, Moffitt & Roberts Addition, City of Seward, Seward County, Nebraska, EXCEPT the following portion of Lot 6 condemned by the City of Seward, Nebraska, for street and traffic purposes: beginning at the Northwest Corner of Lot 6 in Block 37 in that addition; thence Easterly on the North line of that Lot 21.1 feet; thence Southwesterly to a point on the West line of that Lot 17.1 feet Southerly measured along the West line of that Lot, from the Northwest corner thereof; thence Northerly 17.1 feet to the place of beginning, which exception contains .004 acres, more or less.

TOGETHER WITH, all rents, easements, appurtenances, hereditaments, interests in adjoining roads, streets and alleys, improvements and buildings of any kind situated thereon, and all personal property that may be or hereafter become an integral part of such buildings and improvements.

The Property and the entire estate and interest conveyed to the Trustee are referred to collectively as the "Trust Estate."

FOR THE PURPOSE OF SECURING:

(a) Payment of indebtedness in the total principal amount of \$60,000.00, with interest at five and one-half (5.5%) percent per annum, evidenced by that certain promissory note of even date herewith executed by Trustor which has been delivered and is payable to the order of Beneficiary, and which by this reference is hereby made a part hereof, and any and all modifications, extensions and renewals thereof, and

(b) Payment of all sums advanced by Beneficiary to protect the Trust Estate.

This Deed of Trust, the Note, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby are referred to collectively as the "Loan Instruments."

TO PROTECT THE SECURITY OF THIS DEED OF TRUST:

1. Payment of Indebtedness: Covenant of Title.

(a) Trustor shall pay when due the principal indebtedness evidenced by the Notes.

(b) Trustor hereby covenants with Beneficiary that Trustor is lawfully seized of the Property hereby conveyed, that Trustor warrants and will defend the title to the Property against the lawful claims of all persons whomsoever, that Trustor has the right to grant and convey the Property, and that the Property is unencumbered by any mortgage, trust deed, contract to purchase, or otherwise. Trustor covenants that there are no other prior liens of any kind upon the Property.

2. Taxes. Trustor shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Trust Estate or any part thereof, before delinquency, without notice or demand, and shall provide Beneficiary with evidence of the payment of same. Trustor shall pay all taxes and assessments which may be levied upon Beneficiary's interest herein or upon this Deed of Trust or the debt secured hereby without regard to any law that may be enacted using payment of the whole or any part thereof upon the Beneficiary. Trustor shall escrow funds to pay such taxes if Beneficiary so requests.
3. Insurance and Repairs. Trustor shall maintain fire and extended coverage insurance insuring the improvements and buildings constituting part of the Trust Estate for an amount no less than the replacement value of the Trust Estate. Such insurance policy shall contain a standard mortgage clause in favor of Beneficiary and shall not be cancelable, terminable or modifiable without ten (10) days prior written notice to Beneficiary. Trustor shall promptly repair, maintain and replace the Trust Estate or any part thereof so that, except for ordinary wear and tear, the Trust Estate shall not deteriorate. In no event shall the Trustor commit waste on or to the Trust Estate.
4. Actions Affecting Trust Estate. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee and shall pay all costs and expenses, including cost of evidence of title and attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear. Should Trustor fail to make any payment or to do any act as and in the manner provided in any of the Loan Instruments, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation, may make or do the same in such manner and to such extent as either way deem necessary to protect the security hereof. Trustor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and attorney's fees.
5. Eminent Domain. Should the Trust Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner including deed in lieu of Condemnation ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Trustor (the "Proceeds") are hereby assigned to Beneficiary, and Trustor agrees to execute such further assignments of the Proceeds as Beneficiary or Trustee may require.
6. Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Trust Estate is located, and by otherwise complying with the provisions of the applicable law of the State of Nebraska, substitute a successor or successors to the Trustee named herein or acting hereunder.
7. Successors and Assigns. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Notes, or either of them, whether or not named as Beneficiary herein.

8. Inspections. Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Instruments.
9. Events of Default. Any of the following events shall be deemed an event of default hereunder:
- (a) Trustor shall have failed to make payment of any installment of principal or any other sum secured hereby when due; or
 - (b) There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Instruments, including smoking or burning candles within the residence; or
 - (c) Trustor shall sell, transfer, lease or discontinue occupying all or any part of the Property or an interest therein without Beneficiary's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, or (c) a transfer by devise, descent or operation of law upon the death of a joint tenant.
10. Acceleration Upon Default. Additional Remedies. Should an event of default occur, Beneficiary may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may:
- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits, and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon occurrence of any event of default, including the right to exercise the power of sale.
 - (b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof.
 - (c) Deliver to Trustee a written notice of default and election to cause Trustor's interest in the Trust Estate to be sold, which notice Trustee shall cause to be duly filed for record in

the appropriate official records of the county in which the Trust Estate is located.

11. Foreclosure by Power of Sale. Should Beneficiary elect to foreclose by exercise of the Power of Sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Notes and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee and Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of (i) all sums expended under the terms hereof, not then repaid, without interest; (ii) all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

(c) Trustee may, in the manner provided by law, postpone sale of all or any portion of the Trust Estate.

12. Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the such indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments to Trustee or Beneficiary or to which either of them may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue

inconsistent remedies. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against the Trustor to the extent such action is permitted by law.

13. Assignment of Rents. For the purpose of furnishing further security for the debt secured hereby, Trustor hereby assigns, transfers and sets over to the Beneficiary, to be applied toward the payment of the Notes and all other sums secured hereby or evidenced by the Loan Instruments, in case of default in the performance of any of the terms and conditions of this Deed of Trust, or the said Notes, or the terms of any Loan Instruments, all the rents, revenues and incomes, if any, to be derived from the Property during such time as the Notes shall remain unpaid; and the Beneficiary shall have the power to appoint any agent or agents it may desire for the purpose of repairing the Property and of renting the same and collecting the rents, revenues and income, and it may pay out of said income all expenses of repairing the Property and necessary commissions and expenses incurred in renting and managing the same and of the payment of insurance premiums and of collecting rentals therefrom, and the balance remaining, if any, to be applied toward the discharge of the Notes.

14. Request for Notice. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

15. Governing Law. This Deed of Trust shall be governed by the laws of the State of Nebraska. In the event that any provision or clause of any of the Loan Instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Instruments which can be given effect without the conflicting provision and, to this end, the provisions of the Instruments are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

16. Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Notes to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons entitled thereto."

17. Notices. Whenever Beneficiary, Trustor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Deed of Trust. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

18. Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

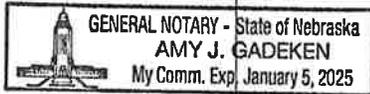
TRUSTOR:

[Handwritten signature]

Michael Lewis, Authorized Member
Two Creeks Holdings, LLC

State of Nebraska, County of Seward -- ss.

The foregoing Deed of Trust was acknowledged before me on July 7, 2022,
by Mike Lewis, Managing Member of Two Creeks Holding, LLC, a Nebraska limited liability
company on behalf of the company.



[Handwritten signature]

Notary Public

ACCEPTANCE OF CONVEYANCE

The undersigned Trustee, for the uses and purposes therein stated, does hereby accept
delivery of the above and foregoing Deed of Trust upon the terms and conditions therein stated.

TRUSTEE:

Gregory C. Damman

STATE OF NEBRASKA)
)ss.
COUNTY OF SEWARD)

The foregoing instrument was acknowledged before me on the _____ day of _____, 2022, by Gregory C. Damman, Trustee.

Notary Public

Business Plan for Two Creek Holdings LLC for lot 7-10 of block 37

HM&R addition

1. Develop new rental space for tenant ST. PJ Supply Inc. for expansion and growth in there business. St. PJ Supply Inc is and long time company in Seward NE starting in 1993. Ownership include Mike and Staci Lewis , Shelby Lewis and Clark Noble. ST. PJ Supply has grown to 22 total employees and has had solid sales growth and would like to expand.
2. Tenants would pay increased rent and maintain triple net lease and would continue to improve area in similarity to 237 South 12th Street and 1201 Main Street which are across Hwy 34 .
3. Tenant rent would cover mortgage requirements. Upon completion of this project Two Creek Holding will hopeful develop lot 4-6 north of this property. If the TIF is approved this helps with equity position and would allow faster development.

Thanks for considering this project



Michael Lewis

President

Two Creek Holdings LLC

two creek elm street project

New Construction

Probable Cost

Total Sheet

<u>Description</u>	<u>Cont. / Supplier</u>	<u>Total</u>	tenant pay
<i>Pre Construction Administration:</i>			
1. Permitting		\$ 2,500.00	
1. Architect		\$ 1,000.00	
2. Engineer, Civil		\$ -	
3. Engineer, Structural		\$ -	
4. Engineer, Mechanical & Electrical		\$ -	
5. Site/Building Lay Out Survey		\$ 2,600.00	\$ -
water sewer estate jr bobcat		\$ 21,000.00	
HM Doors, Frames & Hardware	Behlen Manufacturing	\$ -	
Wood Doors		\$ -	\$ 500.00
Overhead Doors & Operators		\$ -	
Gypsum Drywall Systems		\$ -	\$ 15,000.00
concrete out side		\$ 40,000.00	
Masonry		\$ -	
Painting, Staining & Floor Seal		\$ -	\$ 1,500.00
Toilet & Bath Accessories		\$ -	\$ 500.00
Fire Extinguishers & Cabinet	Owner's Allowance	\$ -	\$ 500.00
Window Coverings		\$ -	
Pre Engineered Metal Building	Behlen Manufacturing	\$ 261,000.00	
Plumbing		\$ 7,000.00	
Fire Protection Systems		\$ -	\$ 15,000.00
HVAC	Gene	\$ 30,000.00	
Gas Piping		\$ -	
Electrical		\$ 25,000.00	
Net		\$ 411,000.00	

Subtotal
Contingency

\$ -

TOTAL

**REDEVELOPMENT AGREEMENT
(TWO CREEKS HOLDINGS 2025 REDEVELOPMENT PROJECT)**

This Redevelopment Agreement is made and entered into effective as of the 17th day of June, 2025, by and between the Community Redevelopment Authority of the City of Seward, Nebraska (“CRA”) and Two Creeks Holdings, LLC, a Nebraska limited liability company (“Redeveloper”).

RECITALS

A. The CRA is a duly organized and existing community redevelopment authority, a body politic and corporate under the laws of the State of Nebraska, with lawful power and authority to enter into this Redevelopment Agreement.

B. The City of Seward, in furtherance of the purposes and pursuant to the provisions of the Act, has adopted a Redevelopment Plan for a blighted and substandard area designated by the City, including the Redevelopment Area.

C. Redeveloper owns the Project Site located in the Redevelopment Area.

D. Redeveloper submitted a redevelopment project proposal to redevelop the Project Site.

E. The Redeveloper’s proposed redevelopment project will consist of the construction of a commercial building and associated infrastructure improvements on the Project Site for shop, storage, and warehouse space for an expanding local business, as more particularly described on the attached and incorporated Exhibit “A”.

F. The CRA has approved Redeveloper’s proposed redevelopment project, including the utilization of tax-increment financing to provide for the construction of the eligible public improvements defined in this Redevelopment Agreement.

G. CRA and Redeveloper desire to enter into this Redevelopment Agreement to implement the redevelopment of the Project Site.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein set forth, CRA and Redeveloper do hereby covenant, agree and bind themselves as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

Section 1.01 Terms Defined in this Redevelopment Agreement.

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Redevelopment Agreement, such

definitions to be equally applicable to both the singular and plural forms and masculine, feminine and neuter gender of any of the terms defined:

A. “Act” means Article VIII, Section 12 of the Nebraska Constitution, NEB. REV. STAT. §§ 18-2101 through 18-2157, as amended, and acts amendatory thereof and supplemental thereto.

B. “Anticipated Tax Increment” means the Anticipated Tax Increment for this Project as set forth on the attached Exhibit “B”.

C. “City” means the City of Seward, Nebraska.

D. “CRA” means Community Redevelopment Authority of the City of Seward, Nebraska.

E. “Effective Date” means January 1, 2026 or January 1, 2027, pursuant to Section 3.01 of this Agreement.

F. “Eligible Project Costs” means only costs or expenses incurred by Redeveloper for Public Improvements and other items eligible for reimbursement under the Act.

G. “Minimum Project Valuation” means the amount of Four Hundred Ten Thousand and No/100 Dollars (\$410,000.00).

H. “Private Improvements” means all the private improvements to be constructed on the Project Site as more particularly described on the attached and incorporated Exhibit “A”.

I. “Project” means the Project Site and includes improvements to the Project Site and adjacent thereto, including the Private Improvements and Public Improvements defined herein and described on Exhibit “A”.

J. “Project Completion Date” means September 30, 2026.

K. “Project Site” means all that certain real property situated in the City of Seward, Seward County, Nebraska, more particularly described on Exhibit “A”.

L. “Public Improvements” shall include all the public improvements more particularly described on Exhibit “A” which are eligible improvements under the Act. The costs of the Public Improvements include the debt service payments of the TIF Indebtedness.

M. “Redevelopment Agreement” means this Redevelopment Agreement between the CRA and Redeveloper with respect to the Project.

N. “Redeveloper” means Two Creeks Holdings, LLC, a Nebraska limited liability company.

O. “Redevelopment Area” means the Redevelopment Area that is set forth in the Redevelopment Plan.

P. “Redevelopment Plan” means the Redevelopment Plan for the Redevelopment Area by the CRA and approved by the City pursuant to the Act, as amended from time to time.

Q. “Tax Increment” means in accordance with NEB. REV. STAT. § 18-2147 of the Act, the difference between the ad valorem tax which is produced by the tax levy (fixed each year by the Seward County Board of Equalization) for the Project Site before the completion of the construction of the Private Improvements and the ad valorem tax which is produced by the tax levy for the Project Site after completion of construction of the Private Improvements as part of the Project.

R. “TIF Indebtedness” means the sums payable under any bonds, notes, loans and advances of money or other indebtedness, including interest thereon, issued by the CRA or the City secured in whole or in part by Tax Increment.

Section 1.02 Construction and Interpretation.

The provisions of this Redevelopment Agreement shall be construed and interpreted in accordance with the following provisions:

(a) This Redevelopment Agreement shall be interpreted in accordance with and governed by the laws of the State of Nebraska, including the Act.

(b) Wherever in this Redevelopment Agreement it is provided that any person may do or perform any act or thing the word “may” shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.

(c) The phrase “at any time” shall be construed as meaning “at any time or from time to time.”

(d) The word “including” shall be construed as meaning “including, but not limited to.”

(e) The words “will” and “shall” shall each be construed as mandatory.

(f) The words “herein,” “hereof,” “hereunder,” “hereinafter” and words of similar import shall refer to the Redevelopment Agreement as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.

(g) Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as the context may require.

(h) The captions to the sections of this Redevelopment Agreement are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

ARTICLE II REPRESENTATIONS

Section 2.01 Representations by the CRA.

The CRA makes the following representations and findings:

(a) The CRA is a duly organized and validly existing community redevelopment authority under the Act.

(b) The CRA deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Redeveloper for the redevelopment of the Project Site as specified herein.

(c) The Project will achieve the public purposes of the Act by, among other things, increasing employment, increasing the tax base, and lessening blighted and substandard conditions in the Redevelopment Area.

(d) The costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the CRA and have been found to be in the long-term best interest of the community impacted by the Project.

Section 2.02 Representations of Redeveloper.

Redeveloper makes the following representations and findings:

(a) Redeveloper is a Nebraska limited liability company in good standing and authorized to do business in Nebraska and has the power to enter into this Redevelopment Agreement and perform all obligations contained herein.

(b) The execution and delivery of the Redevelopment Agreement and the consummation of the transactions therein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which Redeveloper is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of Redeveloper contrary to the terms of any instrument or agreement.

(c) There is no litigation pending or to the best of its knowledge threatened against Redeveloper affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Project or the carrying into effect of this Redevelopment Agreement or, except as disclosed in writing to the CRA, as to any other matter materially affecting the ability of Redeveloper to perform its obligations hereunder.

(d) Redeveloper owns the Project Site in fee simple and free from any liens, encumbrances, or restrictions which would prevent the performance of this Redevelopment Agreement by Redeveloper.

(e) Pursuant to NEB. REV. STAT. § 18-2119, Redeveloper certifies to the CRA that Redeveloper does not intend to file an application with the Nebraska Department of Revenue to receive tax incentives under the ImagiNE Act.

(f) The Project would not be economically feasible without the use of tax increment financing.

(g) The Project would not occur in the Redevelopment Area without the use of tax increment financing.

ARTICLE III OBLIGATIONS OF THE CRA AND PUBLIC IMPROVEMENTS

Section 3.01 Capture of Tax Increment.

Subject to the contingencies described below and to all of the terms and conditions of this Redevelopment Agreement, commencing for the tax year of the Effective Date and continuing thereafter, the CRA shall capture the Tax Increment from the Private Improvements pursuant to the Nebraska Community Development Law. The CRA shall capture the Tax Increment generated by the Project Site for a total period of not to exceed fifteen (15) years after the Private Improvements have been included in the assessed valuation of the Project Site and the Project Site is generating the Tax Increment subject to capture by the CRA. The Effective Date shall be either January 1, 2026 or January 1, 2027, depending on the year of the first material increase in the assessed value of the Project Site following commencement of construction. Redeveloper shall notify the CDA prior to June 1, 2026 if it desires to have the Effective Date established as January 1, 2026. Otherwise, the Effective Date shall be January 1, 2027. The CRA shall file the "Notice to Divide Taxes" with the Seward County Assessor on or prior to July 1 in the year of the Effective Date.

Section 3.02 Issuance of TIF Indebtedness.

On or after thirty (30) days following the approval and execution of this Redevelopment Agreement, the CRA shall incur or issue TIF Indebtedness in an amount not to exceed Seventy Seven Thousand Forty Five and No/100 Dollars

(\$77,045.00), as calculated on the attached and incorporated Exhibit “B”. The TIF Indebtedness shall be issued by the CRA to Redeveloper. The TIF Indebtedness shall be issued in a TIF Promissory Note in the form attached hereto as Exhibit “E” (“Note”). The TIF Indebtedness shall not be a general obligation of the CRA or City which shall issue such Note solely as a conduit. If Redeveloper does not acquire and fund the TIF Indebtedness itself, Redeveloper shall locate a lender or other entity to acquire and fund the acquisition of the Note for the TIF Indebtedness. The TIF Indebtedness shall only be secured by a pledge or assignment of the Tax Increment, and any other security for the TIF Indebtedness as required by any lender shall be provided by Redeveloper. The issuance of the TIF Indebtedness may be accomplished by offset so that the Redeveloper retains the TIF Revenues and no bankable currency is exchanged at closing of the TIF Indebtedness and issuance of the Note, except as otherwise provided herein. If the TIF Indebtedness is not paid in full by the maturity date set forth on Exhibit “B”, all unpaid amounts shall be forgiven.

Section 3.03 Use of TIF Indebtedness.

The CRA will collect the Tax Increment and use said Tax Increment to pay debt service on the TIF Indebtedness incurred as provided in Section 3.02 of this Redevelopment Agreement. Notwithstanding the foregoing, the amount of the TIF Indebtedness that the CRA agrees to service and repay with the Tax Increment shall not exceed the amount of the Eligible Project Costs certified pursuant to Section 4.03. In addition, at or prior to the issuance of the Note, Redeveloper shall pay to the CRA an amount equal to the CRA’s reasonable and necessary cost of issuance, including attorney fees and a CRA administration fee in the amount of three percent (3%) of the TIF Indebtedness. The cost of issuance and CRA fees shall be paid prior to the issuance of the Note. The Tax Increment shall be paid pursuant to the terms of the Note and this Redevelopment Agreement.

Section 3.04 Creation of Fund.

CRA will create a special fund to collect and hold the receipts of the Tax Increment. Such special fund shall be used for no purpose other than to pay TIF Indebtedness issued pursuant to Section 3.02 above.

Section 3.05 Projected TIF Sources and Uses.

In addition to the TIF Indebtedness calculation formula set forth on Exhibit “B”, Redeveloper’s anticipated TIF sources and eligible uses are attached and incorporated for the parties’ reference as Exhibit “C”.

**ARTICLE IV
OBLIGATIONS OF REDEVELOPER**

Section 4.01 Evidence of Financial Ability.

Upon written request from the CRA to Redeveloper, Redeveloper shall provide to the CRA evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitment of Redeveloper in connection with construction of the Public Improvements and the Private Improvements. To the extent allowed by law, the CRA agrees to keep said information confidential. Such information shall state the amount and source of liquid assets on hand or immediately available to Redeveloper for use in constructing the Private Improvements; and shall state the amount and source of debt financing which is available, or irrevocably committed, to Redeveloper for use in completing the Private Improvements. Such information shall be provided in a form satisfactory to the CRA, and evidence of loan commitments shall include all of the documents evidencing the loan commitment, acceptance by Redeveloper, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan. Submittal of such financial information in a form satisfactory to the CRA shall be a condition precedent to the requirement of the CRA to proceed with its obligations under this Redevelopment Agreement.

Section 4.02 Construction of Project; Insurance.

(a) Redeveloper will complete the Public Improvements and the Private Improvements and install all equipment necessary to operate the Public Improvements and the Private Improvements no later than the Project Completion Date. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Public Improvements and the Private Improvements. Until construction of the Public Improvements and the Private Improvements has been completed, Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the CRA as to the actual progress of Redeveloper with respect to construction of the Public Improvements and the Private Improvements. Promptly after completion by Redeveloper of the Public Improvements and the Private Improvements, Redeveloper shall furnish to the CRA a Certificate of Completion in the form attached hereto as Exhibit "F" from Redeveloper's engineer or architect, or owner's representative. When accepted in writing by the CRA, the certification by Redeveloper shall be a conclusive determination of satisfaction of the agreements and covenants in this Redevelopment Agreement with respect to the obligations of Redeveloper to construct the Public Improvements and the Private Improvements.

(b) Any contractor chosen by Redeveloper or Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations (provided that Redeveloper may self-insure in lieu of obtaining and keeping in force such policy of insurance) and a penal bond as required by the Act. Any contractor chosen by Redeveloper or Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof (provided that Redeveloper may self-insure in lieu of obtaining and keeping in force such policy of insurance). This insurance shall insure

against the perils of fire and extended coverage and shall include “special causes of loss” insurance for physical loss or damage.

Section 4.03 Cost Certification.

Redeveloper shall submit to the CRA a certification of Eligible Project Costs in the form of the certification attached hereto as Exhibit “G” (“Eligible Project Costs Certification”), after expenditure of such project costs. Redeveloper may, at its option, submit one or more partial Eligible Project Costs Certifications prior to expenditure of all Eligible Project Costs providing certification of receipt of billings for work in progress. All Eligible Project Costs Certifications shall be subject to review and approval by the CRA. Determinations by the CRA whether costs included in the Eligible Project Costs Certification are properly included in Eligible Project Costs as defined in this Redevelopment Agreement shall be made in its sole discretion and shall be conclusive and binding on Redeveloper. All Eligible Project Costs shall be submitted to the CRA within thirty (30) days of the earlier of: (1) the date construction is actually completed for the Project or (2) the Project Completion Date.

The TIF Indebtedness shall not exceed the actual and certified Eligible Project Costs for the Project. In the event that the certified Eligible Project Costs for the Project are less than the TIF Indebtedness on the Project Completion Date, and said deficiency continues to exist thirty (30) days after Redeveloper’s receipt of written notice from the CRA detailing the same, the CRA shall reduce the TIF Indebtedness amount and Redeveloper shall repay to the CRA within ten (10) days of said cost certification any amount in excess of the Eligible Project Costs issued prior to the Eligible Project Costs Certification. If the CRA requests, Redeveloper shall, from time to time, furnish the CRA with satisfactory evidence as to the use and application of the Tax Increment.

Section 4.04 No Discrimination.

Redeveloper agrees and covenants for itself, its successors and assigns that as long as this Redevelopment Agreement is outstanding, it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Project.

Section 4.05 Pay Real Estate Taxes.

(a) Redeveloper anticipates creating a taxable real property valuation of the Project and Project Site of not less than the Minimum Project Valuation no later than the Project Completion Date. During the period of this Redevelopment

Agreement, Redeveloper, and any successors and assigns, will: (1) not protest a real estate property valuation of the Project Site to a sum less than the Minimum Project Valuation; and (2) not convey the Project Site or structures thereon to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes.

(b) Redeveloper acknowledges and understands that if the actual amount of Tax Increment is less than the anticipated amount of Tax Increment, the CRA shall not be liable for any shortfall or deficiency. If Redeveloper acquires the Note, Redeveloper agrees to forgive any shortfall in repayment of the TIF Indebtedness. If a lender or third party other than Redeveloper acquires the Note, Redeveloper shall make semi-annual payments in lieu of taxes (“Deficiency Payments”) to said lender or third party in the amount the Anticipated Tax Increment exceeds the actual Tax Increment. Said Deficiency Payments shall be made within thirty (30) days of written notice from the lender and/or CRA.

Section 4.06 No Assignment or Conveyance.

Redeveloper shall not convey, assign or transfer the Project Site or any interest therein prior to the termination of the fifteen (15) year period commencing on the Effective Date without the prior written consent of the CRA, which shall not be unreasonably withheld and which the CRA may make subject to any terms or conditions it reasonably deems appropriate, except for the following conveyance, which shall be permitted without consent of the CRA: (i) any conveyance as security for indebtedness incurred by Redeveloper for Project costs or any subsequent physical improvements to the Project Site (whether incurred prior to or after the effective date of this Redevelopment Agreement) with the outstanding principal amount of all such indebtedness secured by the Project Site which shall have lien priority over the obligations of Redeveloper pursuant to this Redevelopment Agreement; or (ii) any additional or subsequent conveyance as security for indebtedness incurred by Redeveloper for Project costs or any subsequent physical improvements to the premises provided that any such conveyance shall be subject to the obligations of Redeveloper pursuant to this Redevelopment Agreement.

ARTICLE V
FINANCING REDEVELOPMENT PROJECT; ENCUMBRANCES

Section 5.01 Financing.

Redeveloper shall pay all costs for the construction of the Private Improvements and the Public Improvements. Redeveloper shall be responsible for arranging all necessary financing for the construction of the Public Improvements and Private Improvements, including, with respect to the Public Improvements, the TIF Indebtedness.

Section 5.02 Encumbrances.

Redeveloper shall not create any lien, encumbrance or mortgage on the Project or the Project Site except, (a) encumbrances which secure indebtedness incurred to acquire, construct and equip the Project or for any other physical improvements to the Project Site, (b) easements and rights of entry granted by Redeveloper, (c) construction and materialman liens that may be filed in connection with the construction of the Private Improvements so long as any such lien is discharged or bonded within ninety (90) days of completion of the Private Improvements, and (d) any other liens so long as any such lien is satisfied and released or substitute security is posted in lieu thereof within ninety (90) days of Redeveloper receiving notice thereof.

Section 5.03 Mortgage Financing.

(a) Mortgage Holder Obligations. Each mortgage holder who obtains title to the Project Site or any part thereof as a result of foreclosure or other judicial proceedings or action in lieu thereof (referred to in this section as the “Mortgage Holder”) shall be obligated to require construction and completion of the Private Improvements and the Public Improvements by any person who subsequently obtains title to the Project Site or any part thereof from the Mortgage Holder; provided, however, the Mortgage Holder shall not be obligated by and shall be exempted from those provisions of this Redevelopment Agreement which require construction and completion of the Private Improvements and the Public Improvements. Additionally, no person, including the Mortgage Holder, may devote the Private Improvements and the Public Improvements thereon or any part thereof to any use or construct any improvements thereon other than those uses and improvements provided and permitted in accordance with this Redevelopment Agreement for the term of this Redevelopment Agreement.

(b) Copy of Notice of Default to Mortgagee. Whenever the CRA shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants in this Redevelopment Agreement, the CRA shall, at the same time, forward a copy of such notice or demand to each holder of any mortgage authorized by this Redevelopment Agreement at the last address of such holder as shown in the records of the CRA or as provided by such mortgagee.

(c) Mortgagee’s Option to Cure Defaults. If thirty (30) days after notice or demand with respect to any breach or default, such breach or default remains uncured, each holder shall (and every mortgage instrument made prior to acceptance by the CRA of the Certificate of Completion with respect to any of the Private Improvements or the Public Improvements by Redeveloper or its successors in interest shall so provide) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after notice or demand, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such period and the default cannot, in

the exercise of due diligence, be cured within such period, the holder shall have the right to diligently continue to cure the default.

(d) Mortgage Rights Applicable to Other Forms of Encumbrance. The rights and obligations of this Redevelopment Agreement relating to mortgages of the Project Site shall apply to any other type of encumbrance on the Project Site, and any of the stated rights, obligations and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance.

(e) Termination of Provisions. The provisions of this Section 5.03 shall terminate upon acceptance by the CRA of Redeveloper's Certificate of Completion.

ARTICLE VI DEFAULT, REMEDIES; INDEMNIFICATION

Section 6.01 Default.

In the event Redeveloper fails to perform or comply with any term, condition, or obligation of this Redevelopment Agreement and does not cure such defect within a period of ten (10) days after receiving written notice from the CRA specifying the nature of the breach of the Redevelopment Agreement, then Redeveloper shall be in default.

Section 6.02 Remedies.

In the event that Redeveloper is in default pursuant to Section 6.01, the CRA may pursue any remedy available at law or in equity, including without limitation, one or more of the following: (1) the CRA may terminate this Redevelopment Agreement and neither party shall have any further obligation hereunder, (2) the CRA may terminate the Note and declare said Note void and thereafter shall not be obligated to remit any Tax Increment as debt service thereon.

Section 6.03 Limitation of Liability; Indemnification.

(a) Notwithstanding anything in this Article VI or this Redevelopment Agreement to the contrary, neither the CRA, City, nor their officers, directors, employees, agents or their governing bodies shall have any pecuniary obligation or monetary liability under this Redevelopment Agreement. The obligation of the CRA on any TIF Indebtedness shall be limited solely to the Tax Increment pledged as security for such TIF Indebtedness. Specifically, but without limitation, neither City nor the CRA shall be liable for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder. Redeveloper releases the CRA and the City from and agrees that the CRA and the City shall not be liable for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Private Improvements.

(b) Redeveloper shall indemnify, defend (at the CRA's and/or the City's option) and hold harmless the CRA, the City, their respective employees, officials, agents, representatives and volunteers from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature, arising out of or in connection with any aspect of the acts, omissions, negligence or willful misconduct of Redeveloper, its employees, agents, officers, contractors or subcontractors, or Redeveloper's performance or failure to perform under the terms and conditions of this Redevelopment Agreement. Such indemnification, hold harmless and defense obligation shall exclude only such liability actions as arise directly out of the sole negligence or willful misconduct of the CRA or the City. The indemnification and defense obligations set forth herein shall survive the termination of this Redevelopment Agreement.

ARTICLE VII MISCELLANEOUS

Section 7.01 Memorandum.

A Memorandum of this Redevelopment Agreement shall be recorded with the Seward County Register of Deeds. The form of the Memorandum is attached as Exhibit "D" and incorporated by this reference.

Section 7.02 Governing Law.

This Redevelopment Agreement shall be governed by the laws of the State of Nebraska, including the Act.

Section 7.03 Binding Effect; Amendment.

This Redevelopment Agreement shall be binding on the parties hereto and their respective successors and assigns. This Redevelopment Agreement shall run with the Project Site. The Redevelopment Agreement shall not be amended except by a writing signed by the party to be bound.

Section 7.04 No Agency or Partnership.

This Redevelopment Agreement is not intended and shall not be construed to create the relationship of agent, employee, partnership, joint venture or association as between: (i) the CRA and/or the City; and (ii) Redeveloper, or any officer, employee, contractor or representative of Redeveloper. No joint employment is intended or created by this Redevelopment Agreement for any purpose. Redeveloper agrees to so inform its employees, agents, contractors and subcontractors who are involved in the implementation of or construction under this Redevelopment Agreement.

Section 7.05 Document Retention.

Redeveloper shall retain copies of all supporting documents that are associated with the Redevelopment Plan, Project, or this Redevelopment Agreement and that are received or generated by Redeveloper for three (3) years following the end of the last fiscal year in which ad valorem taxes are divided for the Project and provide such copies to the City as needed to comply with the City's retention requirements under the Act. Supporting documents shall include, but not be limited to, any cost-benefit analysis conducted pursuant to Section 18-2113 of the Act and any invoice, receipt, claim, or contract received or generated by Redeveloper that provides support for receipts or payments associated with the division of taxes.

Section 7.06 Notice to Redeveloper.

For the purpose of any notice requirement set forth in this Redevelopment Agreement, Redeveloper's address shall be:

Two Creeks Holdings, LLC
Attn: Michael Lewis
1870 266th Road
Seward, NE 68434

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the CRA and Redeveloper have signed this Redevelopment Agreement as of the date and year first above written.

CRA:
COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____
Greg Butcher, Secretary

By: _____
Timothy Moll, Chairman

REDEVELOPER:
TWO CREEKS HOLDINGS, LLC, a
Nebraska limited liability company

By: _____
Michael Lewis, President

EXHIBIT "A"
DESCRIPTION OF PROJECT

The Project undertaken by Redeveloper on the Project Site, defined as the real estate legally described as:

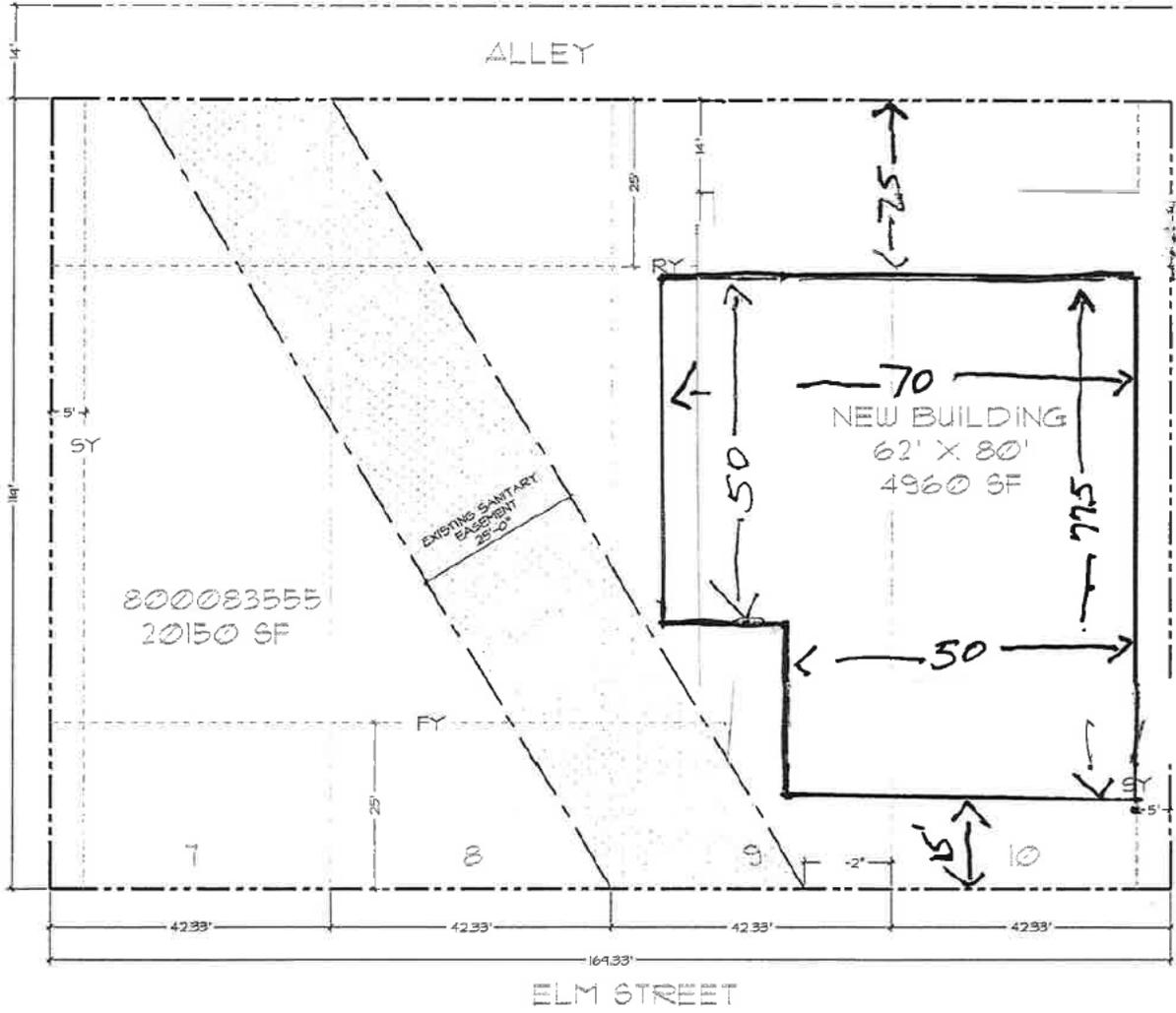
Lots 4-5, part of Lot 6, and all of Lots 7-10, Block 37, Seward HM&R Addition, Seward, Seward, County, Nebraska.

The Project includes the following Public Improvements and Private Improvements, which shall be undertaken and completed by Redeveloper.

- (a) **Private Improvements.** The construction of an approximately 4,960 square foot commercial steel building, together with all related improvements, for additional shop, storage, and warehouse space for company that specializes in providing wholesale paint supplies, tools, and equipment. The Private Improvements are depicted on the attached and incorporated Exhibit "A-1" for reference.

- (b) **Public Improvements.** Site acquisition, grading, site preparation, water and sewer improvements, along with other eligible public improvements on the Project Site and in the Redevelopment Area, which public improvements are eligible improvements under the Act pursuant to this Redevelopment Agreement; paid for, in part, by the Tax Increment created by the Private Improvements.

EXHIBIT "A-1"
SITE PLAN



Site plan is preliminary in nature and subject to change.

**EXHIBIT “B”
TIF INDEBTEDNESS**

1. Projected Base Value: \$54,075
2. Projected Minimum Final Value: \$410,000
3. Projected Incremental Valuation: \$355,925
4. Assumed Tax Levy: 1.443097
5. Anticipated Tax Increment: \$5,136 annually
6. Assumed Interest Rate: 0%
7. TIF Indebtedness:
 - a. **Principal Amount.** The principal amount of the TIF Indebtedness shall be equal to or less than \$77,045, which is the maximum amount, together with interest accruing thereon, which can be amortized by the Maturity Date, solely from the Tax Increment Revenues based upon the Anticipated Tax Increment.
 - b. **Payments.** Semi-annually commencing when real estate taxes are fully collected for the tax year of the Effective Date. The CRA shall utilize all Tax Increment received from the Project to pay debt service on the TIF Indebtedness until the TIF Indebtedness is fully repaid. Provided, however, the CRA does not warrant, represent, or guaranty that the Tax Increment will be sufficient to repay the entire amount of the TIF Indebtedness. The CRA has no obligation to make any payments other than the actual Tax Increment received from the Project.
 - c. **Maturity Date.** On or before December 31, 2041, if the Effective Date is established as January 1, 2026 pursuant to Section 3.01 of this Agreement, or December 31, 2042 if the Effective Date is established as January 1, 2027.
 - d. **TIF Period.** The period for the division of taxes for this Project shall be fifteen (15) years, commencing on the Effective Date. For example, if the Effective Date is January 1, 2026 (2026 taxes paid in 2027), the TIF Period will terminate on December 31, 2040 (2040 taxes due on December 31, 2040 but paid in 2041). Payment of ad valorem taxes in arrears pursuant to customary payments in Nebraska shall not affect the fifteen (15) year TIF period.

Note: All calculations are based on assumptions and estimates of future values that may be different than the values used herein or may vary from year to year.

EXHIBIT "C"
PROJECTED TIF SOURCES AND USES

1. TIF SOURCES:

Assumptions:

Tax Levy	1.443097
Interest Rate	0.0%
Number of Years	15

Property Valuation:

	Assessed Val.	Est. Taxes
Pre-Project	\$54,075	\$780
Completed Project	\$410,000	\$5,917
Difference	\$355,925	\$5,136

TIF Calculations:

Annual TIF Amount	\$5,136
Total TIF	\$77,045
TIF Indebtedness (Present Value)	\$77,045
less 3% Admin Fee	(\$2,311)
Approx. Cost of Issuance (actual cost TBD)	(\$7,500)
TIF Available to Redeveloper	\$67,234

2. TIF USES:

Site acquisition	\$60,000
Grading	\$5,000
Site Prep.	\$3,000
Water and Sewer Imp.	\$21,000
Arch./Engineering	\$3,500
Cost of Issuance	\$7,500
3% Amin. Fee	\$2,311
Total Eligible Expenses	\$102,311

**EXHIBIT “D”
REDEVELOPMENT AGREEMENT
MEMORANDUM**

[On the following page]

After recording please return to:

Derek Bargmann
City of Seward
City Hall, 537 Main Street
Seward, NE 68434

**MEMORANDUM OF REDEVELOPMENT AGREEMENT
(Two Creeks Holdings 2025 Redevelopment Project)**

This Memorandum of Redevelopment Agreement (“Memorandum”) is made this ___ day of June, 2025 by and between the Community Redevelopment Authority of the City of Seward, Nebraska (“CRA”) and Two Creeks Holdings, LLC, a Nebraska limited liability company (“Redeveloper”).

1. **Redevelopment Agreement.** CRA and Redeveloper have entered into that certain Redevelopment Agreement dated as of this even date, describing the public improvements and the private improvements being made to real property owned by Redeveloper and legally described as:

Lots 4-5, part of Lot 6, and all of Lots 7-10, Block 37, Seward HM&R Addition, Seward, Seward, County, Nebraska (the “Project Site”).

2. **Tax Increment Financing.** The Redevelopment Agreement provides for the capture of the Tax Increment, as defined therein, by the CRA of the private improvements to be made by Redeveloper on the Project Site for a period not to exceed fifteen (15) years after the Effective Date set forth in the Redevelopment Agreement. The Tax Increment so captured by the CRA shall be used to make the public improvements as described in the Redevelopment Agreement.

3. **Remaining Terms.** The rest and remaining terms of the Redevelopment Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Redevelopment Agreement may be inspected at the CRA offices in Seward, Nebraska.

[SIGNATURE PAGE TO FOLLOW]

CRA:

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____ By: _____
_____, Secretary _____, Chairman

STATE OF NEBRASKA)
) ss.
COUNTY OF SEWARD)

The foregoing instrument was acknowledged before me this ___ day of _____, 2025, by _____ and _____, Chairman and Secretary respectively of the Community Redevelopment Authority of the City of Seward, Nebraska, a public body corporate and politic, on behalf of the Authority.

Notary Public

REDEVELOPER:

TWO CREEKS HOLDINGS, LLC, a
Nebraska limited liability company

By: _____
Michael Lewis, President

STATE OF NEBRASKA)
) ss.
COUNTY OF SEWARD)

The foregoing instrument was acknowledged before me this ___ day of _____, 2025, by Michael Lewis, President of Two Creeks Holdings, LLC, on behalf of the company.

Notary Public

**EXHIBIT “E”
FORM OF TIF PROMISSORY NOTE**

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (“THE 1933 ACT”) AND MAY NOT BE TRANSFERRED, ASSIGNED, SOLD OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE 1933 ACT SHALL BE IN EFFECT WITH RESPECT THERETO AND THERE SHALL HAVE BEEN COMPLIANCE WITH THE 1933 ACT AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER, OR THERE SHALL HAVE BEEN DELIVERED TO THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA PRIOR TO TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION AN OPINION OF COUNSEL, SATISFACTORY TO THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA TO THE EFFECT THAT REGISTRATION UNDER THE 1933 ACT IS NOT REQUIRED.

UNITED STATES OF AMERICA
STATE OF NEBRASKA
COMMUNITY REDEVELOPMENT AUTHORITY
OF THE CITY OF SEWARD, NEBRASKA

REDEVELOPMENT REVENUE NOTE
(TWO CREEKS HOLDINGS 2025 REDEVELOPMENT PROJECT)

Maturity Date	Interest Rate	Original Issuance Date
December 31, 204__	0%	
Registered Holder	Principal Amount	
Two Creeks Holdings, LLC	\$77,045.00	

THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA (the “Issuer”), a body politic and corporate organized and existing under the laws of the State of Nebraska, for value received hereby promises to pay, solely from the source and as hereinafter provided, to the Registered Holder identified above, or registered assigns, the Principal Amount identified above at the office of the City Treasurer, as Paying Agent and Registrar, and in like manner to pay solely from said source interest on said principal sum at the Interest Rate identified above from the Accrual Commencement Date (as defined herein) or from the most recent date to which interest has not been paid. Principal and accrued interest shall be payable in thirty (30) semi-annual installments due June 15, 202__, December 15, 202__, and each June 15 and December 15 thereafter through December 15, 204__, when all principal and accrued interest shall be due and payable. Except with respect to interest not punctually paid, the principal and interest on this Note will be paid by check or draft mailed to the Registered Holder in whose name this Note is registered at the close of business on the fifteenth calendar day next preceding the applicable maturity date at his address as it appears on such note registration books. The principal and interest of this Note is payable in any coin or currency of the United States of America which on the

respective dates of payment is legal tender for the payment of public and private debts. No interest shall accrue until the later of: (1) the date the taxes are due for the year of the Effective Date identified in the Redevelopment Agreement (which is December 31st of the year of the Effective Date); or (2) the date that the Redeveloper has submitted and the CDA has accepted the Cost Certification for the eligible costs for the Project (the “Accrual Commencement Date”).

This Note is designated the Community Redevelopment Authority of the City of Seward, Nebraska Redevelopment Revenue Note (Two Creeks Holdings 2025 Redevelopment Project), aggregating Seventy Seven Thousand Forty Five and No/100 Dollars (\$77,045.00) (“Note”) in principal amount which has been issued pursuant to the Section 12 of Article VIII of the Nebraska Constitution and NEB. REV. STAT. §§ 18-2101 through 18-2157, as amended and supplemented (the “Act”) and under and pursuant to the terms of that certain Redevelopment Agreement between the Issuer and Two Creeks Holdings, LLC, a Nebraska limited liability company, for the Two Creeks Holdings 2025 Redevelopment Project (the “Redevelopment Agreement”), to aid in the financing of a redevelopment project pursuant to the Act. This Note does not represent a debt or pledge of the faith or credit of the Issuer or grant to the Registered Holder of this Note any right to have the Issuer levy any taxes or appropriate any funds for the payment of the principal hereof or the interest hereon nor is this Note a general obligation of the Issuer, or the individual officials, officers or agents thereof. This Note is payable solely and only out of the Tax Increment generated by the Project defined in the Redevelopment Agreement (the “Project”). All such revenue has been duly pledged for the purpose of paying this Note.

THIS NOTE AND THE INTEREST HEREON DOES NOT NOW AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA, OR THE CITY OF SEWARD, NEBRASKA, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION, NOR SHALL THIS NOTE AND THE INTEREST HEREON EVER GIVE RISE TO ANY PECUNIARY LIABILITY OF THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA, OR THE CITY OF SEWARD, NEBRASKA, A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

No recourse shall be had for the payment of the principal of or interest on this Note, or for any claim based hereon or upon any obligation, covenant or agreement contained in the Redevelopment Agreement against any past, present or future employee, member or elected official of the Issuer, or any incorporator, officer, director, member or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, officer, director or member as such is hereby expressly waived and released as a condition of and in consideration of the issuance of this Note.

It is hereby certified and recited and the Issuer has found: that the Project

is an eligible “redevelopment project” as defined in the Act; that the issuance of this Note and the construction of the Project will promote the public welfare and carry out the purposes of the Act by, among other things, contributing to the development of a blighted and substandard area of the City of Seward, Nebraska, pursuant to a Redevelopment Plan adopted by the City; that all acts, conditions and things required to be done precedent to and in the issuance of this Note have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; and, that this Note does not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitations.

This Note is transferable only upon the books of the Issuer kept for that purpose at the office of the Registrar by the Registered Holder hereof in person, or by his duly authorized attorney, upon written documentation of transfer satisfactory to the Issuer and the Registrar duly executed by the Registered Holder and the assignee/transferee, together with a purchase letter in a form provided by Issuer and any other documentation required by the Issuer. Prior to the approval of any transfer of this Note, the Registered Holder shall pay all of the Issuer’s costs, including attorney’s fees, relating to the transfer of the Note. The Issuer and the Paying Agent may deem and treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and premium, if any, and interest due hereon and for all other purposes.

The Note is prepayable at any time in whole or in part, to the extent there are any funds in the debt service fund in excess of amounts necessary to pay scheduled debt service. Prepayments shall reduce the number, but not the amount, of scheduled debt service payments on the Note, in inverse order of maturity.

It is hereby certified and recited that all conditions, acts and things required by law and the Redevelopment Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed and that the issue of this Note, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by the laws of the State of Nebraska.

This Note shall not be entitled to any benefit or be valid or become obligatory for any purpose until this Note shall have been authenticated by the execution by the Registrar of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA has caused this Note to be signed in its name and on its behalf by the signature of its Chairman and attested by the signature of its Secretary, as of the Original Issuance Date identified above.

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____ By: _____
_____, Secretary _____, Chairman

CERTIFICATE OF AUTHENTICATION

City Treasurer, City of Seward as
Paying Agent and Registrar

By: _____
Authorized Signatory

EXHIBIT "F"
FORM OF CERTIFICATE OF COMPLETION
(Two Creeks Holdings 2025 Redevelopment Project)

The undersigned certifies, represents and warrants to the City of Seward, Nebraska, and the Community Redevelopment Authority of the City of Seward, Nebraska ("CRA") with regard to the following real property situated in the City of Seward, Seward County, Nebraska, to wit:

Lots 4-5, part of Lot 6, and all of Lots 7-10, Block 37, Seward HM&R Addition, Seward, Seward, County, Nebraska.

that the Private Improvements and Public Improvements required to be constructed by Redeveloper upon the above-described property have been satisfactorily completed in accordance with the requirements of the Redevelopment Agreement dated June 17, 2025, as referenced in the Memorandum of Redevelopment Agreement recorded as Instrument No. _____ in the office of the Register of Deeds for Seward County, Nebraska.

REDEVELOPER:

Two Creeks Holdings, LLC, a
Nebraska limited liability company

By: _____
Michael Lewis, President

CRA:

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____
_____, Secretary

By: _____
_____, Chairman

EXHIBIT "G"
FORM OF A CERTIFICATION OF ELIGIBLE PROJECT COSTS

Date: _____

Two Creeks Holdings, LLC, a Nebraska limited liability company ("Redeveloper"), hereby certifies that it has incurred and paid the Eligible Costs indicated herein, pursuant to the terms of the Redevelopment Agreement between Redeveloper and the Community Redevelopment Authority of the City of Seward. The portion of the Project as indicated herein is substantially completed. Attached hereto are documents substantiating the actual Eligible Costs and payment by Redeveloper.

REDEVELOPMENT ELIGIBLE COSTS

Certified and Requested

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total certified TIF eligible costs:	\$ _____*

***Principal Amount of TIF Indebtedness shall not exceed \$77,045**

Two Creeks Holdings, LLC, a
 Nebraska limited liability company

By: _____
 Michael Lewis, President

COPIES OF PROOF OF PAYMENT ARE ATTACHED HERETO.

Approved the by Chairman of the CRA:

 _____, Chairman

**AMENDMENT TO THE REDEVELOPMENT PLAN
OF THE CITY OF SEWARD, NEBRASKA**

(TWO CREEKS HOLDINGS 2025 REDEVELOPMENT PROJECT)

The City of Seward, Nebraska (“City”) has undertaken a plan of redevelopment within the community pursuant to the adoption of the Redevelopment Plan for the City of Seward, as amended (the “Redevelopment Plan”). The Redevelopment Plan was approved by the City Council of the City of Seward on November 15, 2011. The Redevelopment Plan serves as a guide for the implementation of redevelopment activities within certain areas of the City, as set forth in the Redevelopment Plan.

Pursuant to the Nebraska Community Development Law codified at NEB. REV. STAT. §§ 18-2101 through 18-2157 (the “Act”), Seward created the Community Redevelopment Authority of the City of Seward (“CRA”), which has administered the Redevelopment Plan for the City. The Redevelopment Plan describes Redevelopment Area #1 (the “Redevelopment Area”), which includes the Project Site, as defined below. The purpose of this Plan Amendment is to identify a specific region in the Redevelopment Area that is in need of redevelopment to cause the removal of blight and substandard conditions. The project site for this project is legally described on the attached Exhibit “A”, which is incorporated herein by this reference (the “Project Site”).

The Project Site

The Project Site is generally located at 1151 South Street in Seward, Nebraska, as depicted below:



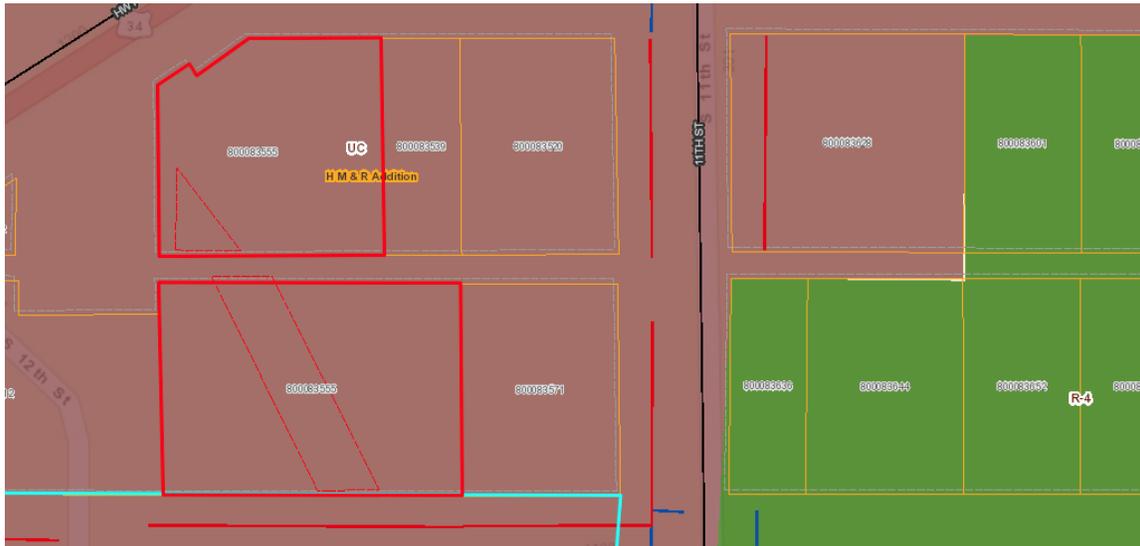


The Project Site is currently vacant. It is intersected by an alley easement and a sanitary easement that make development of the Project Site challenging.



The Project Site is in need of redevelopment. The CRA has considered whether redevelopment of the Project Site will conform to the general plan and the coordinated, adjusted, and harmonious development of the City and its environs. In this consideration, the CRA finds that such a redevelopment of the Project Site will promote the health, safety, morals, order, convenience, prosperity, and the general welfare of the community including, among other things, the promotion of safety from fire, the promotion of the healthful and convenient distribution of population, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of conditions of blight.

The Project Site is zoned UC – Urban Corridor:

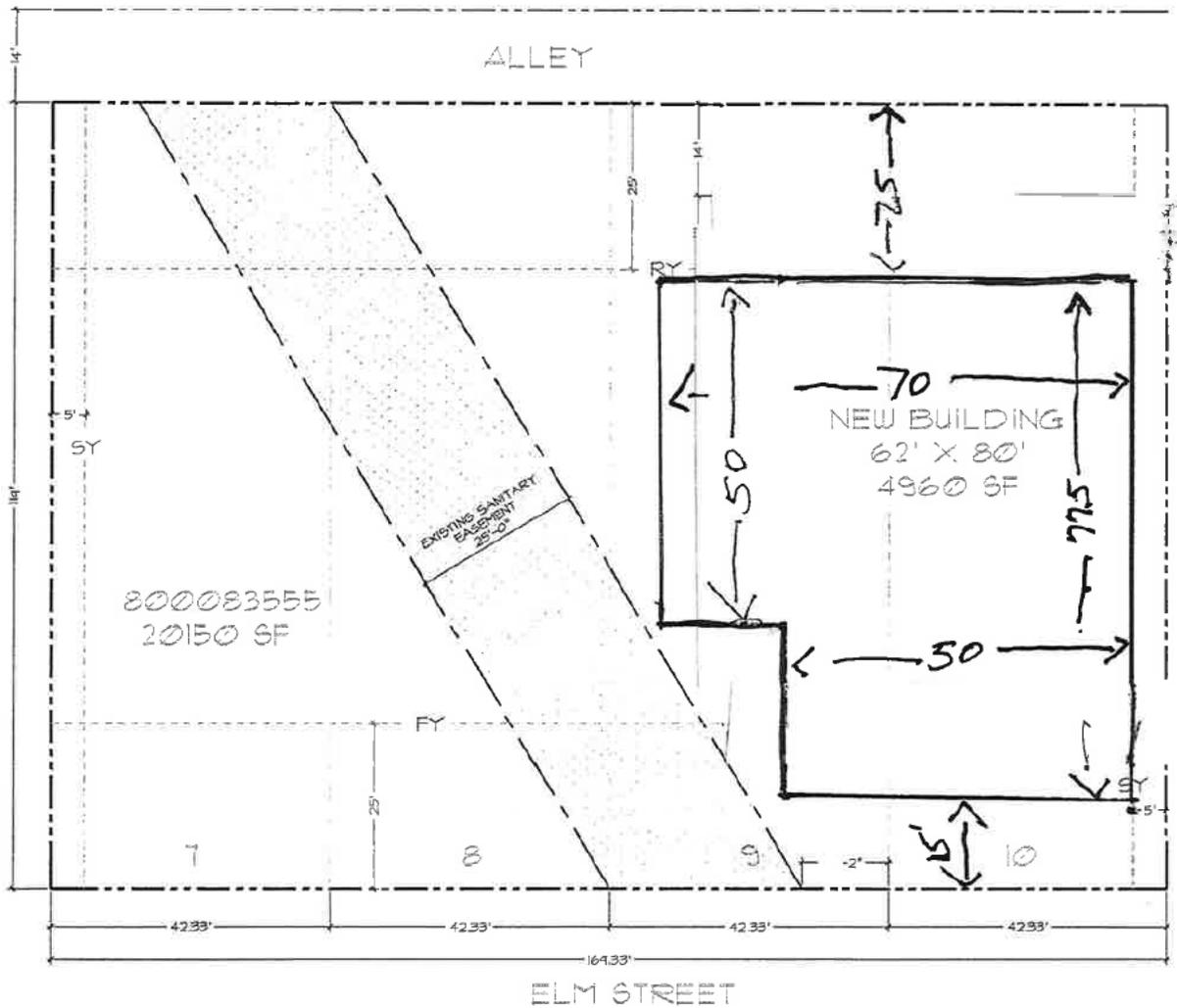


The Future Land Use Map of the Comprehensive Plan (defined below) designates the Project Site as Commercial:



The Redevelopment Project

Two Creeks Holdings, LLC (“Redeveloper”) currently owns the Project Site. Pending approval of this Plan Amendment, Redeveloper intends to construct an approximately 4,960 square foot steel building on the south half of parcel (south of the alley), together with all related improvements (“Project”). The buildings will be used for additional shop, storage, and warehouse space for St. PJ Supply Inc. Below is a preliminary site plan for the Project:



Construction of the project is intended to commence in 2025 after Project approval and be completed in Summer 2026.

The preliminary estimated total cost of the Project is \$458,100. The total estimated cost includes more than \$92,000 of TIF-eligible public costs needed to develop the Project Site and support the private improvements. The breakdown of preliminary estimated TIF-eligible costs is set forth on Exhibit "B". These TIF-eligible costs are estimates, and the actual costs shall be certified upon completion of the work, as further detailed in the Redevelopment Agreement. The Redeveloper is willing to construct the public improvements and renovations subject to receiving all the TIF generated by the Project up to the total cost of the public improvements. Without TIF, construction of the Project Site would be cost prohibitive, and the Redeveloper could not develop the Project Site as designed.

Tax Increment Financing

As part of the Project, the CRA shall capture available tax increment from the Project Site to assist in payment for the public improvements listed as eligible expenditures under the Act in the Redevelopment Area. Section 18-2147 of the Act authorizes the use of TIF. It provides that any ad valorem tax levied upon real property, or any portion thereof, in a redevelopment project shall be divided, for a period not to exceed fifteen years after the effective date as identified in the redevelopment contract, or amendment thereof, or in the resolution(s) of the authority authorizing the issuance of TIF Indebtedness pursuant to the Act, as follows:

- (a) That portion of the ad valorem tax the levy produces at the rate fixed each year by or for each public body upon the redevelopment project valuation shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body (“Base Tax Amount”); and
- (b) That portion of the ad valorem tax on real property, as provided in the redevelopment contract or bond resolution, in the redevelopment project in excess of the Base Tax Amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing, in whole or in part, the redevelopment project.

The Project will support approximately \$77,045 in TIF Indebtedness based upon the projected base value of \$54,075, an anticipated completed valuation of \$410,000, and a 0% interest rate for the TIF Note.¹ The TIF-eligible uses identified by the Redeveloper, together with the 3% CRA administration fee and cost of issuance, which are additional TIF-eligible uses that Redeveloper shall be required to pay, exceed the anticipated TIF amount of \$77,045. The final, actual cost of all TIF-eligible expenses shall be certified by Redeveloper upon completion of construction.

The base valuation year for the Project is anticipated to be 2025 or 2026, depending whether there is an increase in valuation for the partial construction that occurs in 2025. The first year that the tax increment is anticipated to be captured will be 2026 or 2027. The real property ad valorem taxes on the base valuation will continue to be paid to the appropriate taxing jurisdictions. The increase will come from development of the Project Site as previously described. The projected TIF Sources and Uses are set forth in more detail on the attached and incorporated

¹ For purposes of the TIF projections for this Project, the CRA (1) has assumed the Project will capture the full 15 years of tax increment and there will not be a partial valuation in the first year; and (2) has not accounted for any increases in the assessed value of the Project Site during the 15 year tax increment financing period. All of these assumptions will change the actual amount of the tax increment generated by the Project.

Exhibit “B”. The costs of the eligible improvements are estimates, and more detail shall be set forth in the Redevelopment Agreement for the Project.

Statutory Elements

A. Property Acquisition, Demolition and Disposal

No public acquisition or disposal of private property or relocation of families or businesses is necessary to accomplish the Project. Redeveloper owns the Project Site. Redeveloper purchased the Project Site in July, 2022.

B. Population Density

The proposed development of the Project Site is the construction of a commercial building on a vacant lot. As such, the Project will not materially affect the population density in the Redevelopment Area.

C. Land Coverage

The proposed development of the Project Site is the construction of an approximately 4,960 square foot steel building on an approximately 20,150 square foot south half of the parcel. The Project will comply with all land coverage requirements in the City of Seward.

D. Traffic Flow, Street Layouts, and Street Grades

The Project is anticipated to minimally increase traffic to and from the Project Site. The Project Site is located on Highway 35, across the street from the current tenant location that is being expanded. The existing public streets are sufficient to support the Project.

E. Parking

Redeveloper will add a parking lot that will create public parking on the Project Site. The parking lot will meet or exceed the parking requirements set forth in the applicable zoning district. The conditions of the public parking shall be set forth in the redevelopment agreement for the Project.

F. Zoning, Building Code, and Ordinances

The Project Site is located in the City of Seward UC Urban Corridor District. The Project is a permitted use within said zoning district. Due to the unique characteristics of the lot, including an alley easement and a sanitary easement intersecting the lot, the property will require a setback adjustment as designed. Redeveloper shall be responsible for obtaining approval of the setback adjustment and this agreement shall not be interpreted as approval of such requirement. Other than the setback adjustment, no additional zoning, building code, or ordinance changes

will be necessary for the Project. Redeveloper shall be responsible for any further zoning changes that are necessary.

Comprehensive Plan

The comprehensive plan for the City, prepared by RDG Planning & Design, Inc., was adopted by the City on January 15, 2019 (the “Comprehensive Plan”). The Project conforms to the Comprehensive Plan. Of particular note are the community goals identified in the Comprehensive Plan for supporting businesses, including: (1) identifying potential solutions to overcome barriers to retention and expansion of existing businesses, and (2) encouraging the creation of complementary business clusters to reduce operational costs to promote business growth. The development of businesses along Highway 34 and the use of TIF is supported by the Comprehensive Plan. The Commercial category of land uses is described to include “a variety of commercial uses including auto-oriented developments, major retailers, multi-use centers, restaurants, and other services.” The proposed Project will help develop the commercial space necessary to retain and expand an existing local business along Highway 34. The location is adjacent to the current facilities, making it ideal for redevelopment for this business or a complementary business.

Cost-Benefit Analysis

Pursuant to section 18-2113 of the Act, the CRA must conduct a cost-benefit analysis for any redevelopment project that will utilize TIF. The Cost-Benefit Analysis for the Project is attached hereto as Exhibit “C” and incorporated by this reference.

Additional Project Information from the Redeveloper

The CRA has determined that: (i) without the use of TIF, this Project would not be feasible and could not be developed on the Project Site; and (ii) no families will be displaced or relocated from the Project Site based upon this Project. Redeveloper has represented that Redeveloper does not intend to file an application with the Department of Revenue to receive tax incentives under the ImagiNE Act for the Project.

EXHIBIT "A"
Legal Description of Project Site

Lots 4-5, part of Lot 6, and all of Lots 7-10, Block 37, Seward HM&R Addition, Seward, Seward, County, Nebraska

(Parcel ID #800083555).

The general location of the Project Site is depicted below:

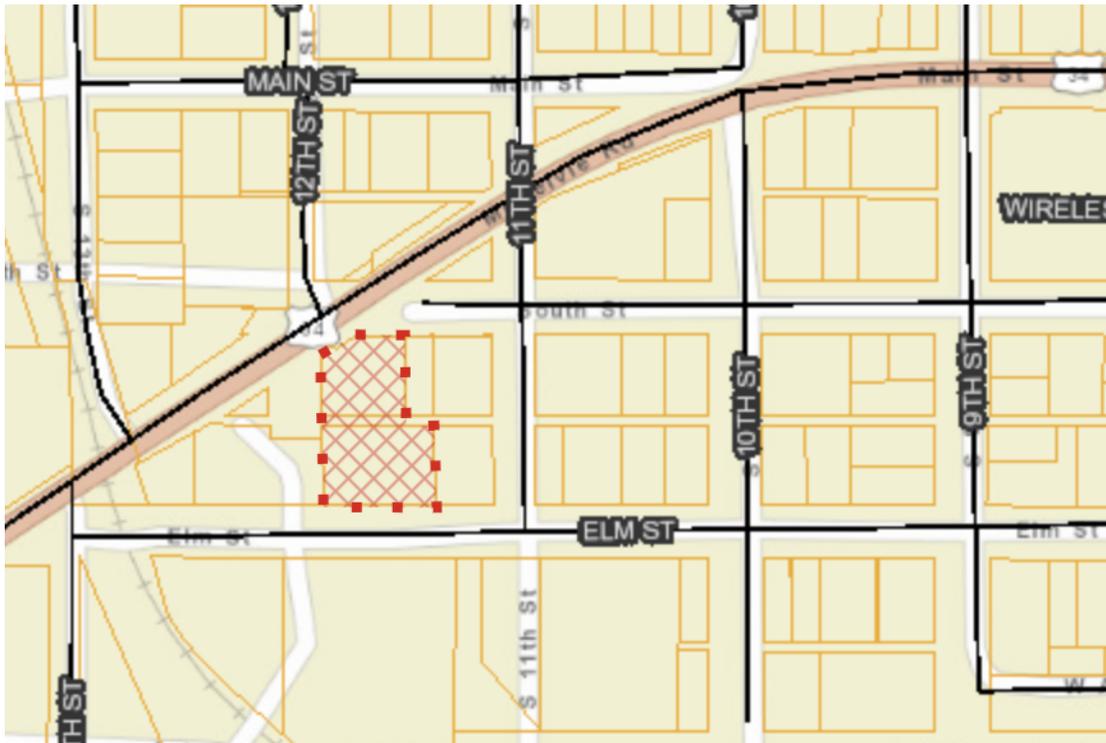


EXHIBIT “B”
Projected TIF Sources and Uses

TIF SOURCES: TIF authorized up to the amount of \$77,045, based upon the anticipated cost of the eligible TIF uses described below.

Assumptions:

Tax Levy:	1.443097
Project Site Base Value	\$54,075
Interest Rate	0%

TIF Calculation:

	Value	Taxes
Base Year	\$54,075	\$780
Completed	\$410,000	\$5,917
Increment	\$355,925	\$5,136

Annual TIF	\$5,136
Max TIF (15 yrs)	\$77,045
TIF Amount	\$77,045

The Annual TIF shall be used to pay debt service on the TIF Note for a period of 15 years or up to a total amount of \$77,045.

TIF USES: The cost of the TIF Uses shown below are based upon preliminary bids.

Site acquisition	\$	60,000
Grading	\$	5,000
Site Prep	\$	3,000
Water and Sewer Improvements	\$	21,000
Arch/Engineering	\$	3,500
Legal Fees	\$	7,500
3% Amin. Fee	\$	2,311
Total Eligible Expenses	\$	102,311

EXHIBIT “C”
Cost-Benefit Analysis
(Pursuant to Neb. Rev. Stat. § 18-2113)

The cost-benefit analysis for the Project, as described in the Amendment to the Redevelopment Plan to which this cost-benefit analysis is attached, is presented below. The above-referenced project will utilize Tax Increment Financing funds authorized by NEB. REV. STAT. §18-2147. The costs and benefits of the Project are identified as follows:

1. Tax shifts resulting from the approval of the use of funds pursuant to Section 18-2147:

The taxes generated by the current value of the property shall continue to be allocated between taxing jurisdictions pursuant to standard statutory requirements. Only the incremental taxes created by the Project will be captured to pay eligible public expenditures. Since the incremental taxes would not exist without the use of TIF to support the Project, the true tax shift of this Project is a positive shift in taxes after 15 years. However, for the purposes of illustrating the incremental taxes used for TIF, the tax shift is as follows:

a.	Estimated Base Project Area Valuation:	\$54,075
b.	Projected Completed Project Assessed Valuation:	\$410,000
c.	Projected Tax Increment Base:	\$355,925
d.	Estimated Tax Levy:	1.443097
e.	Annual Projected Tax Shift:	\$5,136

NOTE: The Projected Tax Increment is based on assumed values and levy rates; actual amounts and rates will vary from those assumptions, and it is understood that the actual tax shift may vary materially from the projected amount. The levy rate is an assumed levy rate that will vary from year to year. The completed values will depend on the county assessor’s yearly assessment of the Project Site. There has been no accounting for incremental growth or change in the tax levy over the 15-year TIF period.

2. Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the redevelopment project:

a. Public infrastructure improvements and impacts:

No substantial adverse effects are anticipated on the public infrastructure and community public service needs. The Redeveloper anticipates expenditures of approximately \$458,100 for the Project, and approximately \$92,500 in eligible public improvements. The Project Site is subject to an alley easement and a drainage easement that have a material beneficial impact on the City but make the development of the Project Site

challenging, and the Project will not have a material adverse effect on any community public services.

b. Local Tax impacts (in addition to impacts of Tax Shifts described above):

The redevelopment of the Project Site will create material tax and other public revenue for the City and other local taxing jurisdictions. While the use of tax increment financing will defer receipt of a majority of new ad valorem real property taxes generated by the redevelopment of the Project Site, the Project should generate immediate tax growth for the City. The Project will include an amount of personal property that will be on the property tax rolls and will generate additional sales tax in the City. The Project will also require and pay for City services. It is not anticipated that the redevelopment of the Project Site will have any material adverse impact on such City services, and the City will generate revenue providing support for those services. The City has determined that the redevelopment of the Property and the City service requirements generated by said redevelopment are a desired, positive result and will not overburden or negatively impact the City.

3. Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project:

The Project is not anticipated to have a material adverse impact on employers and employees of firms locating or expanding within the boundaries of the Redevelopment Area. In general, the overall redevelopment of the Property will have a material positive impact on employers and employees of firms locating or expanding within the boundaries of the area of the Property or the Redevelopment Area. The Project will allow a local paint supply, tools, and equipment wholesale business on an adjacent parcel to expand. This growth will retain the local business and allow the business to grow. It is anticipated that the expansion will allow the business to create 1-2 new full-time jobs in the City and retain the existing 21 employees of this business. The projected salaries for these jobs are approximately \$50,000 to \$75,000 with benefits.

4. Impacts on other employers and employees within the City and the immediate area that is located outside of the boundaries of the area of the redevelopment project:

The Project is not anticipated to impose a burden or have a negative impact on other local area employers. The primary goal of this Project is expansion and retention of an existing business located across the street from the Project Site. This will be a positive impact on existing or future businesses in the area.

5. Impacts on the student populations of school districts within the City:

It is not anticipated that the Project will have a material adverse impact on the student populations of the school district within the City. The Project is a commercial business development that is anticipated to create 1-2 new full-time jobs. The increase in employment because of the Project is not anticipated to substantially affect the school population.

6. Other impacts determined by the agency to be relevant to the consideration of costs and benefits arising from the redevelopment project:

The project is not economically feasible as designed without tax increment financing. The Project will assist a local business expand and grow in the City of Seward. Redeveloper has stated that without TIF, Redeveloper would have to consider a smaller project at this location or would not be able to proceed with the Project.

7. Summary of Findings:

The Project will increase the City's tax base, without material adverse effects on either public or private entities. The Project will increase property tax revenue in the long-term. The Project will facilitate the development of a blighted and substandard area and the use of TIF will help reduce public cost and City obligations for the cost of public infrastructure improvements. The benefits outweigh the costs of the proposed Project.

4938-3788-9861, v. 1

4938-3788-9861, v. 1

4938-3788-9861, v. 1

**PLANNING COMMISSION
CITY OF SEWARD, NEBRASKA**

RESOLUTION # 2025-01

(Amendment to Redevelopment Plan – Two Creeks Holdings 2025
Redevelopment Project)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SEWARD, NEBRASKA, MAKING A RECOMMENDATION TO THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD AND THE CITY COUNCIL OF THE CITY OF SEWARD, NEBRASKA, WITH RESPECT TO THE AMENDMENT OF THE REDEVELOPMENT PLAN FOR THE CITY OF SEWARD, NEBRASKA, INCLUDING THE TWO CREEKS HOLDINGS 2025 REDEVELOPMENT PROJECT.

RECITALS

A. The Community Redevelopment Authority of the City of Seward, Nebraska (“CRA”) has submitted the question of whether the Redevelopment Plan for the City of Seward, a copy of which is on file and available for public inspection with the City Clerk (the “Redevelopment Plan”), should be amended to include a project for the redevelopment of certain real property in the Redevelopment Area identified in the said amendment (“Project Site”). A copy of said amendment to the Redevelopment Plan is on file and available for public inspection with the City Clerk (the “Amendment”).

B. Notice of public hearing regarding the question of whether the Redevelopment Plan should be recommended to the City Council and ultimately be adopted and approved by the City was provided in conformity with the Open Meetings Act, Neb. Rev. Stat. § 84-1407 et seq., the Community Development Law, Neb. Rev. Stat. §§ 18-2115 and 18-2115.01, and Nebraska law.

C. On June 9, 2025, the Planning Commission held a public hearing relating to the question of whether the Amendment to the Redevelopment Plan should be recommended to the City Council and ultimately be adopted and approved by the City. All interested parties were afforded at such public hearing a reasonable opportunity to express their views respecting the submitted question.

D. The Planning Commission has reviewed the Amendment to the Redevelopment Plan and has duly considered all statements made and material submitted related to the submitted question.

NOW THEREFORE, it is found and recommended by the Planning Commission of the City of Seward, Nebraska, in accordance with the Community Development Law, Neb. Rev. Stat. §§ 18-2101 through 18-2157 (the “Act”), as follows:

1. The Project Site is in need of redevelopment to remove blight and substandard conditions identified pursuant to the Act.

2. The Amendment to the Redevelopment Plan will, in accordance with the present and future needs of the City of Seward, promote the health, safety, morals, order, convenience, prosperity, and the general welfare of the community in conformance with the legislative declarations and determinations set forth in the Act.
3. The Amendment to the Redevelopment Plan is in conformance with the general plan for development of the City of Seward as a whole, as set forth in the City of Seward Comprehensive Plan, as amended.

BE IT RESOLVED, that pursuant to the provisions of the Act and in light of the foregoing findings and determinations, the Planning Commission does hereby recommend: (i) recommendation of the Redevelopment Plan by the CRA to the City Council, and (ii) approval of the Amendment to the Redevelopment Plan by the City Council as the governing body for the City of Seward.

Passed and approved by the Planning Commission on this 9th day of June, 2025.

PLANNING COMMISSION OF THE CITY
OF SEWARD, NEBRASKA

By: _____
Chairperson



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800083490

800083555

800083539

800083520

800083628

800083601

S 13TH ST
S 13TH ST

W HWY 34

800083482

800083504

S 11TH ST
S 11TH ST

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800083644

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800227695

ELM ST
ELM ST

S 13TH ST
S 13TH ST

800083245

800083229

800223802

800083202

800083199

2. Public Hearing 7:30pm: TIF application by Dari Processing LLC at 1143 and 1144 Worthman Blvd - Parcel ID's 800233030 and 800231480.

City of Seward Planning Commission
142 N 7th St. Seward, NE 68434

Staff Report
Tim Dworak, Building/Zoning &
Code Enforcement Director
402-643-2928 opt 3 opt 1

APPLICATION TYPE

FINAL ACTION?

DEVELOPER/OWNER

Tax - Increment Financing Application

Dari Processing LLC

PC HEARING DATE

RELATED APPLICATIONS

PROPERTY ADDRESS, ZONING DISTRICT

June 9, 2025

1144 Worthman Blvd, Industrial

ADJACENT ZONING DISTRICTS/USE:

North, I2, Industrial – Teneco

South, I1, Industrial – City of Seward

East, I1/I2, Industrial – City of Seward, John & Janice Heath

West, Ag, Agriculture – Dennis & Lodeen Koranda, Rodney & Carmen Koranda

BRIEF SUMMARY OF REQUEST

Dari Processing LLC is proposing an advanced dairy manufacturing facility including cold and ambient warehouse storage in the Seward Rail Campus.



APPLICATION CONTACT

Brett Rusher, 402-910-6041

2670 'D' Rd, Rising City, NE 68658

ANALYSIS

The TIF application has been reviewed. Andrew Willis will be on hand to review the redevelopment plan and agreement.

APPROXIMATE LAND AREA:

37.68 acres or 1,641,340.8 square feet +/-

LEGAL DESCRIPTION:

LOTS 16 & 17, SEWARD RAIL CAMPUS PUD SECOND ADDITION LOCATED IN THE SE ¼ OF SECTION 29, TOWNSHIP 11 NORTH. RANGE 3 EAST OF THE 6TH P.M., SEWARD COUNTY, NEBRASKA

Prepared by

Tim Dworak

City of Seward Building-Zoning-Code Enforcement Director

TAX INCREMENT FINANCING (TIF) OVERVIEW & APPLICATION



P.O. Box 38, 537 Main Street, Seward, Nebraska 68434. Phone: 402-643-2928. Fax: 402-643-6491. www.CityofSewardNE.gov

CITY OF SEWARD COMMUNITY REDEVELOPMENT AUTHORITY

Submit Completed Applications to:

City of Seward
Attn: City Administrator
PO BOX 38
Seward, NE 68434

UPDATED SEPTEMBER 13, 2024

CITY OF SEWARD

TAX INCREMENT FINANCING PROGRAM OVERVIEW

Tax Increment Financing (TIF) is a tool to assist in financing redevelopment projects in designated blighted and substandard areas of the city. The City of Seward issues bonds or a promissory note to finance any approved public improvements associated with a redevelopment project. The property taxes generated from the increased valuation of the development are then captured for a period of up to 15 years to repay the public investment.

The purpose of TIF is to help communities undertake redevelopment activities for urban renewal and municipal growth. TIF allows a city to pay for the public improvements that are part of a private redevelopment project. TIF is not a grant and it is not a primary funding source for a redevelopment project, but does provide an incentive for private development that will increase the tax base of the Seward community and create additional jobs.

✓ REDEVELOPMENT AREA

All TIF projects must occur within a redevelopment area that has been declared blighted and substandard by the City of Seward. The City of Seward has established a redevelopment area based upon a blight study. Please contact the Seward City Administrator or Seward County Chamber & Development Partnership (SCCDP) Executive Director with your proposed property location to determine redevelopment verification & eligibility.

✓ PROJECT ELIGIBILITY

To be eligible for TIF, a proposed redevelopment project must be located in a designated redevelopment area in the City of Seward. TIF can be used to pay for eligible public improvements, which may include:

- Site Acquisition & Demolition
- Site Preparation – Landscaping
- HVAC Efficiency Systems
- Facade Improvement Upgrades
- Installation or Construction of Public Improvements
Consisting of:
 - Streets & Utilities Extensions
 - Public Spaces- Green Space- Art Work
 - Public Facilities
 - Uses Listed In Q&A Section of Package
 - Or For Other Uses In Accordance With An Approved Redevelopment Plan

Additionally, to use TIF, the City must perform a cost-benefit analysis of the project and determine that the costs and benefits of the project are in the long-term best interest of the City and the project would not be economically feasible without the use of TIF.

✓ COMMUNITY REDEVELOPMENT AUTHORITY

The Community Redevelopment Authority of the City of Seward ("CRA") is responsible for carrying out the redevelopment activities for the City. The CRA is instrumental in the TIF process. The CRA evaluates each TIF application and recommends redevelopment projects to the City. It also enters into approved redevelopment contracts with the redeveloper to establish the rights and obligations of the parties and the details of the TIF bond.

✓ TIF PROCESS CHECKLIST:

- Meeting with the City of Seward and developers to review TIF process & determine initial eligibility of proposed TIF project
- Determine if prospective project is within the City's redevelopment area
- Determination of eligible public improvements
- Developer submits completed TIF application to City Administrator's office with application fee
- Initial project analysis is completed by City of Seward TIF legal counsel
- Initial redevelopment project data for plan completed by City of Seward's TIF counsel
- CRA reviews applications & selects projects
- Proposed Redevelopment Plan amendment to include the proposed project is prepared by TIF counsel
- Planning Commission public hearing scheduled & notices are published and sent to Seward County taxing entities
- Public hearing conducted at the City Planning Commission meeting to make a recommendation on the redevelopment plan amendment
- CRA approves the redevelopment plan amendment and makes a recommendation to the City Council
- City Council Public hearing scheduled & notices are published and sent to Seward County taxing entities
- Public hearing conducted at the City Council meeting to adopt the redevelopment plan amendment
- Developer and CRA negotiate redevelopment agreement implementing the redevelopment plan amendment and setting forth the rights & obligations for the specific project
- CRA approves the redevelopment agreement
- City Council approves the redevelopment agreement
- TIF note is issued
- The redevelopment project is completed & the additional tax revenue created by TIF project is collected and used to pay off the TIF note debt obligation & then property returns to normal re-tax distribution process.

✓ **TIF APPLICATION PROCESS**

The applicant shall complete a fully legible City application request for TIF that is attached to this application package. The completed application document will be signed, dated and submitted to the Seward City Administrator or SCCDP Director for procession and future eligibility analysis.

- Application Fee: a nonrefundable application fee equal to the lesser of: (a) one percent of the requested TIF indebtedness; or (2) One Thousand Dollars and No/100 shall be submitted with the application. The fee will be applied toward the 3% administrative fee collected at closing.

✓ **TIF FINANCING PROJECT EXAMPLE**

This demonstrates how TIF works with a hypothetical project. In this example, the developer owns a lot valued at \$10,000 located in the redevelopment area.

The developer is going to construct a building on the property such that the valuation of the property after the project will be \$250,000.

The annual TIF available for 15 years would be approximately \$4,933:

	<u>Valuation</u>	<u>Taxes</u>
Pre-project:	\$ 10,000	\$ 205
Completed Project:	\$250,000	\$5,138
Difference (Increment):	\$240,000	\$4,933

Assuming that a developer can borrow at a 6% interest rate, the TIF revenue, collected for 15 years could pay off a \$47,910 loan in this example:

Present Value Calculation Case Example

<u>Year</u>	<u>TIF</u>	<u>Year</u>	<u>TIF</u>
1	\$ 4,933	9	\$ 4,933
2	\$ 4,933	10	\$ 4,933
3	\$ 4,933	11	\$ 4,933
4	\$ 4,933	12	\$ 4,933
5	\$ 4,933	13	\$ 4,933
6	\$ 4,933	14	\$ 4,933
7	\$ 4,933	15	\$ <u>4,933</u>
8	\$ 4,933		
		Total	\$73,995

Present Value of \$73,995 @ 6% = \$47,910

✓ **TIF QUESTIONS AND ANSWERS**

Q) What is a substandard & blighted area?

A) An area that has been declared substandard and blighted in accordance with the Nebraska State Statutes. It is defined as one where conditions are present that may have a detrimental effect on public health, safety, morals, or welfare of the neighborhood.

Q) What can a substandard area contain?

A) The area may have inadequate infrastructure, conditions which endanger life and property by fire or other causes, dilapidated buildings, inadequate parking, congestion, and economically or socially unacceptable land uses.

Q) How was the redevelopment area created?

A) The redevelopment area was created in a study completed for the City of Seward by an independent Nebraska planning, architecture, and urban design firm.

Q) What is the Geography of the Redevelopment Area?

A) The study considers the presence of substandard conditions or blight in the City of Seward pursuant to the requirements of the Nebraska Revised Statutes. A total of approximately 468.8 acres are included in the TIF Redevelopment Area. Included in this application packet is a current redevelopment area map and TIF application projects must be in the shaded/designated areas.

Q) How does TIF work?

A) TIF is the use of new real property tax dollars created as the result of a project to help support the financing of the project. TIF allows the use of the new property taxes generated by the increased value of the property to be paid on the TIF bond retirement. The taxes are redirected for the benefit of the project for a period up to 15 years. Property taxes on the original value of the property continue to be paid to local taxing entities.

Q) What types of projects are eligible?

A) In other Nebraska TIF projects, it has been used to provide public improvements for economic development incentives for industrial and manufacturing entities, rental housing projects, upgrades of buildings and public facilities in downtown areas, purchase of land for redevelopment activities, update of business and recreational facilities, and other development enhancing activities. The City of Seward’s CRA encourages and evaluates TIF projects based upon their positive impacts on neighborhoods and the community in general.

Q) How do you qualify for TIF?

A) Applicants/developers must fully complete a TIF application request and submit to the Seward City Administrator’s office with the application fee. Refer to the TIF Process Checklist on the previous page for full TIF process descriptions and requirements. The application must receive a recommendation for approval from the CRA, Planning Commission, and City Council.

Tax-Increment Financing Application

CITY OF SEWARD, NEBRASKA

COMMUNITY REDEVELOPMENT AUTHORITY (CRA)

537 MAIN STREET – P.O. BOX 38 – SEWARD, NE 68434-0038

1. Applicant Information

Dari Processing, LLC 93-1789338
Business Name Federal Id #
Brett Rusher 402-910-6041
Contact Person for Applicant Cell Phone

Street Address City, State, Zip
2670 D Rd Rising City, NE 68658

Mailing Address (if different) City, State, Zip
402-526-2385 402-526-2386

Bus. Phone Bus. Fax
brett@realdari.com
Email

Business Organization: Proprietorship Corporation Partnership LLC
 Other, please explain: _____

Ownership: List all Officers, Directors, Partners, Owner(s), Co-Owners and/or Stockholders.

Name	Title	Ownership Percent
Todd Tuls	Co-Owner	80%
TJ Tuls	Co-Owner/CEO	20%
Brett Rusher	CFO	
Tim Gomez	COO	
Adam Burton	Project Lead/Manager	

2. ImagiNE Nebraska Act

- a. Have you filed or do you intend to file an application to receive tax incentives under the ImagiNE Nebraska Act for this project? Yes No
- b. If an application has been filed, has it been approved? Yes No
- c. Does your application include, or will it include, as one of the tax incentives, a refund of the city's local option sales tax revenue? Yes No

3. Project Description

- a. What type of business does this project involve (i.e. industrial, commercial, residential, etc.): industrial/commercial
- i. If the project involves housing, please give a description of intended tenants, type of household (families/elderly/etc.), income levels, impact on the schools and/or community, etc.:
N/A
- ii. If the project involves retail business, please give a description of the retail business, how the community would benefit from this retail business, the impact on similar existing retail businesses, etc.:
N/A
- iii. If the project involves industry, please give a description of the type of industry, impact on the environment, impact on the community, similar existing industries in town, etc.:
Advanced dairy manufacturing - 70 employee milk bottling facility, including cold and ambient warehouse storage
- b. What is the estimated number of new jobs this project will create? 70
- c. What is the pay scale and benefits package for these positions?
\$17-90/hr plus full insurance benefits and PTO

4. Proposed Project Site

1144 Worthman Blvd. Seward, NE City of Seward
Site Address Current Owner

Legal Description: Lots 16 & 17, Seward Rail Campus PUD Second Addition located in the SE1/4 of Section 29, Township 11 North, Range 3 East of the 6th P.M., Seward County, Nebraska

If current site owner is not the applicant, please list the arrangement to build:

5. Physical Description of the Proposed Project

Please include square footage, size of property, description of building materials:

240,436 sq. ft., 37.68 acres, concrete & steel

https://www.dropbox.com/scl/fo/bxgjib6kgnjaj6wpjrfng/AD09

aGXT3tgTQSJ86gr5ryI?rlkey=c0jkiyu1e91vdc8knprrcb4h&dl=0

Site Plan Attached? Yes No

6. Land Use:

a. Is the property located in a blighted or substandard area? Yes No

b. If property is to be subdivided, please include copy of planned division: Copy Attached? Yes No

c. Current Zoning of the property: I-2=GID & I-1=LID

d. Is the proposed project a permitted use on the property? Yes No

What permits would be required? Normal building permits

e. Please describe any other relevant information relating to zoning, permitting, or similar land use issues:

Milk processing will require Nebraska Department of Environment and Energy permits

7. Relocation

a. Will any residences or businesses need to relocate because of this project? Yes No If yes, please explain.

b. Will any housing units be eliminated by this project? Yes No If yes, what is your plan to create equivalent replacement housing units?

8. Estimated Project Costs

- a. Land Acquisition, if applicable: \$ 800,000
- b. Site Development (itemize below): \$ 1,750,000 (Totaled)
 - i. Demolition: \$
 - ii. Grading: \$ 250,000
 - iii. Site Preparation: \$ 1,500,000
 - iv. Other (explain): \$
- c. Building Construction Cost: \$ 100,000,000
- d. Other Site Improvements (explain) \$ 250,000
- e. Equipment: \$ 65,000,000
- f. Architectural and Engineering Fees: \$ 3,500,000
- g. Legal Fees: \$ 2,500,000
- h. Financing Costs: \$ 2,500,000
- i. Broker Costs, if any: \$ 0
- j. Contingencies: \$ 10,000,000
- k. Other (explain): \$ 0
- Total:** \$ 186,300,000

9. Please attach the following documentation

- a. Construction Pro Forma. Attached? Yes No
- b. Annual Income and Expense Pro Forma (with appropriate schedules). Attached? Yes No
- c. Applicant’s Corporate/Business Annual Financial Statements for the last three years. Attached? Yes No
- d. Business Plan for the proposed project. Attached? Yes No

10. Estimated Tax Increment

- a. Total estimated assessed valuation of Real Property at completion: \$ 41152420

Please also describe how you arrived at this value (e.g., discussions with County Assessor, previous construction projects, etc.):

- b. Latest property valuation before construction (from Property Tax Statement): \$ 1,166,300
- c. Estimated increase in real estate valuation: \$ 39,986,120
- d. Estimated new real estate tax generated annually: \$ 593,869.34

11. Proposed Source of Financing

- a. Equity: \$ 54,300,000
- b. Bank loan: \$ 125,000,000
(please provide conditional approval or commitment letters, if applicable)
- c. Tax Increment Financing: \$ 8,000,000
- d. Other (please describe): \$ 0
- e. **TOTAL FINANCING:** \$ 187,300,000

12. Name and address of architect, engineer, and general contractor:

Architect & Engineer = AVS Engineering, Inc. 5215 West Noble Ave
Visalia, CA General Contractor = Primus Builders, Inc.
8294 Highway 92, Suite #210, Woodstock, GA

13. Project construction schedule:

- a. Construction start date: 6/2/2025
- b. Construction completion date: 1/31/2027
- c. If project is phased:
Year _____ / _____ % Complete
Year _____ / _____ % Complete

14. Municipal reference (if applicable).

Please name any other municipality wherein the applicant, or other corporations the applicant has been involved with, has completed development within the last five years:

15. Amount of TIF request: \$ 8,655,577.47

16. Application Fee Paid: \$ 1,000

A nonrefundable application fee equal to the lesser of: (a) one percent of the requested TIF indebtedness; or (2) One Thousand Dollars and No/100 shall be submitted with the application.

Note: If the Application is approved, the applicant is not entitled to receive the requested TIF amount. The actual amount of the TIF Indebtedness will vary depending on multiple factors including without limitation lender interest rates, identification of eligible expenditures, and additional information identified in the redevelopment project approval process.

17. Describe eligible costs for which tax increment financing will be used.

Please provide a detailed breakdown of proposed eligible uses and costs of each use, including any available bids or cost estimates for such work (include attachment if necessary):

Land - \$986,129

Architecture/Engineering - \$6,000,000

Grading & Site Prep - \$1,899,000

On-Site Infrastructure Improvement - \$4,000,000

Stormwater Management Improvements - \$250,000

Landscaping & Green Space - \$250,000

Legal, Admin, Financing - \$1,500,000

18. Statement of necessity for use of tax increment financing (include attachment if necessary):

a. Is your project economically feasible as designed without tax increment financing? If no, please indicate how tax increment financing is necessary for the economic feasibility of your project.

No, this project requires a significant amount of capital investment.

TIF serves as a critical gap financing tool to support the long-term success of the project in the city of Seward.

b. Would you locate your project in the redevelopment area without Tax Increment Financing? Explain.

No, the project has multiple site options to locate outside of the city of Seward. TIF makes the Seward Rail Campus property competitive when comparing other location possibilities.

19. List any other long-term public benefits your project will bring to the City, or any other information relevant to this application.

Job Creation, Quality Wages & Benefits, Property Tax Base

Expansion, Infrastructure Investment & Improvement, Local

Economic Diversification, Commitment to the Community as

evidenced by Tuls Dairies generational commitment to the

communities where already reside and do business.

The above information is accurate to the best of my knowledge and belief. The above information is provided to help the City to evaluate the feasibility of the use of tax increment financing. I/we further authorize the release of all personal and business credit information to the City of Seward and acknowledge this information upon submission will be considered a Public Record.

Signature: 

Printed Name: D. Brett Rusher

Title: CFO Date: 5/16/25

**REDEVELOPMENT AGREEMENT
(DARI PROCESSING REDEVELOPMENT PROJECT)**

This Redevelopment Agreement is made and entered into effective as of the ___ day of _____, 2025, by and between the Community Redevelopment Authority of the City of Seward, Nebraska (“CRA”) and DARI Processing, LLC, a Nebraska limited liability company (“Redeveloper”).

RECITALS

A. The CRA is a duly organized and existing community redevelopment authority, a body politic and corporate under the laws of the State of Nebraska, with lawful power and authority to enter into this Redevelopment Agreement.

B. The City of Seward, in furtherance of the purposes and pursuant to the provisions of the Act, has adopted a Redevelopment Plan for a blighted and substandard area designated by the City, including the Redevelopment Area.

C. Redeveloper owns or has site control and will own the Project Site located in the Redevelopment Area.

D. Redeveloper submitted a redevelopment project proposal to redevelop the Project Site.

E. The Redeveloper’s proposed redevelopment project will consist of the construction of a warehouse, office, and associated infrastructure improvements on the Project Site for use as an ecommerce manufacturing and fulfillment facility, as more particularly described on the attached and incorporated Exhibit “A”.

F. The CRA has approved Redeveloper’s proposed redevelopment project, including the utilization of tax-increment financing to provide for the construction of the eligible public improvements defined in this Redevelopment Agreement.

G. CRA and Redeveloper desire to enter into this Redevelopment Agreement to implement the redevelopment of the Project Site.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein set forth, CRA and Redeveloper do hereby covenant, agree and bind themselves as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

Section 1.01 Terms Defined in this Redevelopment Agreement.

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Redevelopment Agreement, such

definitions to be equally applicable to both the singular and plural forms and masculine, feminine and neuter gender of any of the terms defined:

A. “Act” means Article VIII, Section 12 of the Nebraska Constitution, NEB. REV. STAT. §§ 18-2101 through 18-2157, as amended, and acts amendatory thereof and supplemental thereto.

B. “Anticipated Tax Increment” means the Anticipated Tax Increment for this Project as set forth on the attached Exhibit “B”.

C. “City” means the City of Seward, Nebraska.

D. “CRA” means Community Redevelopment Authority of the City of Seward, Nebraska.

E. “Effective Date” means January 1, 2026 or January 1, 2027, pursuant to Section 3.01 of this Agreement.

F. “Eligible Project Costs” means only costs or expenses incurred by Redeveloper for Public Improvements and other items eligible for reimbursement under the Act.

G. “Minimum Project Valuation” means the amount of Forty One Million One Hundred Fifty-Two Thousand Four Hundred Twenty and No/100 Dollars (\$41,152,420.00).

H. “Private Improvements” means all the private improvements to be constructed on the Project Site as more particularly described on the attached and incorporated Exhibit “A”.

I. “Project” means the Project Site and includes improvements to the Project Site and adjacent thereto, including the Private Improvements and Public Improvements defined herein and described on Exhibit “A”.

J. “Project Completion Date” means March 31, 2027.

K. “Project Site” means all that certain real property situated in the City of Seward, Seward County, Nebraska, more particularly described on Exhibit “A”.

L. “Public Improvements” shall include all the public improvements more particularly described on Exhibit “A” which are eligible improvements under the Act. The costs of the Public Improvements include the debt service payments of the TIF Indebtedness.

M. “Redevelopment Agreement” means this Redevelopment Agreement between the CRA and Redeveloper with respect to the Project.

N. “Redeveloper” means DARI Processing, LLC, a Nebraska limited liability company.

O. “Redevelopment Area” means the Redevelopment Area that is set forth in the Redevelopment Plan.

P. “Redevelopment Plan” means the Redevelopment Plan for the Redevelopment Area by the CRA and approved by the City pursuant to the Act, as amended from time to time.

Q. “Tax Increment” means in accordance with NEB. REV. STAT. § 18-2147 of the Act, the difference between the ad valorem tax which is produced by the tax levy (fixed each year by the Seward County Board of Equalization) for the Project Site before the completion of the construction of the Private Improvements and the ad valorem tax which is produced by the tax levy for the Project Site after completion of construction of the Private Improvements as part of the Project.

R. “TIF Indebtedness” means the sums payable under any bonds, notes, loans and advances of money or other indebtedness, including interest thereon, issued by the CRA or the City secured in whole or in part by Tax Increment.

Section 1.02 Construction and Interpretation.

The provisions of this Redevelopment Agreement shall be construed and interpreted in accordance with the following provisions:

(a) This Redevelopment Agreement shall be interpreted in accordance with and governed by the laws of the State of Nebraska, including the Act.

(b) Wherever in this Redevelopment Agreement it is provided that any person may do or perform any act or thing the word “may” shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.

(c) The phrase “at any time” shall be construed as meaning “at any time or from time to time.”

(d) The word “including” shall be construed as meaning “including, but not limited to.”

(e) The words “will” and “shall” shall each be construed as mandatory.

(f) The words “herein,” “hereof,” “hereunder,” “hereinafter” and words of similar import shall refer to the Redevelopment Agreement as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.

(g) Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as the context may require.

(h) The captions to the sections of this Redevelopment Agreement are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

ARTICLE II REPRESENTATIONS

Section 2.01 Representations by the CRA.

The CRA makes the following representations and findings:

(a) The CRA is a duly organized and validly existing community redevelopment authority under the Act.

(b) The CRA deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Redeveloper for the redevelopment of the Project Site as specified herein.

(c) The Project will achieve the public purposes of the Act by, among other things, increasing employment, increasing the tax base, and lessening blighted and substandard conditions in the Redevelopment Area.

(d) The costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the CRA and have been found to be in the long-term best interest of the community impacted by the Project.

Section 2.02 Representations of Redeveloper.

Redeveloper makes the following representations and findings:

(a) Redeveloper is a Nebraska limited liability company in good standing and authorized to do business in Nebraska and has the power to enter into this Redevelopment Agreement and perform all obligations contained herein.

(b) The execution and delivery of the Redevelopment Agreement and the consummation of the transactions therein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which Redeveloper is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of Redeveloper contrary to the terms of any instrument or agreement.

(c) There is no litigation pending or to the best of its knowledge threatened against Redeveloper affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Project or the carrying into effect of this Redevelopment Agreement or, except as disclosed in writing to the CRA, as to any other matter materially affecting the ability of Redeveloper to perform its obligations hereunder.

(d) Redeveloper owns the Project Site in fee simple and free from any liens, encumbrances, or restrictions which would prevent the performance of this Redevelopment Agreement by Redeveloper.

(e) Pursuant to NEB. REV. STAT. § 18-2119, Redeveloper certifies to the CRA that Redeveloper does not intend to file an application with the Nebraska Department of Revenue to receive tax incentives under the ImagiNE Act.

(f) The Project would not be economically feasible without the use of tax increment financing.

(g) The Project would not occur in the Redevelopment Area without the use of tax increment financing.

ARTICLE III OBLIGATIONS OF THE CRA AND PUBLIC IMPROVEMENTS

Section 3.01 Capture of Tax Increment.

Subject to the contingencies described below and to all of the terms and conditions of this Redevelopment Agreement, commencing for the tax year of the Effective Date and continuing thereafter, the CRA shall capture the Tax Increment from the Private Improvements pursuant to the Nebraska Community Development Law. The CRA shall capture the Tax Increment generated by the Project Site for a total period of not to exceed fifteen (15) years after the Private Improvements have been included in the assessed valuation of the Project Site and the Project Site is generating the Tax Increment subject to capture by the CRA. The Effective Date shall be either January 1, 2026 or January 1, 2027, depending on the year of the first material increase in the assessed value of the Project Site following commencement of construction. Redeveloper shall notify the CDA prior to June 1, 2026 if it desires to have the Effective Date established as January 1, 2026. Otherwise, the Effective Date shall be January 1, 2027. The CRA shall file the "Notice to Divide Taxes" with the Seward County Assessor on or prior to July 1 in the year of the Effective Date.

Section 3.02 Issuance of TIF Indebtedness.

On or after thirty (30) days following the approval and execution of this Redevelopment Agreement, the CRA shall incur or issue TIF Indebtedness in an amount not to exceed Eight Million Six Hundred Fifty-Five Thousand Five Hundred

and No/100 Dollars (\$8,655,500.00), as calculated on the attached and incorporated Exhibit “B”. The TIF Indebtedness shall be issued by the CRA to Redeveloper. The TIF Indebtedness shall be issued in a TIF Promissory Note in the form attached hereto as Exhibit “E” (“Note”). The TIF Indebtedness shall not be a general obligation of the CRA or City which shall issue such Note solely as a conduit. If Redeveloper does not acquire and fund the TIF Indebtedness itself, Redeveloper shall locate a lender or other entity to acquire and fund the acquisition of the Note for the TIF Indebtedness. The TIF Indebtedness shall only be secured by a pledge or assignment of the Tax Increment, and any other security for the TIF Indebtedness as required by any lender shall be provided by Redeveloper. The issuance of the TIF Indebtedness may be accomplished by offset so that the Redeveloper retains the TIF Revenues and no bankable currency is exchanged at closing of the TIF Indebtedness and issuance of the Note, except as otherwise provided herein. If the TIF Indebtedness is not paid in full by the maturity date set forth on Exhibit “B”, all unpaid amounts shall be forgiven.

Section 3.03 Use of TIF Indebtedness.

The CRA will collect the Tax Increment and use said Tax Increment to pay debt service on the TIF Indebtedness incurred as provided in Section 3.02 of this Redevelopment Agreement. Notwithstanding the foregoing, the amount of the TIF Indebtedness that the CRA agrees to service and repay with the Tax Increment shall not exceed the amount of the Eligible Project Costs certified pursuant to Section 4.03. In addition, at or prior to the issuance of the Note, Redeveloper shall pay to the CRA an amount equal to the CRA’s reasonable and necessary cost of issuance, including attorney fees and a CRA administration fee in the amount of three percent (3%) of the TIF Indebtedness. The cost of issuance and CRA fees shall be paid prior to the issuance of the Note. The Tax Increment shall be paid pursuant to the terms of the Note and this Redevelopment Agreement.

Section 3.04 Creation of Fund.

CRA will create a special fund to collect and hold the receipts of the Tax Increment. Such special fund shall be used for no purpose other than to pay TIF Indebtedness issued pursuant to Section 3.02 above.

Section 3.05 Projected TIF Sources and Uses.

In addition to the TIF Indebtedness calculation formula set forth on Exhibit “B”, Redeveloper’s anticipated TIF sources and eligible uses are attached and incorporated for the parties’ reference as Exhibit “C”.

**ARTICLE IV
OBLIGATIONS OF REDEVELOPER**

Section 4.01 Evidence of Financial Ability.

Upon written request from the CRA to Redeveloper, Redeveloper shall provide to the CRA evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitment of Redeveloper in connection with construction of the Public Improvements and the Private Improvements. To the extent allowed by law, the CRA agrees to keep said information confidential. Such information shall state the amount and source of liquid assets on hand or immediately available to Redeveloper for use in constructing the Private Improvements; and shall state the amount and source of debt financing which is available, or irrevocably committed, to Redeveloper for use in completing the Private Improvements. Such information shall be provided in a form satisfactory to the CRA, and evidence of loan commitments shall include all of the documents evidencing the loan commitment, acceptance by Redeveloper, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan. Submittal of such financial information in a form satisfactory to the CRA shall be a condition precedent to the requirement of the CRA to proceed with its obligations under this Redevelopment Agreement.

Section 4.02 Construction of Project; Insurance.

(a) Redeveloper will complete the Public Improvements and the Private Improvements and install all equipment necessary to operate the Public Improvements and the Private Improvements no later than the Project Completion Date. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Public Improvements and the Private Improvements. Until construction of the Public Improvements and the Private Improvements has been completed, Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the CRA as to the actual progress of Redeveloper with respect to construction of the Public Improvements and the Private Improvements. Promptly after completion by Redeveloper of the Public Improvements and the Private Improvements, Redeveloper shall furnish to the CRA a Certificate of Completion in the form attached hereto as Exhibit "F" from Redeveloper's engineer or architect, or owner's representative. When accepted in writing by the CRA, the certification by Redeveloper shall be a conclusive determination of satisfaction of the agreements and covenants in this Redevelopment Agreement with respect to the obligations of Redeveloper to construct the Public Improvements and the Private Improvements.

(b) Any contractor chosen by Redeveloper or Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations (provided that Redeveloper may self-insure in lieu of obtaining and keeping in force such policy of insurance) and a penal bond as required by the Act. Any contractor chosen by Redeveloper or Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof (provided that Redeveloper may self-insure in lieu of obtaining and keeping in force such policy of insurance). This insurance shall insure

against the perils of fire and extended coverage and shall include “special causes of loss” insurance for physical loss or damage.

Section 4.03 Cost Certification.

Redeveloper shall submit to the CRA a certification of Eligible Project Costs in the form of the certification attached hereto as Exhibit “G” (“Eligible Project Costs Certification”), after expenditure of such project costs. Redeveloper may, at its option, submit one or more partial Eligible Project Costs Certifications prior to expenditure of all Eligible Project Costs providing certification of receipt of billings for work in progress. All Eligible Project Costs Certifications shall be subject to review and approval by the CRA. Determinations by the CRA whether costs included in the Eligible Project Costs Certification are properly included in Eligible Project Costs as defined in this Redevelopment Agreement shall be made in its sole discretion and shall be conclusive and binding on Redeveloper. All Eligible Project Costs shall be submitted to the CRA within thirty (30) days of the earlier of: (1) the date construction is actually completed for the Project or (2) the Project Completion Date.

The TIF Indebtedness shall not exceed the actual and certified Eligible Project Costs for the Project. In the event that the certified Eligible Project Costs for the Project are less than the TIF Indebtedness on the Project Completion Date, and said deficiency continues to exist thirty (30) days after Redeveloper’s receipt of written notice from the CRA detailing the same, the CRA shall reduce the TIF Indebtedness amount and Redeveloper shall repay to the CRA within ten (10) days of said cost certification any amount in excess of the Eligible Project Costs issued prior to the Eligible Project Costs Certification. If the CRA requests, Redeveloper shall, from time to time, furnish the CRA with satisfactory evidence as to the use and application of the Tax Increment.

Section 4.04 No Discrimination.

Redeveloper agrees and covenants for itself, its successors and assigns that as long as this Redevelopment Agreement is outstanding, it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Project.

Section 4.05 Pay Real Estate Taxes.

(a) Redeveloper anticipates creating a taxable real property valuation of the Project and Project Site of not less than the Minimum Project Valuation no later than the Project Completion Date. During the period of this Redevelopment

Agreement, Redeveloper, and any successors and assigns, will: (1) not protest a real estate property valuation of the Project Site to a sum less than the Minimum Project Valuation; and (2) not convey the Project Site or structures thereon to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes.

(b) Redeveloper acknowledges and understands that if the actual amount of Tax Increment is less than the anticipated amount of Tax Increment, the CRA shall not be liable for any shortfall or deficiency. If Redeveloper acquires the Note, Redeveloper agrees to forgive any shortfall in repayment of the TIF Indebtedness. If a lender or third party other than Redeveloper acquires the Note, Redeveloper shall make semi-annual payments in lieu of taxes (“Deficiency Payments”) to said lender or third party in the amount the Anticipated Tax Increment exceeds the actual Tax Increment. Said Deficiency Payments shall be made within thirty (30) days of written notice from the lender and/or CRA.

Section 4.06 No Assignment or Conveyance.

Redeveloper shall not convey, assign or transfer the Project Site or any interest therein prior to the termination of the fifteen (15) year period commencing on the Effective Date without the prior written consent of the CRA, which shall not be unreasonably withheld and which the CRA may make subject to any terms or conditions it reasonably deems appropriate, except for the following conveyance, which shall be permitted without consent of the CRA: (i) any conveyance as security for indebtedness incurred by Redeveloper for Project costs or any subsequent physical improvements to the Project Site (whether incurred prior to or after the effective date of this Redevelopment Agreement) with the outstanding principal amount of all such indebtedness secured by the Project Site which shall have lien priority over the obligations of Redeveloper pursuant to this Redevelopment Agreement; or (ii) any additional or subsequent conveyance as security for indebtedness incurred by Redeveloper for Project costs or any subsequent physical improvements to the premises provided that any such conveyance shall be subject to the obligations of Redeveloper pursuant to this Redevelopment Agreement.

ARTICLE V
FINANCING REDEVELOPMENT PROJECT; ENCUMBRANCES

Section 5.01 Financing.

Redeveloper shall pay all costs for the construction of the Private Improvements and the Public Improvements. Redeveloper shall be responsible for arranging all necessary financing for the construction of the Public Improvements and Private Improvements, including, with respect to the Public Improvements, the TIF Indebtedness.

Section 5.02 Encumbrances.

Redeveloper shall not create any lien, encumbrance or mortgage on the Project or the Project Site except, (a) encumbrances which secure indebtedness incurred to acquire, construct and equip the Project or for any other physical improvements to the Project Site, (b) easements and rights of entry granted by Redeveloper, (c) construction and materialman liens that may be filed in connection with the construction of the Private Improvements so long as any such lien is discharged or bonded within ninety (90) days of completion of the Private Improvements, and (d) any other liens so long as any such lien is satisfied and released or substitute security is posted in lieu thereof within ninety (90) days of Redeveloper receiving notice thereof.

Section 5.03 Mortgage Financing.

(a) Mortgage Holder Obligations. Each mortgage holder who obtains title to the Project Site or any part thereof as a result of foreclosure or other judicial proceedings or action in lieu thereof (referred to in this section as the “Mortgage Holder”) shall be obligated to require construction and completion of the Private Improvements and the Public Improvements by any person who subsequently obtains title to the Project Site or any part thereof from the Mortgage Holder; provided, however, the Mortgage Holder shall not be obligated by and shall be exempted from those provisions of this Redevelopment Agreement which require construction and completion of the Private Improvements and the Public Improvements. Additionally, no person, including the Mortgage Holder, may devote the Private Improvements and the Public Improvements thereon or any part thereof to any use or construct any improvements thereon other than those uses and improvements provided and permitted in accordance with this Redevelopment Agreement for the term of this Redevelopment Agreement.

(b) Copy of Notice of Default to Mortgagee. Whenever the CRA shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants in this Redevelopment Agreement, the CRA shall, at the same time, forward a copy of such notice or demand to each holder of any mortgage authorized by this Redevelopment Agreement at the last address of such holder as shown in the records of the CRA or as provided by such mortgagee.

(c) Mortgagee’s Option to Cure Defaults. If thirty (30) days after notice or demand with respect to any breach or default, such breach or default remains uncured, each holder shall (and every mortgage instrument made prior to acceptance by the CRA of the Certificate of Completion with respect to any of the Private Improvements or the Public Improvements by Redeveloper or its successors in interest shall so provide) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after notice or demand, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such period and the default cannot, in

the exercise of due diligence, be cured within such period, the holder shall have the right to diligently continue to cure the default.

(d) Mortgage Rights Applicable to Other Forms of Encumbrance. The rights and obligations of this Redevelopment Agreement relating to mortgages of the Project Site shall apply to any other type of encumbrance on the Project Site, and any of the stated rights, obligations and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance.

(e) Termination of Provisions. The provisions of this Section 5.03 shall terminate upon acceptance by the CRA of Redeveloper's Certificate of Completion.

ARTICLE VI DEFAULT, REMEDIES; INDEMNIFICATION

Section 6.01 Default.

In the event Redeveloper fails to perform or comply with any term, condition, or obligation of this Redevelopment Agreement and does not cure such defect within a period of ten (10) days after receiving written notice from the CRA specifying the nature of the breach of the Redevelopment Agreement, then Redeveloper shall be in default.

Section 6.02 Remedies.

In the event that Redeveloper is in default pursuant to Section 6.01, the CRA may pursue any remedy available at law or in equity, including without limitation, one or more of the following: (1) the CRA may terminate this Redevelopment Agreement and neither party shall have any further obligation hereunder, (2) the CRA may terminate the Note and declare said Note void and thereafter shall not be obligated to remit any Tax Increment as debt service thereon.

Section 6.03 Limitation of Liability; Indemnification.

(a) Notwithstanding anything in this Article VI or this Redevelopment Agreement to the contrary, neither the CRA, City, nor their officers, directors, employees, agents or their governing bodies shall have any pecuniary obligation or monetary liability under this Redevelopment Agreement. The obligation of the CRA on any TIF Indebtedness shall be limited solely to the Tax Increment pledged as security for such TIF Indebtedness. Specifically, but without limitation, neither City nor the CRA shall be liable for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder. Redeveloper releases the CRA and the City from and agrees that the CRA and the City shall not be liable for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Private Improvements.

(b) Redeveloper shall indemnify, defend (at the CRA's and/or the City's option) and hold harmless the CRA, the City, their respective employees, officials, agents, representatives and volunteers from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature, arising out of or in connection with any aspect of the acts, omissions, negligence or willful misconduct of Redeveloper, its employees, agents, officers, contractors or subcontractors, or Redeveloper's performance or failure to perform under the terms and conditions of this Redevelopment Agreement. Such indemnification, hold harmless and defense obligation shall exclude only such liability actions as arise directly out of the sole negligence or willful misconduct of the CRA or the City. The indemnification and defense obligations set forth herein shall survive the termination of this Redevelopment Agreement.

ARTICLE VII MISCELLANEOUS

Section 7.01 Memorandum.

A Memorandum of this Redevelopment Agreement shall be recorded with the Seward County Register of Deeds. The form of the Memorandum is attached as Exhibit "D" and incorporated by this reference.

Section 7.02 Governing Law.

This Redevelopment Agreement shall be governed by the laws of the State of Nebraska, including the Act.

Section 7.03 Binding Effect; Amendment.

This Redevelopment Agreement shall be binding on the parties hereto and their respective successors and assigns. This Redevelopment Agreement shall run with the Project Site. The Redevelopment Agreement shall not be amended except by a writing signed by the party to be bound.

Section 7.04 No Agency or Partnership.

This Redevelopment Agreement is not intended and shall not be construed to create the relationship of agent, employee, partnership, joint venture or association as between: (i) the CRA and/or the City; and (ii) Redeveloper, or any officer, employee, contractor or representative of Redeveloper. No joint employment is intended or created by this Redevelopment Agreement for any purpose. Redeveloper agrees to so inform its employees, agents, contractors and subcontractors who are involved in the implementation of or construction under this Redevelopment Agreement.

Section 7.05 Document Retention.

Redeveloper shall retain copies of all supporting documents that are associated with the Redevelopment Plan, Project, or this Redevelopment Agreement and that are received or generated by Redeveloper for three (3) years following the end of the last fiscal year in which ad valorem taxes are divided for the Project and provide such copies to the City as needed to comply with the City's retention requirements under the Act. Supporting documents shall include, but not be limited to, any cost-benefit analysis conducted pursuant to Section 18-2113 of the Act and any invoice, receipt, claim, or contract received or generated by Redeveloper that provides support for receipts or payments associated with the division of taxes.

Section 7.06 Notice to Redeveloper.

For the purpose of any notice requirement set forth in this Redevelopment Agreement, Redeveloper's address shall be:

DARI Processing, LLC
Attn: Brett Rusher
2670 D Road
Rising City, NE 68658

Section 7.07 Redevelopment Agreement Contingency.

CRA and Redeveloper expressly agree that this Agreement is contingent upon the City annexing the Project Site. If the Project Site is not annexed into the City of Seward by August 15, 2025, then this contract shall be void and of no effect, and neither party shall have any obligations hereunder.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the CRA and Redeveloper have signed this Redevelopment Agreement as of the date and year first above written.

CRA:
COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____
Greg Butcher, Secretary

By: _____
Timothy Moll, Chairman

REDEVELOPER:
DARI Processing, LLC, a Nebraska
limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT “A”
DESCRIPTION OF PROJECT

The Project undertaken by Redeveloper on the Project Site, defined as the real estate legally described as:

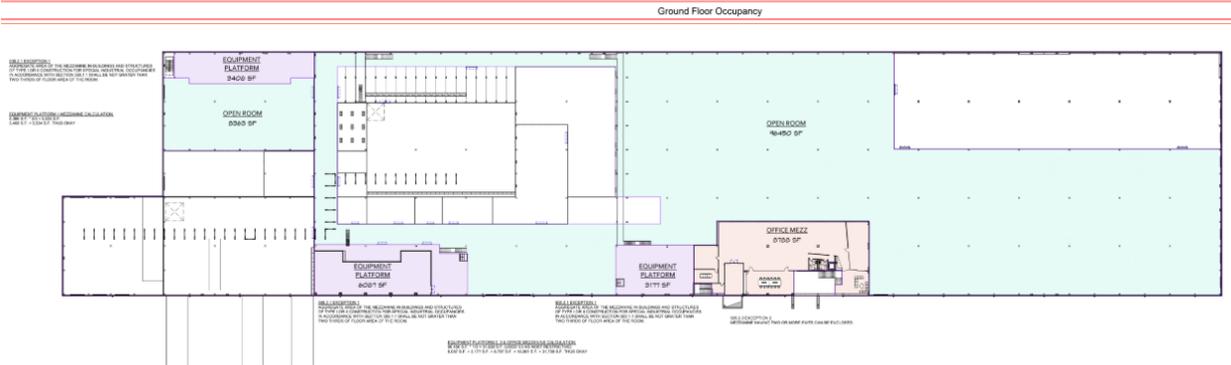
Lots 16 and 17, Seward Rail Campus PUD Second Addition, City of Seward, Seward County, Nebraska.

The Project includes the following Public Improvements and Private Improvements, which shall be undertaken and completed by Redeveloper.

- (a) **Private Improvements.** The construction of a large-scale milk processing business facility on the Project Site, including an approximately 240,436 square foot commercial building and related improvements. Preliminary plans and renderings of the Private Improvements are attached and incorporated Exhibit “A-1” for reference.

- (b) **Public Improvements.** Site acquisition, grading, wastewater treatment facilities, site preparation, façade enhancements, energy efficiency enhancements, along with other eligible public improvements on the Project Site and in the Redevelopment Area, which public improvements are eligible improvements under the Act pursuant to this Redevelopment Agreement; paid for, in part, by the Tax Increment created by the Private Improvements.

EXHIBIT "A-1" PLANS



For reference only. Preliminary in nature and subject to change.

**EXHIBIT “B”
TIF INDEBTEDNESS**

1. Projected Base Value: \$1,166,300
2. Projected Minimum Final Value: \$41,152,420
3. Projected Incremental Valuation: \$39,986,120
4. Assumed Tax Levy: 1.443097
5. Anticipated Tax Increment: \$577,038 annually
6. Assumed Interest Rate: 0%
7. TIF Indebtedness:
 - a. **Principal Amount.** The principal amount of the TIF Indebtedness shall be equal to or less than \$8,655,577, which is the maximum amount, together with interest accruing thereon, which can be amortized by the Maturity Date, solely from the Tax Increment Revenues based upon the Anticipated Tax Increment.
 - b. **Payments.** Semi-annually commencing when real estate taxes are collected for the tax year of the Effective Date. The CRA shall utilize all Tax Increment received from the Project to pay debt service on the TIF Indebtedness until the TIF Indebtedness is fully repaid. Provided, however, the CRA does not warrant, represent, or guaranty that the Tax Increment will be sufficient to repay the entire amount of the TIF Indebtedness. The CRA has no obligation to make any payments other than the actual Tax Increment received from the Project.
 - c. **Maturity Date.** On or before December 31, 2041, if the Effective Date is established as January 1, 2026 pursuant to Section 3.01 of this Agreement, or December 31, 2042 if the Effective Date is established as January 1, 2027.
 - d. **TIF Period.** The period for the division of taxes for this Project shall be fifteen (15) years, commencing on the Effective Date. For example, if the Effective Date is January 1, 2026 (2026 taxes paid in 2027), the TIF Period will terminate on December 31, 2040 (2040 taxes due on December 31, 2040 but paid in 2041). Payment of ad valorem taxes in arrears pursuant to customary payments in Nebraska shall not affect the fifteen (15) year TIF period.

Note: All calculations are based on assumptions and estimates of future values that may be different than the values used herein or may vary from year to year.

**EXHIBIT “C”
PROJECTED TIF SOURCES AND USES**

1. TIF SOURCES:

Assumptions:

Tax Levy (2024)	1.443097
Interest Rate	0.0%
Number of Years	15

Property Valuation:

	Assessed Val.	Est. Taxes
Pre-Project	\$1,166,300	\$16,831
Completed Project	\$41,152,420	\$593,869
Difference	\$39,986,120	\$577,038

TIF Calculations:

Annual TIF Amount	\$577,038
Total TIF	\$8,655,577
TIF Indebtedness (Present Value)	\$8,655,577
less 3% Admin Fee	(\$259,667)
Approx. Cost of Issuance (actual cost TBD)	(\$7,500)
TIF Available to Redeveloper	\$8,388,410

2. TIF USES:

Site Acquisition	\$800,000
Site Preparation	\$1,600,000
Grading	\$300,000
Waste Water Treatment	\$8,000,000
Arch/Eng/Legal Fees	\$5,000,000
<u>Facade/Energy Efficiency</u>	<u>\$1,000,000</u>
Total	\$16,700,000

**EXHIBIT “D”
REDEVELOPMENT AGREEMENT
MEMORANDUM**

[On the following page]

After recording please return to:

Derek Bargmann
City of Seward
City Hall, 537 Main Street
Seward, NE 68434

**MEMORANDUM OF REDEVELOPMENT AGREEMENT
(DARI Processing Redevelopment Project)**

This Memorandum of Redevelopment Agreement (“Memorandum”) is made this ___ day of _____, 2025 by and between the Community Redevelopment Authority of the City of Seward, Nebraska (“CRA”) and DARI Processing, LLC, a Nebraska limited liability company (“Redeveloper”).

1. **Redevelopment Agreement.** CRA and Redeveloper have entered into that certain Redevelopment Agreement dated as of this even date, describing the public improvements and the private improvements being made to real property owned by Redeveloper and legally described as:

Lots 16 and 17, Seward Rail Campus PUD Second Addition, City of Seward, Seward County, Nebraska (the “Project Site”).

2. **Tax Increment Financing.** The Redevelopment Agreement provides for the capture of the Tax Increment, as defined therein, by the CRA of the private improvements to be made by Redeveloper on the Project Site for a period not to exceed fifteen (15) years after the Effective Date set forth in the Redevelopment Agreement. The Tax Increment so captured by the CRA shall be used to make the public improvements as described in the Redevelopment Agreement.

3. **Remaining Terms.** The rest and remaining terms of the Redevelopment Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Redevelopment Agreement may be inspected at the CRA offices in Seward, Nebraska.

[SIGNATURE PAGE TO FOLLOW]

CRA:

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____ By: _____
_____, Secretary _____, Chairman

STATE OF NEBRASKA)
) ss.
COUNTY OF SEWARD)

The foregoing instrument was acknowledged before me this ___ day of _____, 2025, by _____ and _____, Chairman and Secretary respectively of the Community Redevelopment Authority of the City of Seward, Nebraska, a public body corporate and politic, on behalf of the Authority.

Notary Public

REDEVELOPER:

DARI Processing, LLC, a Nebraska
limited liability company

By: _____
Name: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF SEWARD)

The foregoing instrument was acknowledged before me this ___ day of _____, 2025, by _____, _____ of DARI Processing, LLC, on behalf of the company.

Notary Public

**EXHIBIT “E”
FORM OF TIF PROMISSORY NOTE**

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (“THE 1933 ACT”) AND MAY NOT BE TRANSFERRED, ASSIGNED, SOLD OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE 1933 ACT SHALL BE IN EFFECT WITH RESPECT THERETO AND THERE SHALL HAVE BEEN COMPLIANCE WITH THE 1933 ACT AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER, OR THERE SHALL HAVE BEEN DELIVERED TO THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA PRIOR TO TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION AN OPINION OF COUNSEL, SATISFACTORY TO THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA TO THE EFFECT THAT REGISTRATION UNDER THE 1933 ACT IS NOT REQUIRED.

UNITED STATES OF AMERICA
STATE OF NEBRASKA
COMMUNITY REDEVELOPMENT AUTHORITY
OF THE CITY OF SEWARD, NEBRASKA

REDEVELOPMENT REVENUE NOTE
(DARI PROCESSING REDEVELOPMENT PROJECT)

Maturity Date	Interest Rate	Original Issuance Date
December 31, 204__	0%	

Registered Holder	Principal Amount
DARI Processing, LLC	\$8,655,500.00

THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA (the “Issuer”), a body politic and corporate organized and existing under the laws of the State of Nebraska, for value received hereby promises to pay, solely from the source and as hereinafter provided, to the Registered Holder identified above, or registered assigns, the Principal Amount identified above at the office of the City Treasurer, as Paying Agent and Registrar, and in like manner to pay solely from said source interest on said principal sum at the Interest Rate identified above from the Accrual Commencement Date (as defined herein) or from the most recent date to which interest has not been paid. Principal and accrued interest shall be payable in thirty (30) semi-annual installments due June 15, 202__, December 15, 202__, and each June 15 and December 15 thereafter through December 15, 204__, when all principal and accrued interest shall be due and payable. Except with respect to interest not punctually paid, the principal and interest on this Note will be paid by check or draft mailed to the Registered Holder in whose name this Note is registered at the close of business on the fifteenth calendar day next preceding the applicable maturity date at his address as it appears on such note registration books. The principal and interest of this Note is payable in any coin or currency of the United States of America which on the

respective dates of payment is legal tender for the payment of public and private debts. No interest shall accrue until the later of: (1) the date the taxes are due for the year of the Effective Date identified in the Redevelopment Agreement (which is December 31st of the year of the Effective Date); or (2) the date that the Redeveloper has submitted and the CDA has accepted the Cost Certification for the eligible costs for the Project (the "Accrual Commencement Date").

This Note is designated the Community Redevelopment Authority of the City of Seward, Nebraska Redevelopment Revenue Note (DARI Processing Redevelopment Project), aggregating Eight Million Six Hundred Fifty-Five Thousand Five Hundred and No/100 Dollars (\$8,655,500.00) ("Note") in principal amount which has been issued pursuant to the Section 12 of Article VIII of the Nebraska Constitution and NEB. REV. STAT. §§ 18-2101 through 18-2157, as amended and supplemented (the "Act") and under and pursuant to the terms of that certain Redevelopment Agreement between the Issuer and DARI Processing, LLC, a Nebraska limited liability company, for the DARI Processing Redevelopment Project (the "Redevelopment Agreement"), to aid in the financing of a redevelopment project pursuant to the Act. This Note does not represent a debt or pledge of the faith or credit of the Issuer or grant to the Registered Holder of this Note any right to have the Issuer levy any taxes or appropriate any funds for the payment of the principal hereof or the interest hereon nor is this Note a general obligation of the Issuer, or the individual officials, officers or agents thereof. This Note is payable solely and only out of the Tax Increment generated by the Project defined in the Redevelopment Agreement (the "Project"). All such revenue has been duly pledged for the purpose of paying this Note.

THIS NOTE AND THE INTEREST HEREON DOES NOT NOW AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA, OR THE CITY OF SEWARD, NEBRASKA, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION, NOR SHALL THIS NOTE AND THE INTEREST HEREON EVER GIVE RISE TO ANY PECUNIARY LIABILITY OF THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA, OR THE CITY OF SEWARD, NEBRASKA, A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

No recourse shall be had for the payment of the principal of or interest on this Note, or for any claim based hereon or upon any obligation, covenant or agreement contained in the Redevelopment Agreement against any past, present or future employee, member or elected official of the Issuer, or any incorporator, officer, director, member or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, officer, director or member as such is hereby expressly waived and released as a condition of and in consideration of the issuance of this Note.

It is hereby certified and recited and the Issuer has found: that the Project

is an eligible “redevelopment project” as defined in the Act; that the issuance of this Note and the construction of the Project will promote the public welfare and carry out the purposes of the Act by, among other things, contributing to the development of a blighted and substandard area of the City of Seward, Nebraska, pursuant to a Redevelopment Plan adopted by the City; that all acts, conditions and things required to be done precedent to and in the issuance of this Note have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; and, that this Note does not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitations.

This Note is transferable only upon the books of the Issuer kept for that purpose at the office of the Registrar by the Registered Holder hereof in person, or by his duly authorized attorney, upon written documentation of transfer satisfactory to the Issuer and the Registrar duly executed by the Registered Holder and the assignee/transferee, together with a purchase letter in a form provided by Issuer and any other documentation required by the Issuer. Prior to the approval of any transfer of this Note, the Registered Holder shall pay all of the Issuer’s costs, including attorney’s fees, relating to the transfer of the Note. The Issuer and the Paying Agent may deem and treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and premium, if any, and interest due hereon and for all other purposes.

The Note is prepayable at any time in whole or in part, to the extent there are any funds in the debt service fund in excess of amounts necessary to pay scheduled debt service. Prepayments shall reduce the number, but not the amount, of scheduled debt service payments on the Note, in inverse order of maturity.

It is hereby certified and recited that all conditions, acts and things required by law and the Redevelopment Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed and that the issue of this Note, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by the laws of the State of Nebraska.

This Note shall not be entitled to any benefit or be valid or become obligatory for any purpose until this Note shall have been authenticated by the execution by the Registrar of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA has caused this Note to be signed in its name and on its behalf by the signature of its Chairman and attested by the signature of its Secretary, as of the Original Issuance Date identified above.

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____ By: _____
_____, Secretary _____, Chairman

CERTIFICATE OF AUTHENTICATION

City Treasurer, City of Seward as
Paying Agent and Registrar

By: _____
Authorized Signatory

EXHIBIT "F"
FORM OF CERTIFICATE OF COMPLETION
(DARI Processing Redevelopment Project)

The undersigned certifies, represents and warrants to the City of Seward, Nebraska, and the Community Redevelopment Authority of the City of Seward, Nebraska ("CRA") with regard to the following real property situated in the City of Seward, Seward County, Nebraska, to wit:

Lots 16 and 17, Seward Rail Campus PUD Second Addition, City of Seward, Seward County, Nebraska.

that the Private Improvements and Public Improvements required to be constructed by Redeveloper upon the above-described property have been satisfactorily completed in accordance with the requirements of the Redevelopment Agreement dated _____, 2025, as referenced in the Memorandum of Redevelopment Agreement recorded as Instrument No. _____ in the office of the Register of Deeds for Seward County, Nebraska.

REDEVELOPER:

DARI Processing, LLC, a Nebraska
limited liability company

By: _____
Name: _____
Title: _____

CRA:

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____
_____, Secretary

By: _____
_____, Chairman

EXHIBIT "G"
FORM OF A CERTIFICATION OF ELIGIBLE PROJECT COSTS

Date: _____

DARI Processing, LLC, a Nebraska limited liability company ("Redeveloper"), hereby certifies that it has incurred and paid the Eligible Costs indicated herein, pursuant to the terms of the Redevelopment Agreement between Redeveloper and the Community Redevelopment Authority of the City of Seward. The portion of the Project as indicated herein is substantially completed. Attached hereto are documents substantiating the actual Eligible Costs and payment by Redeveloper.

REDEVELOPMENT ELIGIBLE COSTS

Certified and Requested

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total certified TIF eligible costs:	\$ _____ *

***Principal Amount of TIF Indebtedness shall not exceed \$8,655,500**

DARI Processing, LLC, a Nebraska
limited liability company

By: _____
Name: _____
Title: _____

COPIES OF PROOF OF PAYMENT ARE ATTACHED HERETO.

Approved the by Chairman of the CRA:

_____, Chairman

4912-0996-7944, v. 1

4912-0996-7944, v. 1
4912-0996-7944, v. 1

**AMENDMENT TO THE REDEVELOPMENT PLAN
OF THE CITY OF SEWARD, NEBRASKA**

(DARI PROCESSING REDEVELOPMENT PROJECT)

The City of Seward, Nebraska (“City”) has undertaken a plan of redevelopment within the community pursuant to the adoption of the Redevelopment Plan for a certain redevelopment area in the City of Seward, as amended (the “Redevelopment Plan”). The Redevelopment Plan was approved by the City Council of the City as of November 15, 2011. The Redevelopment Plan serves as a guide for the implementation of redevelopment activities within certain areas of the City, as set forth in the Redevelopment Plan.

Pursuant to the Nebraska Community Development Law codified at Neb. Rev. Stat. §§ 18-2101 through 18-2157 (the “Act”), the City created the Community Redevelopment Authority of the City of Seward (“CRA”), which administers the Redevelopment Plan for the City.

The purpose of this Plan Amendment is to identify specific property within the redevelopment area that is in need of redevelopment to cause the removal of blight and substandard conditions identified as the site located in the in the City of Seward, Nebraska, and legally described on the attached and incorporated Exhibit “A” (the “Project Site”).

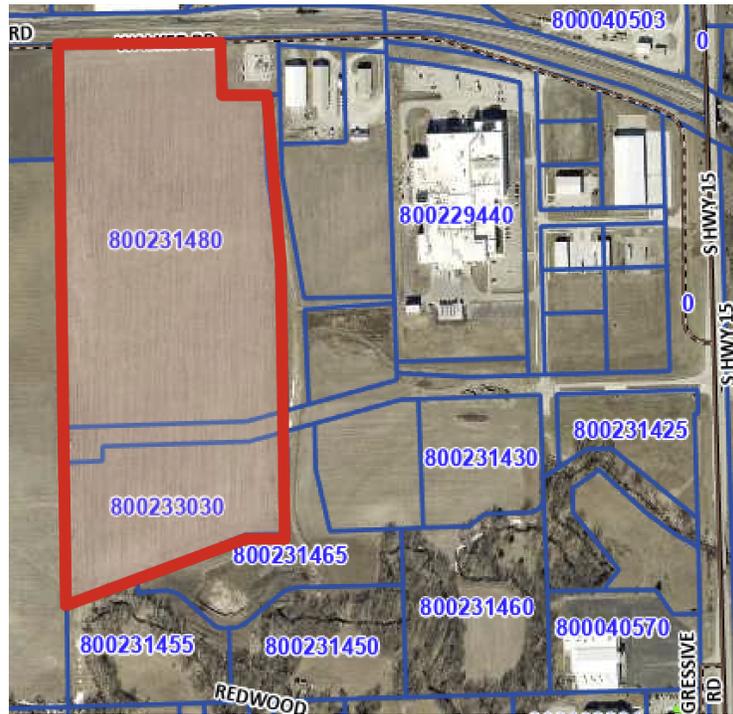
Project Site

The Project Site is located in the Redevelopment Area and, more particularly, in the Seward/Lincoln Regional Rail Campus, a 306-acre rail-served industrial park (the “Rail Campus Area”). The Project Site and the Rail Campus Area generally consists of vacant and underdeveloped land.

The Rail Campus Area is generally depicted below:



The Project Site is located in the Rail Campus Area, and is generally depicted below:



The current land use map set forth in the 2018 City of Seward Comprehensive Plan (“Comprehensive Plan”) identifies the current land use as open space. The future land use map set forth in the Comprehensive Plan designates the future land use of the Project Site as industrial. The current and future land use maps set forth in the Comprehensive Plan are incorporated into the Redevelopment Plan by this reference. Portions of the current land use map and future land use map are set forth below.

Current Land Use Map:



Future Land Use Map:



Additionally, the Project Site and Rail Campus Area have been the focus of the City for strategic growth as a rail campus for a variety of industrial and commercial uses, and the Comprehensive Plan identifies the Highway 15 Corridor as a primary

location for industrial and commercial development. The need for redevelopment of the Rail Campus Area in general has already been documented in the Redevelopment Plan.

The Project Site is in need of redevelopment. The CRA has considered whether redevelopment of the Project Site will conform to the general plan and the coordinated, adjusted, and harmonious development of the City and its environs. In this consideration, the CRA finds that such a redevelopment of the Project Site will promote the health, safety, morals, order, convenience, prosperity, and the general welfare of the community including, among other things, the promotion of safety from fire, the promotion of the healthful and convenient distribution of population, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary and unsafe dwelling accommodations or conditions of blight. Because redevelopment of the Project Site will require significant upfront costs, including, but not limited to, site preparation, grading, and public infrastructure improvements, the City is unlikely to attract businesses and/or development to the Rail Campus Area without the use of tax increment financing.

The redevelopment of the Project Site pursuant to this Plan Amendment will eliminate the current blight and substandard conditions of the Project Site and will further the purposes of the Act in conformity with the Redevelopment Plan. The CRA has approved multiple redevelopment projects to facilitate the overall redevelopment of the Rail Campus Area, and the development of the Project Site will further continue the implementation of the redevelopment of the Rail Campus Area, as set forth in the Redevelopment Plan.

The Project Site is currently outside the corporate limits of the City, but has been identified for annexation. The Project Site and current City limit are depicted below.



The CRA's area of operation is defined to include "the area within the corporate limits of the city and such land outside the city as may come within the purview of sections 18-2123 and 18-2123.01." Neb. Rev. Stat. § 18-2103(1). Section 18-2123 states:

Upon a determination, by resolution, of the governing body of the city in which such land is located, that the acquisition and development of undeveloped vacant land, not within a substandard and blighted area, is essential to the proper clearance or redevelopment of substandard and blighted areas or a necessary part of the general community redevelopment program of the city, or that the acquisition and development of land outside the city, but within a radius of three miles thereof, is necessary or convenient to the proper clearance or redevelopment of one or more substandard and blighted areas within the city or is a necessary adjunct to the general community redevelopment program of the city, the acquisition, planning, and preparation for development or disposal of such land shall constitute a redevelopment project which may be undertaken by the authority in the manner provided in the Community Development Law.

The entire Rail Campus Area has been identified in the Redevelopment Plan for redevelopment. The ability to redevelop the entire Rail Campus Area was intended and anticipated, and is crucial to the success of the overall Rail Campus Redevelopment Plan. The Redevelopment Plan for the Rail Campus also specifically identified the intent to annex and redevelop the entire Rail Campus Area over time in connection with redevelopment of the Rail Campus Area:

While a portion of the Rail Campus Project Area is outside the corporate limits of the City of Seward, the City and the CRA contemplate that all of the land comprising the Rail Campus Project Area will be zoned for industrial use following annexation by the City of Seward of the portion outside City limits. The Rail Campus Project Area has been declared blighted and substandard and is eligible for the use of tax increment financing; provided, however, no redevelopment project shall be approved in the Rail Campus Project Area before the applicable property is annexed by the City.

The CRA is not seeking to have the City add the additional property to the Redevelopment Plan, because the Project Site and a greater portion of the Rail Campus Area are currently in the process of annexation. If the City Council desires to allow the project to move forward it will, among other things, need to annex the Project Site. If the annexation is not ultimately approved, then the CRA will not proceed with this Project and this Redevelopment Plan Amendment shall have no effect. However, the CRA does believe that the conditions that would support inclusion under Section 18-2123 exist, if annexation was not being sought for the Project Site. The Project Site is within the City's ETJ, and the redevelopment of this parcel outside of corporate limits is necessary to redevelop the portion of the Rail Campus Area within City limits when considering the Rail Campus redevelopment as a whole. The City has documented its intent to redevelop the entire Rail Campus Area and the CRA and City have made this clear through multiple studies, public hearings, and the general plan for development

of the City. Prohibiting the redevelopment of the Project Site would significantly hinder the CRA's and the City's overall plan for development of the Rail Campus Area.

Notwithstanding section 18-2123 of the Community Development Law and the discussion above, for clarity and to ensure that a redevelopment project using TIF only occurs in the CRA's area of operation, this Redevelopment Plan Amendment is expressly contingent upon the annexation of the Project Site. If the City does not annex the Project Site, then this Redevelopment Plan Amendment shall be null and void, and the Project shall not be permitted. TIF shall only be utilized within the corporate limits of the City for this Project. The CRA and Redeveloper acknowledge and understand that if the Project Site is not annexed into the City, this Project cannot and will not be permitted to utilize tax increment financing. No further supplement to this Redevelopment Plan Amendment shall be required upon the annexation of the Project Site, and this condition shall be satisfied immediately upon the annexation of the Project Site.

The Project

DARI Processing, LLC (the "Redeveloper") has submitted a proposal for the Project and the redevelopment of the Project Site. The project under consideration will consist of the construction of a large-scale milk processing business facility on the Project Site, including an approximately 240,436 square foot commercial building and related improvements (the "Project"). The Project will include bottling facilities, and cold and ambient warehouse storage facilities.

As part of the Project, the CRA shall capture available tax increment from the Project Site to assist in payment for the public improvements listed as eligible expenditures under the Act in the Redevelopment Area. Such public improvements may include, but are not limited to: site acquisition, site preparation, grading, wastewater treatment improvements, architectural, engineering and legal fees, and other eligible uses. The use of TIF to assist with the costs of the eligible public improvements will make the Project as designed feasible. Redeveloper shall be responsible for all other costs and expenses associated with the Project. Preliminary building design and renderings for the Project are attached hereto as Exhibit A-1 for reference purposes only.

Redeveloper's goal is to commence construction in summer, 2025, as soon as the Project is approved and all contingencies required herein have been satisfied, and to complete construction in the first quarter of 2027. The base year for the Project is anticipated to be 2026 and the effective date for the division of taxes is anticipated to be January 1, 2027. However, the base year for the Project shall be 2025 and the effective date for the division of taxes shall be January 1, 2026 if the project receives a significant partial valuation during construction for the 2026 tax year.

The base value of the Project Site is anticipated to be \$1,166,300 which is the current assessed valuation of the Project Site. Pursuant to the Seward County Assessor's preliminary appraisal of the proposed project, the projected completed valuation of the Project is \$41,152,420. The preliminary appraisal is not binding and is based upon the information and assumptions provided from Redeveloper to the Assessor. The CRA does not make any representations to the final value of any project.

Redeveloper estimates that the total Project costs shall be approximately

\$186,300,000. Redeveloper has identified multiple eligible TIF uses including the \$16,700,000 in TIF-eligible expenditures set forth below:

Site Acquisition	\$800,000
Site Preparation	\$1,600,000
Grading	\$250,000
Waste Water Treatment	\$8,000,000
Arch., Eng., and Legal Fees	\$5,000,000
<u>Façade/Energy Efficiency Enhancements</u>	<u>\$1,000,000</u>
Total estimated TIF eligible costs:	\$16,700,000

Based upon the anticipated completed valuation of \$41,152,420, and a 0% interest rate for the TIF Note, the Project will support approximately \$8,655,500 in TIF Indebtedness.¹ The identified TIF-eligible uses, together with the 3.0% CRA administration fee and cost of issuance which are additional TIF-eligible uses that Redeveloper shall be required to pay, exceed the anticipated TIF amount set forth above. The final, actual cost of all TIF-eligible expenses shall be certified by Redeveloper upon completion of construction. In addition to the TIF Indebtedness, Redeveloper has stated that the Project would be financed in part using investor equity and the remainder financed through a bank loan.

Statutory Elements

As described above, the Project envisions the capture of the incremental taxes created by the Project on the Project Site to pay for those eligible expenditures as set forth in the Act. This section includes a consideration of the statutory elements under the Nebraska Community Development Law.

A. Property Acquisition, Demolition and Disposal

No public acquisition of private property, relocation of families or businesses, or the sale of property by the CRA is necessary to accomplish the Project. Redeveloper recently purchased the Project Site from the City in preparation to undertake the Project. The City has followed all State and local laws regarding the sale of the Project Site, which was completed separate from and prior to this Redevelopment Plan Amendment.

B. Population Density

The proposed Project on the Project Site is an industrial project, involving the construction of dairy processing facility. The Project will not directly affect population density in the project area. The proposed Project is anticipated to create up to 70 jobs at the new facility. These new jobs are anticipated to increase the population of the City, but outside of the Project Site and Rail Campus Area. An analysis of the

¹ For purposes of the TIF projections for this Project, the CRA (1) has assumed the Project will capture the full 15 years of tax increment and there will not be a partial valuation in the first year; and (2) has not accounted for any increases in the assessed value of the Project Site during the 15 year tax increment financing period. All of these assumptions will change the actual amount of the tax increment generated by the Project.

anticipated effect on population, including any potential concerns of the school districts, is set forth in the cost benefit analysis. However, this growth from additional jobs is the anticipated and desired consequence of the City’s focus on growth of the Rail Campus Area, and is therefore deemed to be a positive outcome.

C. Land Coverage

The facility will be approximately 240,436 square feet on the approximately 37.68 acre lots. The Project will meet the applicable land-coverage ratios and zoning requirements as required by the City of Seward.

The general Site Development Regulations for the I-1 Zoning District are set forth below:

I-1	Permitted Uses
Minimum district size (square feet)	5,000
Minimum lot area (square feet)	5,000
Minimum lot width (feet)	100
Minimum yards (feet)	
Front yard (Note 1)	25
Side yard	0
Street side yard	25
Rear yard	0
Maximum height (feet)	60
Maximum building coverage	75%
Floor area ratio (Note 2)	1
Maximum amount of total parking located in street yard	100%

The general Site Development Regulations for the I-2 Zoning District are set forth below:

I-2	Permitted Uses
Minimum district size (square feet)	6,000
Minimum lot area (square feet)	6,000
Minimum lot width (feet)	60
Minimum yards (feet)	
Front yard (Note 1)	25
Side yard	0
Street side yard	25
Rear yard	0
Maximum height (feet)	60
Maximum impervious coverage	90%
Floor area ratio (Note 2)	1
Maximum amount of total parking located in street yard	100%

D. Traffic Flow, Street Layouts, and Street Grades

The Project will increase traffic flow in and to the Project Site and the Rail Campus Area. The rail campus infrastructure is anticipated to be sufficient for the intended uses of the Project Site upon completion of the Project, and such increases in traffic are the intended result of the redevelopment of the Rail Campus Area. TIF from further development of the Rail Campus Area is anticipated to pay for additional infrastructure that would benefit the Project Site, but no such anticipated future improvements are necessary for the use and operation of the Project.

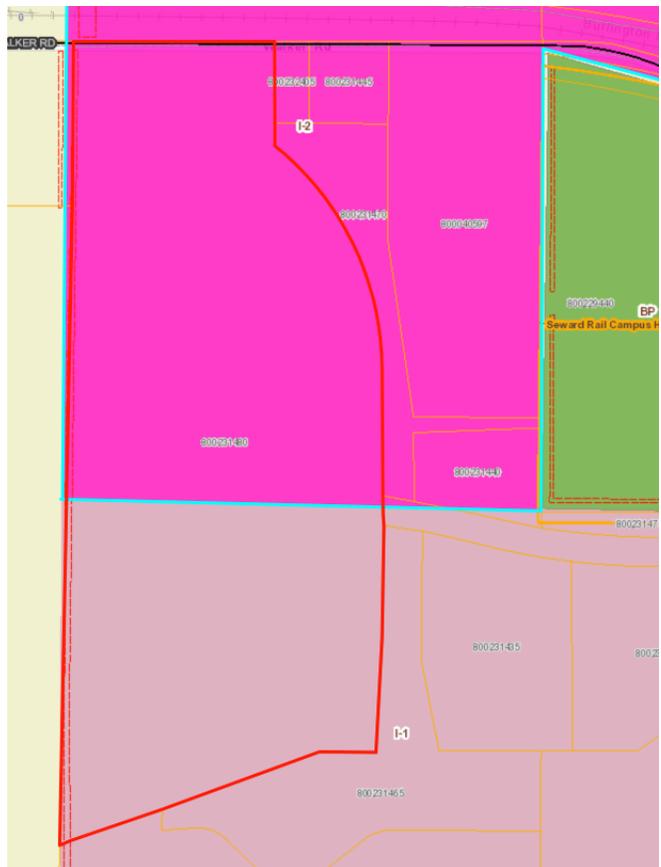
E. Parking

Redeveloper shall be responsible for ensuring that the Project meets or exceeds the parking requirements set forth in the applicable zoning district pursuant to Articles 18 and 34 of Chapter 410 of the Seward City Code. Approval of this Plan Amendment does not circumvent or supersede any building code or zoning requirements for the building and the Project Site.

F. Zoning, Building Code, and Ordinances

The Project Site is located in the (1) I-2 – General Industrial District and (2) I-1 – Limited Industrial District. The northern portion of the Project Site (Lot 17) is located in the I-2 zoning district and the southern portion of the Project Site (Lot 16) is located in the I-1 zoning district.

The Project is a permitted use in the current zoning districts. Redeveloper shall be responsible for obtaining all necessary zoning approvals. Approval of this Plan Amendment does not authorize any use that does not comply with the City of Seward zoning ordinance. Redeveloper will be responsible for complying with the City of Seward zoning ordinance, and will obtain any zoning, building code, or ordinance changes that are necessary for the Project. As described above, the Project Site is currently in the process of annexation into the City and this project is subject to the annexation conditions set forth above.



Cost-Benefit Analysis

Pursuant to Section 18-2113 of the Act, the CRA must conduct a cost-benefit analysis for any redevelopment project that will utilize TIF. The Cost-Benefit Analysis for the Project is attached hereto as Exhibit "C" and incorporated by this reference.

Additional Project Information from Redeveloper

Redeveloper has represented that without the use of TIF, this Project would not be feasible and Redeveloper could not develop this Project on the Project Site. Redeveloper has further represented that it intends to file an application with the Department of Revenue to receive tax incentives under the ImagineNE Nebraska Act. Redeveloper has not yet filed such application but has indicated its intent to do so.

EXHIBIT "A"
Legal Description of the Project Site

The property is located at 1143 Worthman Boulevard in Seward (PIDs# 800233030 and 800231480). The property is legally described as follows:

Lots 16 and 17, Seward Rail Campus PUD Second Addition, City of Seward, Seward County, Nebraska.

The general location of the Project Site is depicted below:

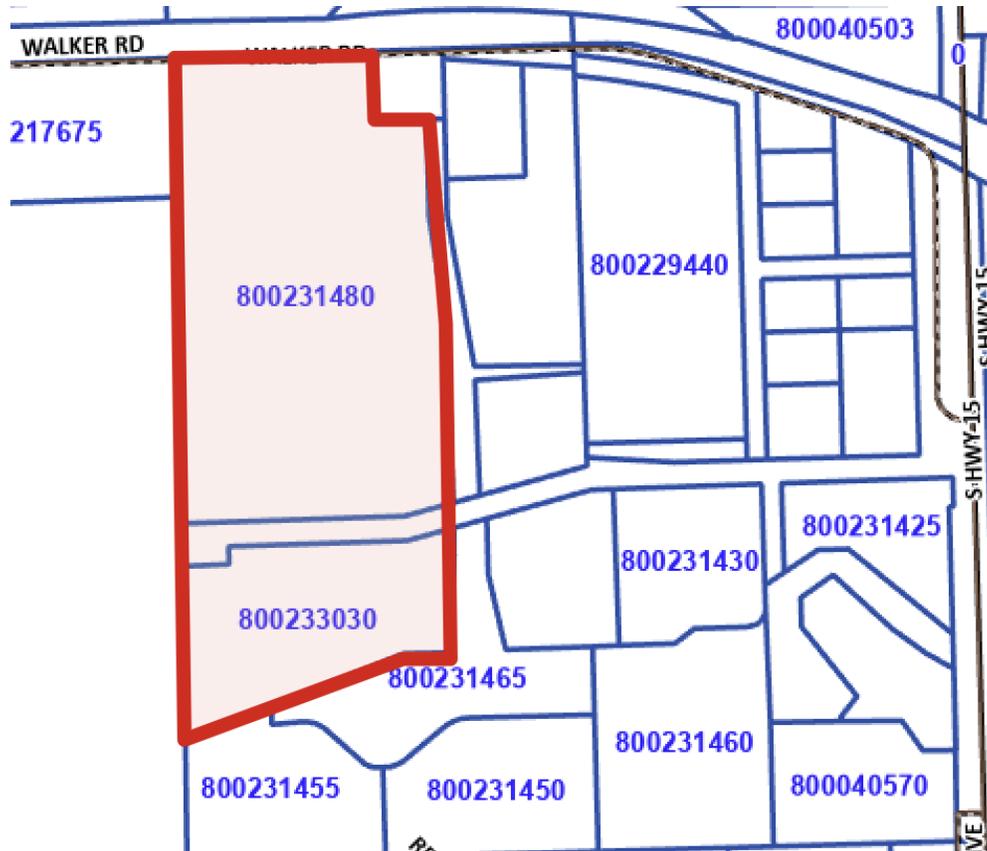
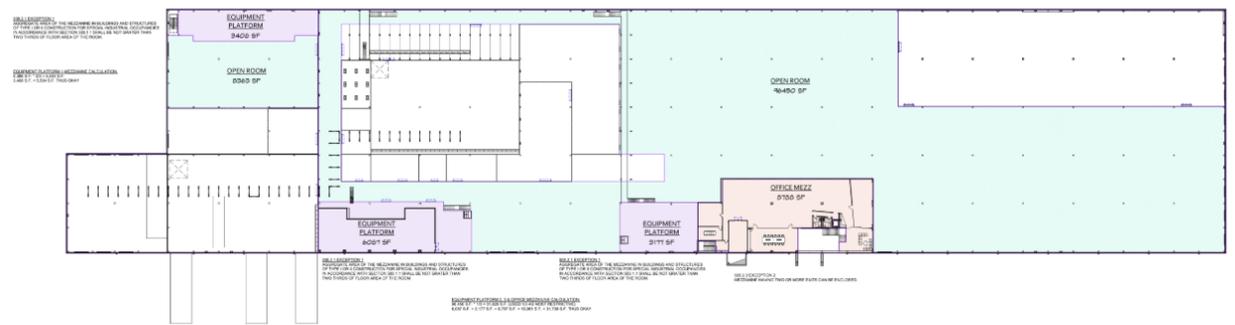


EXHIBIT "A-1" Preliminary Plans and Drawings

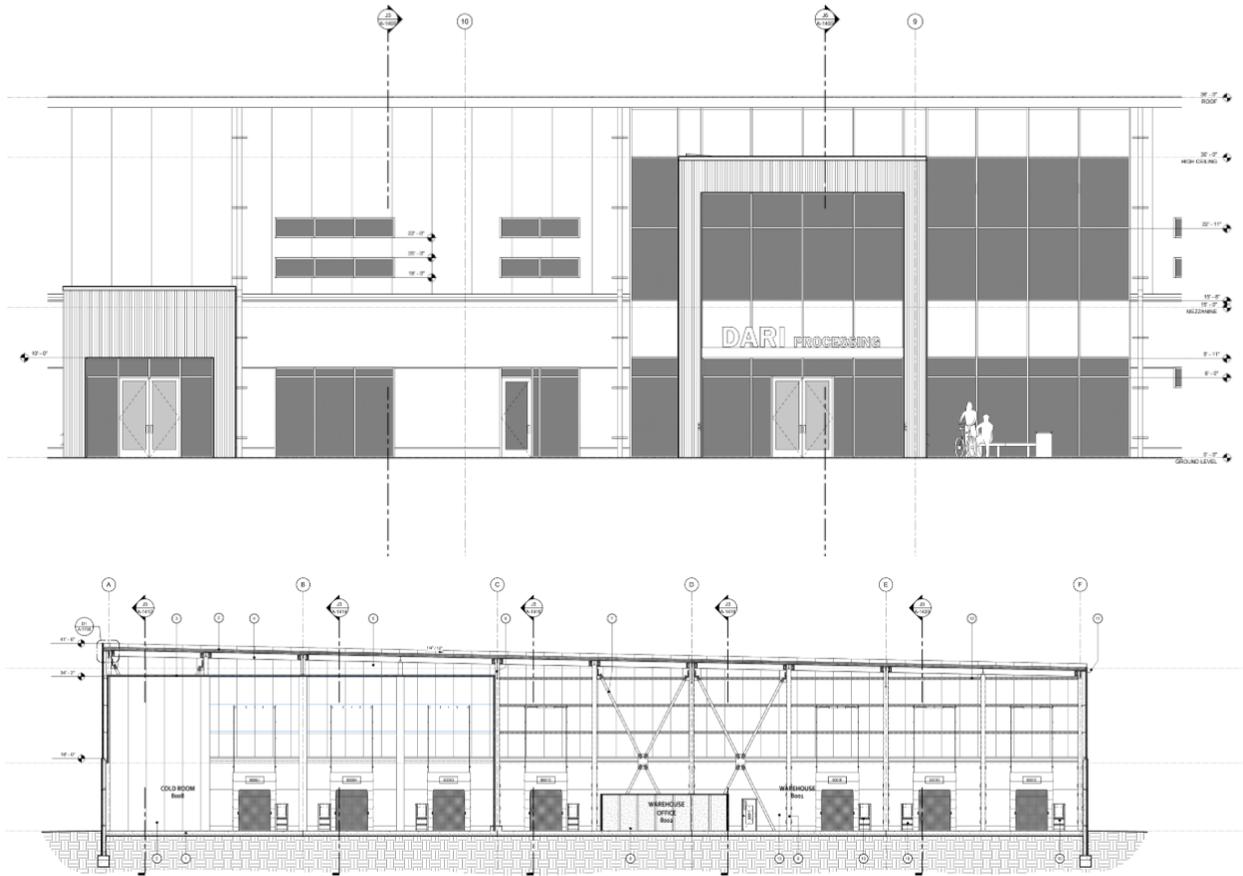
For reference only.



Ground Floor Occupancy



MEZZANINE AREA CALCULATION



BUILDING SECTION - GRID LINE 1

Exhibit "A-1"

EXHIBIT "B"
PROJECTED TIF SOURCES AND USES

1. TIF SOURCES:

Assumptions:

Tax Levy (2024)	1.443097
Interest Rate	0%
Number of Years	15

Property Valuation:

	Assessed Val.	Est. Taxes
Pre-Project	\$1,166,300	\$16,831
Completed Project	\$41,152,420	\$593,869
Difference	\$39,986,120	\$577,038

TIF Calculations:

Annual TIF Amount	\$577,038
Total TIF	\$8,655,577
TIF Indebtedness (Present Value)	\$8,655,577
less 3% Admin Fee	(\$259,667)
Approx. Cost of Issuance (actual cost TBD)	(\$7,500)
TIF Available to Redeveloper	\$8,388,410

2. TIF USES:

Site Acquisition	\$800,000
Site Preparation	\$1,600,000
Grading	\$300,000
Waste Water Treatment	\$8,000,000
Arch/Eng/Legal Fees	\$5,000,000
Façade/Energy Efficiency	\$1,000,000
Total	\$16,700,000

EXHIBIT “C”
Cost Benefit Analysis
(Pursuant to Neb. Rev. Stat. § 18-2113)

The cost-benefit analysis for the DARI Processing Redevelopment Project, as described in the Amendment to the Redevelopment Plan to which this cost-benefit analysis is attached, is presented below. The above-referenced project will utilize Tax Increment Financing funds authorized by Neb. Rev. Stat. § 18-2147.

1. Tax shifts resulting from the approval of the use of funds pursuant to Section 18-2147:

The taxes generated by the current value of the property shall continue to be allocated between taxing jurisdictions pursuant to standard statutory requirements. Only the incremental taxes created by the Project will be captured to pay eligible public expenditures. Since the incremental taxes would not exist without the use of TIF to support the Project, the true tax shift of this Project is a positive shift in taxes after 15 years. However, for the purposes of illustrating the incremental taxes used for TIF, the 15 year tax shift is as follows:

a.	Redevelopment Project Valuation:	\$1,166,300
b.	Projected Completed Project Assessed Valuation:	\$41,152,420
c.	Projected Tax Increment Base:	\$39,986,120
d.	Estimated Tax Levy:	1.443097
e.	Annual Projected Tax Shift:	\$577,038

Note: The Projected Tax Increment is based on assumed values and levy rates; actual amounts and rates will vary from those assumptions, and it is understood that the actual tax shift may vary materially from the projected amount. The levy rate is assumed to be the 2024 levy rate. There has been no accounting for incremental growth or change in the tax levy over the 15 year TIF period. There has been no accounting for any annual state property tax credit.

2. Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the redevelopment project:

a. Public infrastructure improvements and impacts:

No substantial adverse effects are anticipated on the public infrastructure and community public service needs. All public infrastructure and community public services required to serve the Project exist, are planned for construction by the City, or will be constructed as part of the overall Rail Campus redevelopment. The Project will be required to include waste water treatment improvements as part of the development of the site. Worthmann Boulevard will need to be extended, but a CDBG grant has been secured to assist with the funding of this construction, and this extension of Worthmann Blvd is within the anticipated City infrastructure improvements. The development of a large scale processing plant like the Project is a desired goal of the Rail Campus redevelopment. The Rail Campus Area has been designated by the City as a target area for industrial/commercial growth, and the construction of the Project in the Rail Campus Area will serve the City’s goals and not have a material negative impact.

b. Local Tax impacts (in addition to impacts of Tax Shifts described above):

The Project will create material tax and other public revenue for the City and other local taxing jurisdictions. While the use of tax increment financing will defer receipt of a majority of new ad valorem real property taxes generated by the Project, the Project should generate immediate tax growth for the City. The businesses operated on the Project Site should generate immediate sales tax and personal property tax revenue that would otherwise not be produced. The Project will also require and pay for City services. It is not anticipated that the Project will have any material adverse impact on such City services, but will generate revenue providing support for those services.

3. Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project:

It is not anticipated that the Project will have a material adverse impact on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project. There should be a positive impact throughout the Redevelopment Area because the Project will ameliorate conditions of blight that might otherwise deter businesses from locating or expanding in the area. The positive impacts of the development of the Rail Campus Area have been previously documented in the Redevelopment Plan, and this project would continue fulfilling the goals of the City and the CRA. The Project would bring an innovative agricultural processing facility to the Rail Campus.

4. Impacts on other employers and employees within the City and the immediate area that is located outside of the boundaries of the area of the redevelopment project:

Similar to the answer provided in Section 3, above, the Project should have a material positive impact on private sector businesses in and around the area outside the boundaries of the redevelopment project. The Project is not anticipated to impose a burden or have a negative impact on other local area employers. The Project should also encourage business owners to locate and/or relocate along the Highway 15 Corridor, which will allow for further growth of the community. The Project will result in relocating the warehouse and fulfillment centers for two ecommerce businesses to the City. This will bring the physical operations of existing ecommerce retailers to the City, which should create positive economic stimulation for the City without material impact on other local businesses.

5. Impacts on the student populations of school districts within the City:

The Comprehensive Plan anticipates steady population growth in the City of Seward. The plan for the development of the Rail Campus includes targeting larger-scale employers and businesses that are a good fit in the rail campus. This population growth will naturally include a corresponding growth in the student population. The Project could have an impact on the student populations of the school district within the City. The addition of approximately 70 jobs is likely to increase the number of students in the school system. While the number and grade distribution of students is unknown and will depend on the family sizes of the specific employees that are hired, the school district has the capacity to handle the anticipated student population increase from the Project, and no concerns have been identified.

6. Other impacts determined by the agency to be relevant to the consideration of costs and benefits arising from the redevelopment project:

It is anticipated that the Project will create up to 70 full-time jobs. The positions will have competitive salaries for the industry starting in the range of \$17/hr. to \$90/hr. A benefits package including healthcare and retirement will be available to full-time employees. The Worthmann Boulevard street project, which is partially funded with the CDBG grant, is expected to create approximately 29 full-time jobs for the 30 months construction schedule.

This Project is a continuation of the fulfillment of the overall general benefit of the development of the Rail Campus Area that has been identified in cost benefit analyses for other redevelopment projects in the Rail Campus Area. The Project continues to fulfill the overall intent of the Rail Campus Redevelopment Plan. There are no other material impacts determined by the agency relevant to the consideration of the cost of benefits arising from the Project.

7. Summary of Findings:

The Project will facilitate the development of a blighted and substandard area of the City without the incurrence of significant public cost. Additionally, the Project will increase property tax revenue in the long-term. The benefits outweigh the costs of the proposed Project.

4927-9585-7479, v. 1

4927-9585-7479, v. 1

4927-9585-7479, v. 1

**PLANNING COMMISSION
CITY OF SEWARD, NEBRASKA**

RESOLUTION # 2025-02

(Amendment to Redevelopment Plan – DARI Processing Redevelopment Project)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SEWARD, NEBRASKA, MAKING A RECOMMENDATION TO THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD AND THE CITY COUNCIL OF THE CITY OF SEWARD, NEBRASKA, WITH RESPECT TO THE AMENDMENT OF THE REDEVELOPMENT PLAN FOR THE CITY OF SEWARD, NEBRASKA, INCLUDING THE DARI PROCESSING REDEVELOPMENT PROJECT.

RECITALS

A. The Community Redevelopment Authority of the City of Seward, Nebraska (“CRA”) has submitted the question of whether the Redevelopment Plan for the City of Seward, a copy of which is on file and available for public inspection with the City Clerk (the “Redevelopment Plan”), should be amended to include a project for the redevelopment of certain real property in the Redevelopment Area identified in the said amendment (“Project Site”). A copy of said amendment to the Redevelopment Plan is on file and available for public inspection with the City Clerk (the “Amendment”).

B. Notice of public hearing regarding the question of whether the Redevelopment Plan should be recommended to the City Council and ultimately be adopted and approved by the City was provided in conformity with the Open Meetings Act, Neb. Rev. Stat. § 84-1407 et seq., the Community Development Law, Neb. Rev. Stat. §§ 18-2115 and 18-2115.01, and Nebraska law.

C. On June 9, 2025, the Planning Commission held a public hearing relating to the question of whether the Amendment to the Redevelopment Plan should be recommended to the City Council and ultimately be adopted and approved by the City. All interested parties were afforded at such public hearing a reasonable opportunity to express their views respecting the submitted question.

D. The Planning Commission has reviewed the Amendment to the Redevelopment Plan and has duly considered all statements made and material submitted related to the submitted question.

NOW THEREFORE, it is found and recommended by the Planning Commission of the City of Seward, Nebraska, in accordance with the Community Development Law, Neb. Rev. Stat. §§ 18-2101 through 18-2157 (the “Act”), as follows:

1. The Project Site is in need of redevelopment to remove blight and substandard conditions identified pursuant to the Act.

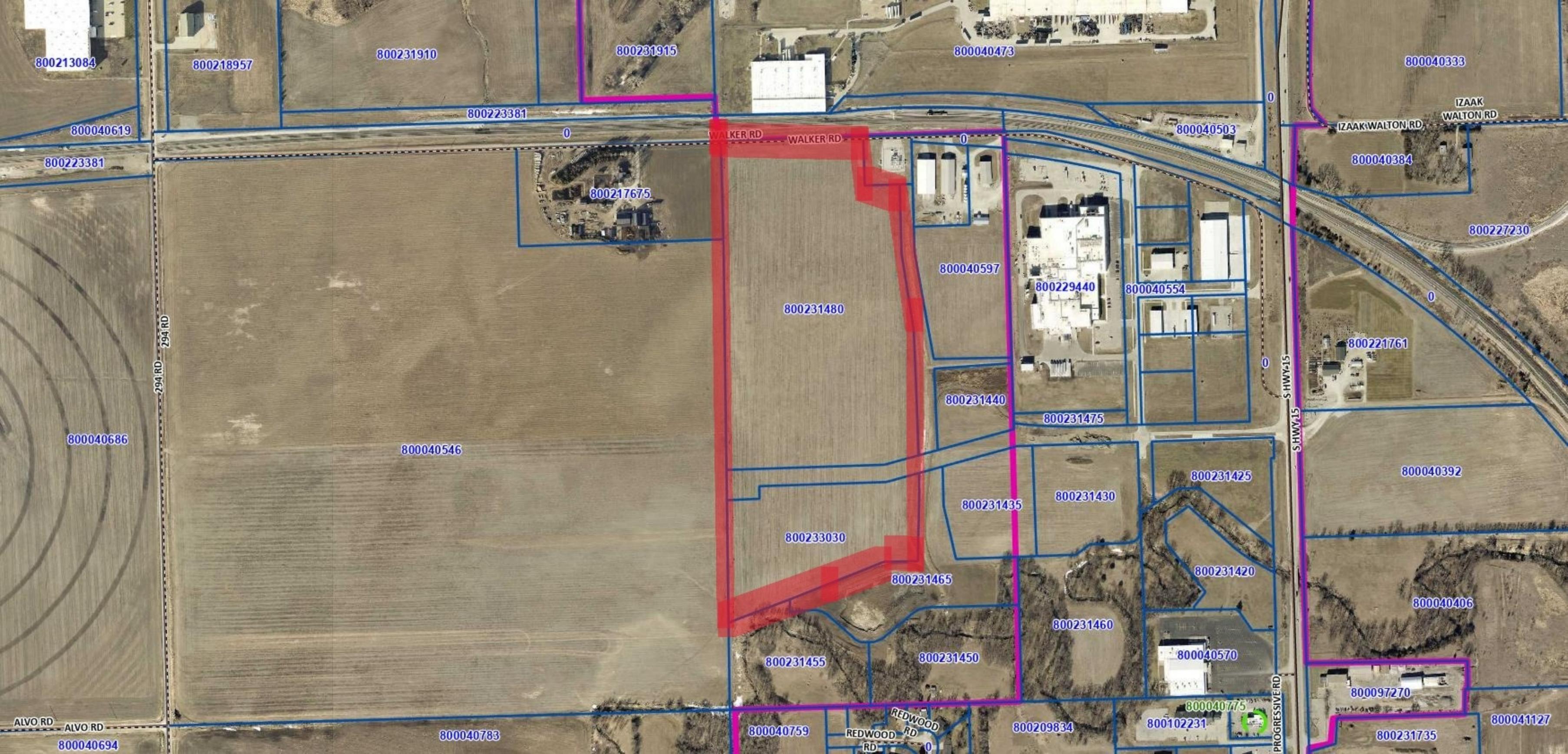
2. The Amendment to the Redevelopment Plan will, in accordance with the present and future needs of the City of Seward, promote the health, safety, morals, order, convenience, prosperity, and the general welfare of the community in conformance with the legislative declarations and determinations set forth in the Act.
3. The Amendment to the Redevelopment Plan is in conformance with the general plan for development of the City of Seward as a whole, as set forth in the City of Seward Comprehensive Plan, as amended.

BE IT RESOLVED, that pursuant to the provisions of the Act and in light of the foregoing findings and determinations, the Planning Commission does hereby recommend: (i) recommendation of the Redevelopment Plan by the CRA to the City Council, and (ii) approval of the Amendment to the Redevelopment Plan by the City Council as the governing body for the City of Seward.

Passed and approved by the Planning Commission on this 9th day of June, 2025.

PLANNING COMMISSION OF THE CITY
OF SEWARD, NEBRASKA

By: _____
Chairperson



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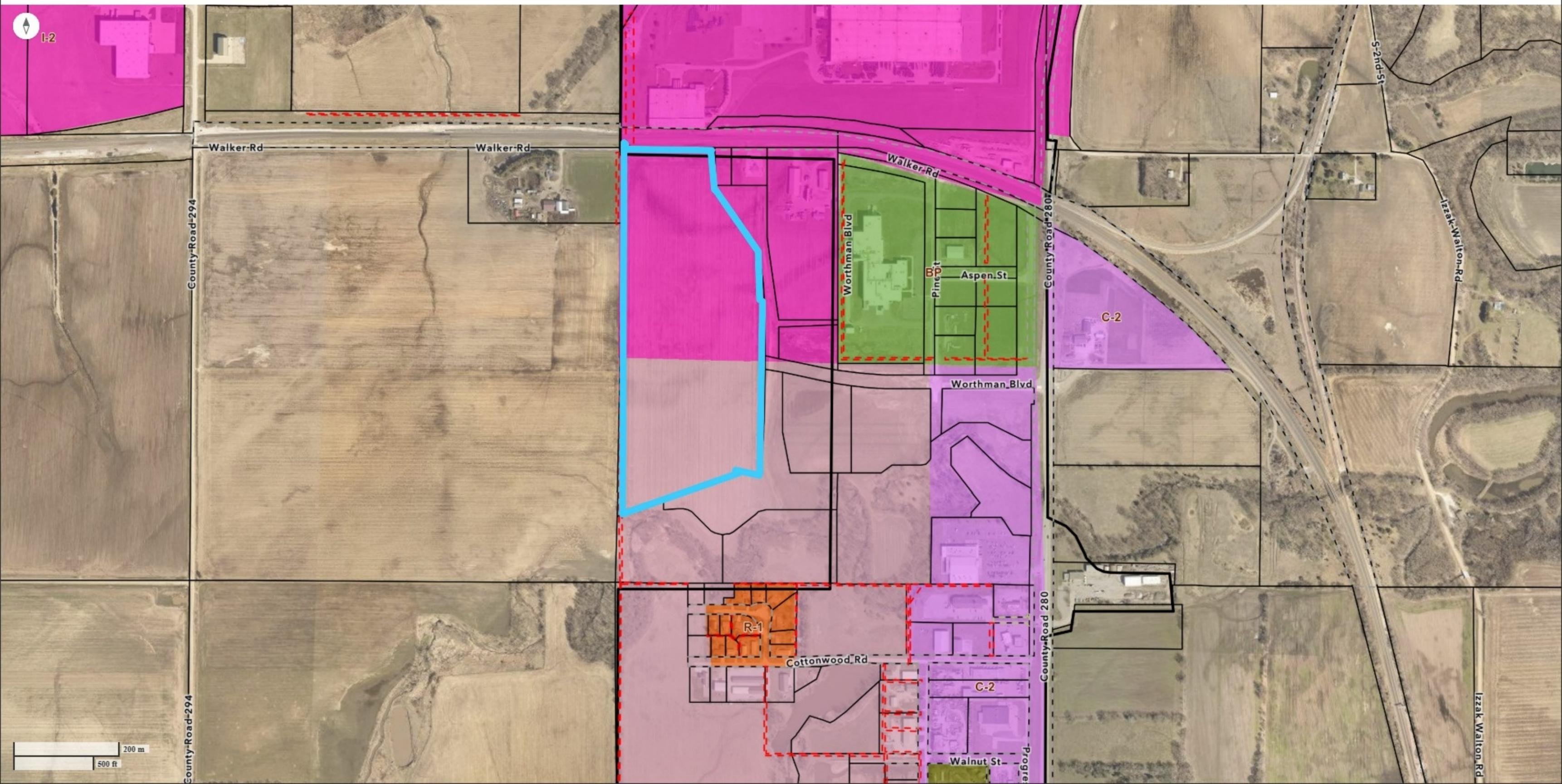
800231735

ALVO RD

800040694

294 RD

PROGRESSIVE RD



1-2

200 m
500 ft

County Road 294

County Road 294

Walker Rd

Walker Rd

Worthman Blvd

Walker Rd

Pine St

Aspen St

County Road 280

Worthman Blvd

C-2

R-1

Cottonwood Rd

County Road 280

C-2

Walnut St

Progre

S 2nd St

Izzak Walton Rd

Izzak Walton Rd

3. Public Hearing 7:30pm: TIF application for Parker Baby Co. at 1027 Worthman Blvd
- Parcel ID 800231435.

City of Seward Planning Commission
142 N 7th St. Seward, NE 68434

Staff Report
Tim Dworak, Building/Zoning &
Code Enforcement Director
402-643-2928 opt 3 opt 1

APPLICATION TYPE

FINAL ACTION?

DEVELOPER/OWNER

Tax - Increment Financing Application

Sam & Kirsten Huebner

PC HEARING DATE

RELATED APPLICATIONS

PROPERTY ADDRESS, ZONING DISTRICT

June 9, 2025

1027 Worthman Blvd, Industrial

ADJACENT ZONING DISTRICTS/USE:

North, I2, Industrial – City of Seward, Pet Source

South, I1, Industrial – City of Seward

East, I1, Industrial – Meyco Holdings LLC

West, I1 - Industrial – City of Seward

BRIEF SUMMARY OF REQUEST

Parker Baby is proposing an eCommerce Manufacturing and Fulfillment facility in the Seward Rail Campus.



APPLICATION CONTACT

Sam Huebner, 720-252-4668

18800 E Clarke Rd, Unit 102, Parker, CO 80134

ANALYSIS

The TIF application has been reviewed. Andrew Willis will be on hand to review the redevelopment plan and agreement.

APPROXIMATE LAND AREA:

4.46 acres or 194277.6 square feet +/-

LEGAL DESCRIPTION:

SEWARD RAIL CAMPUS PUD 2ND ADDITION LOT 14

Prepared by

Tim Dworak

City of Seward Building-Zoning-Code Enforcement Director

TAX INCREMENT FINANCING (TIF) OVERVIEW & APPLICATION



P.O. Box 38, 537 Main Street, Seward, Nebraska 68434. Phone: 402-643-2928. Fax: 402-643-6491. www.CityofSewardNE.gov

CITY OF SEWARD COMMUNITY REDEVELOPMENT AUTHORITY

Submit Completed Applications to:

City of Seward
Attn: City Administrator
PO BOX 38
Seward, NE 68434

UPDATED SEPTEMBER 13, 2024

CITY OF SEWARD

TAX INCREMENT FINANCING PROGRAM OVERVIEW

Tax Increment Financing (TIF) is a tool to assist in financing redevelopment projects in designated blighted and substandard areas of the city. The City of Seward issues bonds or a promissory note to finance any approved public improvements associated with a redevelopment project. The property taxes generated from the increased valuation of the development are then captured for a period of up to 15 years to repay the public investment.

The purpose of TIF is to help communities undertake redevelopment activities for urban renewal and municipal growth. TIF allows a city to pay for the public improvements that are part of a private redevelopment project. TIF is not a grant and it is not a primary funding source for a redevelopment project, but does provide an incentive for private development that will increase the tax base of the Seward community and create additional jobs.

✓ REDEVELOPMENT AREA

All TIF projects must occur within a redevelopment area that has been declared blighted and substandard by the City of Seward. The City of Seward has established a redevelopment area based upon a blight study. Please contact the Seward City Administrator or Seward County Chamber & Development Partnership (SCCDP) Executive Director with your proposed property location to determine redevelopment verification & eligibility.

✓ PROJECT ELIGIBILITY

To be eligible for TIF, a proposed redevelopment project must be located in a designated redevelopment area in the City of Seward. TIF can be used to pay for eligible public improvements, which may include:

- Site Acquisition & Demolition
- Site Preparation – Landscaping
- HVAC Efficiency Systems
- Facade Improvement Upgrades
- Installation or Construction of Public Improvements
Consisting of:
 - Streets & Utilities Extensions
 - Public Spaces- Green Space- Art Work
 - Public Facilities
 - Uses Listed In Q&A Section of Package
 - Or For Other Uses In Accordance With An Approved Redevelopment Plan

Additionally, to use TIF, the City must perform a cost-benefit analysis of the project and determine that the costs and benefits of the project are in the long-term best interest of the City and the project would not be economically feasible without the use of TIF.

✓ COMMUNITY REDEVELOPMENT AUTHORITY

The Community Redevelopment Authority of the City of Seward ("CRA") is responsible for carrying out the redevelopment activities for the City. The CRA is instrumental in the TIF process. The CRA evaluates each TIF application and recommends redevelopment projects to the City. It also enters into approved redevelopment contracts with the redeveloper to establish the rights and obligations of the parties and the details of the TIF bond.

✓ TIF PROCESS CHECKLIST:

- Meeting with the City of Seward and developers to review TIF process & determine initial eligibility of proposed TIF project
- Determine if prospective project is within the City's redevelopment area
- Determination of eligible public improvements
- Developer submits completed TIF application to City Administrator's office with application fee
- Initial project analysis is completed by City of Seward TIF legal counsel
- Initial redevelopment project data for plan completed by City of Seward's TIF counsel
- CRA reviews applications & selects projects
- Proposed Redevelopment Plan amendment to include the proposed project is prepared by TIF counsel
- Planning Commission public hearing scheduled & notices are published and sent to Seward County taxing entities
- Public hearing conducted at the City Planning Commission meeting to make a recommendation on the redevelopment plan amendment
- CRA approves the redevelopment plan amendment and makes a recommendation to the City Council
- City Council Public hearing scheduled & notices are published and sent to Seward County taxing entities
- Public hearing conducted at the City Council meeting to adopt the redevelopment plan amendment
- Developer and CRA negotiate redevelopment agreement implementing the redevelopment plan amendment and setting forth the rights & obligations for the specific project
- CRA approves the redevelopment agreement
- City Council approves the redevelopment agreement
- TIF note is issued
- The redevelopment project is completed & the additional tax revenue created by TIF project is collected and used to pay off the TIF note debt obligation & then property returns to normal re-tax distribution process.

✓ **TIF APPLICATION PROCESS**

The applicant shall complete a fully legible City application request for TIF that is attached to this application package. The completed application document will be signed, dated and submitted to the Seward City Administrator or SCCDP Director for procession and future eligibility analysis.

- Application Fee: a nonrefundable application fee equal to the lesser of: (a) one percent of the requested TIF indebtedness; or (2) One Thousand Dollars and No/100 shall be submitted with the application. The fee will be applied toward the 3% administrative fee collected at closing.

✓ **TIF FINANCING PROJECT EXAMPLE**

This demonstrates how TIF works with a hypothetical project. In this example, the developer owns a lot valued at \$10,000 located in the redevelopment area.

The developer is going to construct a building on the property such that the valuation of the property after the project will be \$250,000.

The annual TIF available for 15 years would be approximately \$4,933:

	<u>Valuation</u>	<u>Taxes</u>
Pre-project:	\$ 10,000	\$ 205
Completed Project:	\$250,000	\$5,138
Difference (Increment):	\$240,000	\$4,933

Assuming that a developer can borrow at a 6% interest rate, the TIF revenue, collected for 15 years could pay off a \$47,910 loan in this example:

Present Value Calculation Case Example

<u>Year</u>	<u>TIF</u>	<u>Year</u>	<u>TIF</u>
1	\$ 4,933	9	\$ 4,933
2	\$ 4,933	10	\$ 4,933
3	\$ 4,933	11	\$ 4,933
4	\$ 4,933	12	\$ 4,933
5	\$ 4,933	13	\$ 4,933
6	\$ 4,933	14	\$ 4,933
7	\$ 4,933	15	\$ 4,933
8	\$ 4,933		
		Total	\$73,995

Present Value of \$73,995 @ 6% = \$47,910

✓ **TIF QUESTIONS AND ANSWERS**

Q) What is a substandard & blighted area?

A) An area that has been declared substandard and blighted in accordance with the Nebraska State Statutes. It is defined as one where conditions are present that may have a detrimental effect on public health, safety, morals, or welfare of the neighborhood.

Q) What can a substandard area contain?

A) The area may have inadequate infrastructure, conditions which endanger life and property by fire or other causes, dilapidated buildings, inadequate parking, congestion, and economically or socially unacceptable land uses.

Q) How was the redevelopment area created?

A) The redevelopment area was created in a study completed for the City of Seward by an independent Nebraska planning, architecture, and urban design firm.

Q) What is the Geography of the Redevelopment Area?

A) The study considers the presence of substandard conditions or blight in the City of Seward pursuant to the requirements of the Nebraska Revised Statutes. A total of approximately 468.8 acres are included in the TIF Redevelopment Area. Included in this application packet is a current redevelopment area map and TIF application projects must be in the shaded/designated areas.

Q) How does TIF work?

A) TIF is the use of new real property tax dollars created as the result of a project to help support the financing of the project. TIF allows the use of the new property taxes generated by the increased value of the property to be paid on the TIF bond retirement. The taxes are redirected for the benefit of the project for a period up to 15 years. Property taxes on the original value of the property continue to be paid to local taxing entities.

Q) What types of projects are eligible?

A) In other Nebraska TIF projects, it has been used to provide public improvements for economic development incentives for industrial and manufacturing entities, rental housing projects, upgrades of buildings and public facilities in downtown areas, purchase of land for redevelopment activities, update of business and recreational facilities, and other development enhancing activities. The City of Seward’s CRA encourages and evaluates TIF projects based upon their positive impacts on neighborhoods and the community in general.

Q) How do you qualify for TIF?

A) Applicants/developers must fully complete a TIF application request and submit to the Seward City Administrator’s office with the application fee. Refer to the TIF Process Checklist on the previous page for full TIF process descriptions and requirements. The application must receive a recommendation for approval from the CRA, Planning Commission, and City Council.

Tax-Increment Financing Application

CITY OF SEWARD, NEBRASKA
COMMUNITY REDEVELOPMENT AUTHORITY (CRA)
537 MAIN STREET – P.O. BOX 38 – SEWARD, NE 68434-0038

1. Applicant Information

Business Name	Federal Id #
Sam Huebner	720-252-4668
Contact Person for Applicant	Cell Phone
18800 E Clarke Rd, Unit 102	Parker, CO 80134
Street Address	City, State, Zip
1312 17th St PMB 70971	Denver, CO 80202
Mailing Address (if different)	City, State, Zip

Bus. Phone	Bus. Fax
sam@parkerbaby.com	
Email	

Business Organization: Proprietorship Corporation Partnership LLC
 Other, please explain: _____

Ownership: List all Officers, Directors, Partners, Owner(s), Co-Owners and/or Stockholders.

Name	Title	Ownership Percent
Kirsten Huebner	President	100%
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. ImagiNE Nebraska Act

- a. Have you filed or do you intend to file an application to receive tax incentives under the ImagiNE Nebraska Act for this project? Yes No
- b. If an application has been filed, has it been approved? Yes No
- c. Does your application include, or will it include, as one of the tax incentives, a refund of the city's local option sales tax revenue? Yes No

3. Project Description

- a. What type of business does this project involve (i.e. industrial, commercial, residential, etc.): Industrial
- i. If the project involves housing, please give a description of intended tenants, type of household (families/elderly/etc.), income levels, impact on the schools and/or community, etc.:
n/a
- ii. If the project involves retail business, please give a description of the retail business, how the community would benefit from this retail business, the impact on similar existing retail businesses, etc.:
n/a
- iii. If the project involves industry, please give a description of the type of industry, impact on the environment, impact on the community, similar existing industries in town, etc.:
Industry: eCommerce Manufacturing and Fulfillment
Impact: Daily small parcel delivery/pickup (USPS, UPS, etc.)
- b. What is the estimated number of new jobs this project will create? 10
- c. What is the pay scale and benefits package for these positions?
\$45-95k/year. QSEHRA, SIMPLE IRA Match, 10 Holiday, 10 PTO

4. Proposed Project Site

1027 Worthman Blvd City of Seward
Site Address Current Owner

Legal Description: SEWARD SEWARD RAIL CAMPUS PUD 2ND ADDITION LOT

If current site owner is not the applicant, please list the arrangement to build:
Under contract to purchase lot, closing date: 05/15/2025

5. Physical Description of the Proposed Project

Please include square footage, size of property, description of building materials:

4.46 acres
25,000 sf insulated steel building, clear span construction.
3,200 sf office, composite siding

Site Plan Attached? Yes No

6. Land Use:

a. Is the property located in a blighted or substandard area? Yes No

b. If property is to be subdivided, please include copy of planned division:
Copy Attached? Yes No

c. Current Zoning of the property: I-1 Limited Industrial District

d. Is the proposed project a permitted use on the property? Yes No
What permits would be required?

e. Please describe any other relevant information relating to zoning, permitting, or similar land use issues:

7. Relocation

a. Will any residences or businesses need to relocate because of this project?
 Yes No If yes, please explain.

b. Will any housing units be eliminated by this project? Yes No
If yes, what is your plan to create equivalent replacement housing units?

8. Estimated Project Costs

- a. Land Acquisition, if applicable: \$ 533,988
- b. Site Development (itemize below): \$ 175,000 (Totaled)
 - i. Demolition: \$ 0
 - ii. Grading: \$ 75,000
 - iii. Site Preparation: \$ 100,000
 - iv. Other (explain): \$ 0
- c. Building Construction Cost: \$ 3,500,000
- d. Other Site Improvements (explain) \$ 0
- e. Equipment: \$ 180,622
- f. Architectural and Engineering Fees: \$ 175,000
- g. Legal Fees: \$ 15,000
- h. Financing Costs: \$ 12,000
- i. Broker Costs, if any: \$ 0
- j. Contingencies: \$ 0
- k. Other (explain): \$ 0
- Total:** \$ 4,591,610

17. Describe eligible costs for which tax increment financing will be used.

Please provide a detailed breakdown of proposed eligible uses and costs of each use, including any available bids or cost estimates for such work (include attachment if necessary):

See Exhibit C

18. Statement of necessity for use of tax increment financing (include attachment if necessary):

a. Is your project economically feasible as designed without tax increment financing? If no, please indicate how tax increment financing is necessary for the economic feasibility of your project.

See Exhibit C

b. Would you locate your project in the redevelopment area without Tax Increment Financing? Explain.

See Exhibit C

19. List any other long-term public benefits your project will bring to the City, or any other information relevant to this application.

See Exhibit C

The above information is accurate to the best of my knowledge and belief. The above information is provided to help the City to evaluate the feasibility of the use of tax increment financing. I/we further authorize the release of all personal and business credit information to the City of Seward and acknowledge this information upon submission will be considered a Public Record.

Signature: _____

Printed Name: Samuel Huebner

Title: Secretary Date: 04/25/2025

Exhibit C

17. Describe eligible costs for which tax increment financing will be used. Please provide a detailed breakdown of proposed eligible uses and costs of each use, including any available bids or cost estimates for such work (include attachment if necessary):

Tax increment financing (TIF) proceeds will be used to reimburse the costs of public improvements and site development associated with constructing a 25,000 square foot insulated steel industrial facility (including 3,200 square feet of office space) on a 4.46-acre site within the Seward/Lincoln Regional Rail Campus.

These costs are necessary to make the site development-ready and include the following TIF-eligible expenses:

- **Site Purchase Cost:** \$533,988
- **Architectural/Engineering:** \$175,000
- **Grading and site preparation (including erosion control):** \$100,000
- **On-site infrastructure improvements (paving, driveway access, sidewalks):** \$85,000
- **Stormwater management improvements (inlets, drainage, piping):** \$30,000
- **Landscaping and green space (public-facing areas):** \$30,000
- **TIF-related legal, administrative, financing, and issuance costs:** \$43,500

Total TIF-eligible costs: \$997,488

Cost estimates are based on discussions with contractors and architects. Detailed bids and plans will be provided as attachments prior to final closing.

18. Statement of necessity for use of tax increment financing (include attachment if necessary):

A. Is your project economically feasible as designed without tax increment financing? If no, please indicate how tax increment financing is necessary for the economic feasibility of your project.

No. The project is not economically feasible without TIF assistance. The proposed site requires substantial upfront investment in grading and infrastructure that are not recoverable through

Exhibit C

rental income or cash flow in the short term. TIF assistance is necessary to close the funding gap and enable the project to proceed at the selected location.

TIF allows the developer to offset extraordinary development costs and make the project financially viable, while still delivering public infrastructure improvements and long-term taxable value to the City.

B. Would you locate your project in the redevelopment area without Tax Increment Financing? Explain.

Not likely. The additional public improvement costs make this specific parcel financially uncompetitive compared to other available industrial land in surrounding areas, especially considering the cost of the land to be developed. TIF serves as a critical tool to mitigate site-specific development hurdles and enables the project to proceed within the Seward Regional Rail Campus.

19. List any other long-term public benefits your project will bring to the City, or any other information relevant to this application.

- **Job Creation:** The project is expected to generate at least 10 new full-time positions in Seward County. Roles will include warehouse operations, logistics, customization technicians (embroidery, printing), and office staff.
- **Wages and Benefits:** Estimated wages range from \$45,000 to \$95,000 annually. Benefits will include a QSEHRA, SIMPLE IRA retirement plan with employer match, 10 paid holidays, and 10 days of PTO annually.
- **Property Tax Base Expansion:** The completed facility is expected to increase the taxable valuation from a nominal amount to over \$1.9 million, resulting in a projected \$25,375 of new annual real estate taxes post-TIF.
- **Infrastructure Investment:** The project will fund permanent upgrades to the City's utility and road infrastructure, which will benefit future users in the Regional Rail Campus.
- **Economic Diversification:** This eCommerce-focused facility adds to the industrial diversity of the community and establishes Seward as a logistics and fulfillment-friendly destination.
- **Long-Term Anchoring:** The owner intends to occupy and operate from this facility for the foreseeable future, ensuring continuity, reinvestment, and community engagement.

Balance Sheet

Parker Baby Co.

As of December 31, 2024

DISTRIBUTION ACCOUNT	2022	2023	2024
Assets			
Current Assets			
Bank Accounts			
Checking - Chase 8378	99,005.37	70,995.10	15,398.94
Highbeam Checking 4231			150,000.00
Highbeam High yield			242,198.32
Paypal	1,423.15	1,007.01	0.00
Paypal CAD		52.80	176.25
Paypal Hold	56.98		
Transaction Clearing A/c			-1.73
Total for Bank Accounts	100,485.50	72,054.91	407,771.78
Accounts Receivable			
Accounts Receivable (A/R)	279,534.33	0	0
Intercompany Receivable		335,645.90	461,323.50
Wholesale Receivable		41,367.00	98,496.00
Total for Accounts Receivable (A/R)	279,534.33	377,012.90	559,819.50
Total for Accounts Receivable	279,534.33	377,012.90	559,819.50
Other Current Assets			
Amazon Receivables	0	0	0
Amazon Receivable CA	442.81	469.90	1,290.73
Amazon Receivable MX	102.08	57.00	81.41
Amazon Receivable USA	25,520.05	69,977.58	26,299.60
Amazon Receivable USA LLC	82.85	14.32	56.14
Total for Amazon Receivables	26,147.79	70,518.80	27,727.88
BlockFi			
GST Receivable CA			1,065.06
Interest Receivable		3,732.00	5,395.33
Inventory	0	0	0
Inbound Inventory			210,398.96
Inventory Asset	1,806,694.15	2,134,229.10	1,770,253.32
Total for Inventory	1,806,694.15	2,134,229.10	1,980,652.28
Prepaid expenses	11,597.26	17,987.89	21,987.12
Shopify Clearing Account	5,416.28	9,044.33	4,206.91
Short Term Loan - Huebner	311,000.00	311,000.00	237,372.42
Vendor Deposits	56,244.00	20,327.04	
Walmart Receivable	190.03	384.37	510.01
Total for Other Current Assets	2,217,289.51	2,567,223.53	2,278,917.01
Total for Current Assets	2,597,309.34	3,016,291.34	3,246,508.29
Fixed Assets			

Balance Sheet

Parker Baby Co.

As of December 31, 2024

DISTRIBUTION ACCOUNT	2022	2023	2024
Other Assets			
Security deposits	3,732.78	3,732.78	3,732.78
Total for Other Assets	3,732.78	3,732.78	3,732.78
Total for Assets	2,601,042.12	3,020,024.12	3,250,241.07
Liabilities and Equity			
Liabilities			
Current Liabilities			
Accounts Payable			
Accounts Payable (A/P)		11,400.00	
Total for Accounts Payable	0	11,400.00	0
Credit Cards			
Amex Gold 01005			67.14
Amex Gold 21001		488.79	-39.00
Amex Gold 21004 (Kirsten)	519.41	100,315.47	-1,041.78
Amex Gold 31009	500.00		174,567.73
Amex Gold 62002			1,168.39
Amex Gold 81007		26,364.24	20.96
Amex Gold 92007		1,957.22	
Capital One Spark - Original 8860	47,883.88	135,246.76	232,639.63
Capital One Spark - Plus 5405	38,148.67	74,113.69	29,465.23
Chase 2848			
Chase Ink Preferred	87,799.76	870.00	7,696.98
Chase Line of Credit	341,236.44	301,620.04	
Total for Credit Cards	516,088.16	640,976.21	444,545.28
Other Current Liabilities			
Accrued Interest	0	0	0
Accrued Interest SBA-I	43,237.00	30,306.05	19,863.32
Accrued Interest SBA-II	22,619.09	78,869.12	135,273.32
Total for Accrued Interest	65,856.09	109,175.17	155,136.64
Amazon Lending			
Payroll Liability	0	0	0
Accrued Payroll Liability			
Payroll Tax Liability			
Simple IRA Payable	7,604.76	22,437.33	7,587.63
Total for Payroll Liability	7,604.76	22,437.33	7,587.63
Sales Tax Liability	7,005.51	4,183.89	3,363.99
Total for Other Current Liabilities	80,466.36	135,796.39	166,088.26
Total for Current Liabilities	596,554.52	788,172.60	610,633.54

Balance Sheet

Parker Baby Co.

As of December 31, 2024

DISTRIBUTION ACCOUNT	2022	2023	2024
Long-term Liabilities			
SBA EIDL Loan	0	0	0
EIDL Loan 1 - \$.5M	500,000.00	500,000.00	500,000.00
EIDL Loan 2 - \$1.5M	1,500,000.00	1,500,000.00	1,500,000.00
Total for SBA EIDL Loan	2,000,000.00	2,000,000.00	2,000,000.00
Total for Long-term Liabilities	2,000,000.00	2,000,000.00	2,000,000.00
Total for Liabilities	2,596,554.52	2,788,172.60	2,610,633.54
Equity			
Retained Earnings	384,532.41	1,084,604.60	1,811,168.52
Net Income	700,072.19	726,563.92	1,451,756.01
Members Distribution - Sam	-1,080,500.00	-1,579,700.00	-2,623,700.00
Shareholder's Equity - Sam	383.00	383.00	383.00
Total for Equity	4,487.60	231,851.52	639,607.53
Total for Liabilities and Equity	2,601,042.12	3,020,024.12	3,250,241.07

Profit and Loss

Parker Baby Co.

January 1, 2022-December 31, 2024

DISTRIBUTION ACCOUNT	2022	2023	2024	TOTAL
Income				
Amazon Sales				0
Amazon Sales CA	831.61	53,403.52	236,976.58	291,211.71
Amazon Sales MX	1,920.39	4,016.17	7,755.08	13,691.64
Amazon Sales USA	7,203,685.95	8,929,455.16	10,617,850.82	26,750,991.93
Amazon Sales USA LLC	1,464.85	4,917.80	13,960.04	20,342.69
Total for Amazon Sales	7,207,902.80	8,991,792.65	10,876,542.52	\$27,076,237.97
Amazon Sales Return				0
Sales Return CA		-4,787.39	-13,909.32	-18,696.71
Sales Return MX	-55.49	-152.61	-130.91	-339.01
Sales Return USA	-376,516.81	-518,854.59	-580,749.31	-1,476,120.71
Sales Return USA LLC		-349.20	-96.80	-446.00
Total for Amazon Sales Return	-376,572.30	-524,143.79	-594,886.34	-\$1,495,602.43
eBay sales		159.87		159.87
Faire Sales		4,537.39	63,205.76	67,743.15
Licensing Revenue	30,404.96	53,052.30	45,231.61	128,688.87
Other Amazon Income				0
Other Amazon Income CA		394.43	1,191.49	1,585.92
Other Amazon Income MX	54.37	26.30	43.56	124.23
Other Amazon Income USA	65,333.76	125,137.08	105,980.27	296,451.11
Other Amazon Income USA LLC	3.99	16.53	13.47	33.99
Total for Other Amazon Income	65,392.12	125,574.34	107,228.79	\$298,195.25
Shipping Income				0
Shipping Income CA	233.43	941.27	4,184.76	5,359.46
Shipping Income MX	69.46	151.45	353.67	574.58
Shipping Income USA	91,564.94	115,295.78	175,105.67	381,966.39
Shipping Income USA LLC	19.00	14.35	55.37	88.72
Total for Shipping Income	91,886.83	116,402.85	179,699.47	\$387,989.15
Shopify				0
Shopify Sales	742,992.48	784,213.18	516,970.23	2,044,175.89
Shopify Sales Discount	-42,136.90	-99,700.35	-82,774.98	-224,612.23
Shopify Sales Refund	-14,053.06	-15,261.39	-14,602.27	-43,916.72
Shopify Shipping Income	59,320.00	87,817.53	52,299.36	199,436.89
Total for Shopify	746,122.52	757,068.97	471,892.34	\$1,975,083.83
Target sales		189,285.43	714,563.82	903,849.25
Walmart Income				0
Walmart Sales	63,143.15	49,666.85	21,383.30	134,193.30
Walmart Sales Return	-2,513.51	-1,456.72	-1,109.15	-5,079.38
Walmart Shipping Income	516.31	369.33	180.77	1,066.41
Total for Walmart Income	61,145.95	48,579.46	20,454.92	\$130,180.33

Profit and Loss

Parker Baby Co.

January 1, 2022-December 31, 2024

DISTRIBUTION ACCOUNT	2022	2023	2024	TOTAL
Wholesales	722,566.71	1,015,926.00	796,924.10	2,535,416.81
Total for Income	8,548,849.59	10,778,235.47	12,680,856.99	\$32,007,942.05
Cost of Goods Sold				
Amazon Fulfillment Fees				0
Amazon Fulfillment Fees CA		7,824.04	60,596.94	68,420.98
Amazon Fulfillment Fees MX	597.57	1,203.67	4,214.14	6,015.38
Amazon Fulfillment Fees USA	1,537,808.30	2,117,514.07	2,646,919.29	6,302,241.66
Amazon Fulfillment Fees USA LLC	372.01	1,565.43	4,980.18	6,917.62
Total for Amazon Fulfillment Fees	1,538,777.88	2,128,107.21	2,716,710.55	\$6,383,595.64
Amazon Selling Fee				0
Amazon Selling Fee CA	159.71	7,575.96	34,092.47	41,828.14
Amazon Selling Fee MX	274.83	574.88	1,147.02	1,996.73
Amazon Selling Fee USA	1,049,480.21	1,276,442.21	1,519,748.30	3,845,670.72
Amazon Selling Fee USA LLC	220.57	695.04	2,082.32	2,997.93
Total for Amazon Selling Fee	1,050,135.32	1,285,288.09	1,557,070.11	\$3,892,493.52
Amazon Sponsored Ads				0
Amazon DSP Ads		114,976.00	41,960.69	156,936.69
Amazon Sponsored ad Spend CA		10,820.34	30,868.36	41,688.70
Amazon Sponsored ad Spend USA	1,136,293.75	1,239,720.92	1,270,150.52	3,646,165.19
Total for Amazon Sponsored Ads	1,136,293.75	1,365,517.26	1,342,979.57	\$3,844,790.58
Amazon Subscription Fees				0
Amazon Subscription Fees CA	10.72	87.01	116.30	214.03
Amazon Subscription Fees MX	210.52	190.00	173.93	574.45
Amazon Subscription Fees USA	285.94	228.02	212.41	726.37
Total for Amazon Subscription Fees	507.18	505.03	502.64	\$1,514.85
FBA Inventory Fees				0
FBA Inventory Fees CA		11,152.09	63,352.87	74,504.96
FBA Inventory Fees USA	141,295.63	186,126.18	280,412.00	607,833.81
Total for FBA Inventory Fees	141,295.63	197,278.27	343,764.87	\$682,338.77
Fulfillment Center	187,402.03	280,792.89	356,001.27	824,196.19
Other Amazon Expenses				0
Other Amazon Expenses CA		92.06	75.84	167.90
Other Amazon Expenses USA		35.12	2,620.48	2,655.60
Total for Other Amazon Expenses	0	127.18	2,696.32	\$2,823.50
Outbound Shipping	213,118.53	435,447.07	629,615.11	1,278,180.71
Product Cost				0
Amazon COGS CA	168.65	10,458.60	46,291.86	56,919.11
Amazon COGS MX	225.73	479.07	1,161.31	1,866.11
Amazon COGS USA	1,594,760.80	1,914,054.14	1,932,273.57	5,441,088.51

Profit and Loss

Parker Baby Co.

January 1, 2022-December 31, 2024

DISTRIBUTION ACCOUNT	2022	2023	2024	TOTAL
Amazon COGS USA LLC	266.80	768.66	3,273.36	4,308.82
COGS-Year End Inventory Adjustment			13,982.95	13,982.95
ebay COGS		39.97		39.97
Faire COGS		1,134.38	15,801.45	16,935.83
Maisonette COGS	2,808.99			2,808.99
Return/Disposals COGS	44,068.17	31,459.64	35,679.55	111,207.36
Shopify COGS	181,647.17	194,444.45	103,383.04	479,474.66
Target COGS		55,086.23	172,922.70	228,008.93
Walmart COGS	13,529.55	10,118.00	4,002.90	27,650.45
Wholesales COGS	355,239.48	466,788.13	303,998.14	1,126,025.75
Total for Product Cost	2,192,715.34	2,684,831.27	2,632,770.83	\$7,510,317.44
Promotional Rebates				0
Promotional Rebates CA		1,041.19	5,727.46	6,768.65
Promotional Rebates USA	69,808.61	96,194.59	163,132.56	329,135.76
Promotional Rebates USA LLC	15.05	7.40	53.70	76.15
Total for Promotional Rebates	69,823.66	97,243.18	168,913.72	\$335,980.56
Walmart Expenses				0
Walmart Advertisement	5,155.78			5,155.78
Walmart Commission	9,340.87	7,431.46	3,252.43	20,024.76
Total for Walmart Expenses	14,496.65	7,431.46	3,252.43	\$25,180.54
Total for Cost of Goods Sold	6,544,565.97	8,482,568.91	9,754,277.42	\$24,781,412.30
Gross Profit	2,004,283.62	2,295,666.56	2,926,579.57	\$7,226,529.75
Expenses				
Advertising & marketing				0
Google Ads	111,791.49	86,836.77	91,338.73	289,966.99
Meta Ads	238,095.04	209,360.91	86,948.63	534,404.58
Other Ads	1,921.94	39,436.10	44,106.50	85,464.54
Pinterest Ads	25,163.19	5,793.01		30,956.20
Promotion/PR			39,407.65	39,407.65
Tiktok Ads	3,448.41	38,326.95	12,044.06	53,819.42
Total for Advertising & marketing	380,420.07	379,753.74	273,845.57	\$1,034,019.38
Affiliate Fees			9,617.99	9,617.99
Bank Charges	2,919.50	6,683.69	7,021.75	16,624.94
Cloud Tools			90,582.24	90,582.24
Computer Expenses			4,234.07	4,234.07
Consulting Services			175,552.94	175,552.94
Contract labor	9,649.71	7,572.67		17,222.38
Dues & Subscriptions			181.12	181.12
Employment Costs			2,136.62	2,136.62
Gifts			6,514.38	6,514.38

Profit and Loss

Parker Baby Co.

January 1, 2022-December 31, 2024

DISTRIBUTION ACCOUNT	2022	2023	2024	TOTAL
Gusto - Payroll				0
Payroll Expenses	307,133.53	391,992.12		699,125.65
Payroll Processing Fees	2,316.05	2,869.92		5,185.97
Payroll Taxes	26,932.66	36,343.78	47,575.59	110,852.03
Reimbursements	5,014.79	7,731.88		12,746.67
Simple IRA Benefits	6,411.89	12,566.10	13,211.24	32,189.23
Wages & Salaries	59,587.38	124,671.06	620,334.96	804,593.40
Total for Gusto - Payroll	407,396.30	576,174.86	681,121.79	\$1,664,692.95
Health & Wellness Benefit			16,515.33	16,515.33
Hotel Expense		4,695.74	6,527.19	11,222.93
Inspection Charges		1,500.00	3,817.34	5,317.34
Insurance Expenses	8,969.55	23,427.14	28,834.13	61,230.82
Interest Expenses			80,826.71	\$80,826.71
Interest on Amazon Lending	20,258.59	16,844.00		37,102.59
Interest on LOC / CC	14,325.66	25,339.33		39,664.99
SBA Loan Interest	56,815.14	75,000.08		131,815.22
Total for Interest Expenses	91,399.39	117,183.41	80,826.71	\$289,409.51
Legal & Professional Expenses	110,708.92	165,634.77		\$276,343.69
Accounting fees			19,668.00	19,668.00
Legal Fees			8,800.50	8,800.50
Professional Development			57,682.36	57,682.36
Total for Legal & Professional Expenses	110,708.92	165,634.77	86,150.86	\$362,494.55
Mailbox Fees			441.20	441.20
Meals & Entertainment	2,402.67	13,729.37	12,307.79	28,439.83
Merchant Account Fees	27,915.91	28,067.56	26,981.10	82,964.57
Mobile & Internet Expenses	2,468.39	3,352.60		5,820.99
Office Supplies	7,223.65	18,573.30	16,192.04	41,988.99
Other Business Expenses	10,527.99	13,393.60		23,921.59
Packaging expense	1,791.92		5,401.50	7,193.42
Photography Services Expenses	1,109.79	4,666.80	16,137.86	21,914.45
Product Samples			19,687.79	19,687.79
Rent or Lease	30,321.45	29,885.74	31,237.00	91,444.19
Research and Development			19,634.59	19,634.59
Sales Returns - Shipping Income			2,287.66	2,287.66
Section 139 Disaster Relief Reimbursements	100,000.00			100,000.00
Seller Service Fees			955.82	955.82
Software & Subscription Expenses	44,267.75	106,380.54		150,648.29
Training and Certification	37,189.00	40,937.00		78,126.00
Travel	2,459.24	5,249.00	4,294.67	12,002.91
Uniforms	241.26	1,604.99		1,846.25

Profit and Loss

Parker Baby Co.

January 1, 2022-December 31, 2024

DISTRIBUTION ACCOUNT	2022	2023	2024	TOTAL
Utilities			7,849.76	\$7,849.76
Gas	1,085.41	1,436.36		2,521.77
Waste Disposal Expenses	2,268.61	3,830.32		6,098.93
Total for Utilities	3,354.02	5,266.68	7,849.76	\$16,470.46
Website Services			3,157.46	3,157.46
Total for Expenses	1,282,736.48	1,553,733.20	1,640,046.27	\$4,476,515.95
Net Operating Income	721,547.14	741,933.36	1,286,533.30	\$2,750,013.80
Other Income				
Interest Income		3,732.00	18,962.93	22,694.93
Legal Settlement Income			211,615.52	211,615.52
Other Income		3,296.80	880.00	4,176.80
Total for Other Income	0	7,028.80	231,458.45	\$238,487.25
Other Expenses				
Donation	7,523.00	22,406.78	66,282.94	96,212.72
Exchange Gain or Loss	0.93	-8.54	-47.20	-54.81
Prior Period Adjustment	13,951.02			13,951.02
Total for Other Expenses	21,474.95	22,398.24	66,235.74	\$110,108.93
Net Other Income	-21,474.95	-15,369.44	165,222.71	\$128,378.32
Net Income	700,072.19	726,563.92	1,451,756.01	\$2,878,392.12

**Parker Baby Co.
Profit and Loss
Pro Forma**

	Forecasted 2025	Forecasted 2026	Forecasted 2027
Income			
Amazon Sales			
Amazon Sales CA	87,629	0	0
Amazon Sales MX	12,892	15,470	18,564
Amazon Sales USA	11,636,721	15,127,738	18,153,285
Amazon Sales USA LLC	1,890	2,268	2,721
Total Amazon Sales	11,739,131	15,145,475	18,174,570
Amazon Sales Return	0		
Sales Return CA	(5,762)	0	0
Sales Return MX	(390)	(468)	(561)
Sales Return USA	(622,500)	(809,249)	(971,099)
Sales Return USA LLC	0	0	0
Total Amazon Sales Return	(628,651)	(809,717)	(971,661)
Faire Sales	81,067	97,281	116,737
Licensing Revenue	95,270	95,270	95,270
Maisonette Sales	4,250	0	0
Nordstrom.com Sales	143,979	172,775	207,330
Other Amazon Income			
Other Amazon Income CA	540	0	0
Other Amazon Income MX	62	75	89
Other Amazon Income USA	104,078	135,302	162,362
Other Amazon Income USA LLC	4	5	6
Total Other Amazon Income	104,684	135,381	162,457
Shipping Income			
Shipping Income CA	1,664	0	0
Shipping Income MX	538	646	775
Shipping Income USA	193,051	250,967	301,160
Shipping Income USA LLC	11	0	0
Total Shipping Income	195,265	251,613	301,935
Shopify			
Shopify Sales	505,919	607,103	728,524
Shopify Sales Discount	(60,244)	(72,292)	(86,751)
Shopify Sales Refund	(16,403)	(19,684)	(23,621)
Shopify Shipping Income	54,312	65,174	78,209
Total Shopify	483,584	580,301	696,361
Target sales	1,047,842	1,257,411	1,508,893
Walmart Income			
Walmart Sales	22,474	26,969	32,363
Walmart Sales Return	(879)	(1,054)	(1,265)
Walmart Shipping Income	182	219	263
Total Walmart Income	21,778	26,133	31,360
Wholesales	421,685	506,022	607,227
Total Income	\$ 13,709,885	\$ 17,457,945	\$ 20,930,479
Cost of Goods Sold			
Amazon Fulfillment Fees			
Amazon Fulfillment Fees CA	22,972	0	0
Amazon Fulfillment Fees MX	5,209	6,251	7,501
Amazon Fulfillment Fees USA	2,888,042	3,465,651	4,158,781
Amazon Fulfillment Fees USA LLC	4,601	5,522	6,626
Total Amazon Fulfillment Fees	2,920,825	3,477,423	4,172,908

Amazon Selling Fee	0		
Amazon Selling Fee CA	12,953	0	0
Amazon Selling Fee MX	1,917	2,300	2,760
Amazon Selling Fee USA	1,738,751	2,086,501	2,503,802
Amazon Selling Fee USA LLC	2,108	2,529	3,035
Total Amazon Selling Fee	1,755,729	2,091,331	2,509,597
Amazon Sponsored Ads			
Amazon Sponsored ad Spend CA	12,706	0	0
Amazon Sponsored ad Spend USA	949,560	1,139,473	1,367,367
Total Amazon Sponsored Ads	962,266	1,139,473	1,367,367
Amazon Subscription Fees			
Amazon Subscription Fees CA	119	0	1
Amazon Subscription Fees MX	176	211	254
Amazon Subscription Fees USA	56	67	80
Total Amazon Subscription Fees	351	278	335
FBA Inventory Fees			
FBA Inventory Fees CA	17,478	0	0
FBA Inventory Fees USA	328,836	394,603	473,524
Total FBA Inventory Fees	346,314	394,603	473,524
Fulfillment Center	373,534	356,739	427,698
Other Amazon Expenses			
Other Amazon Expenses CA	92	0	0
Other Amazon Expenses USA	502	602	722
Total Other Amazon Expenses	594	602	722
Outbound Shipping	564,128	574,681	688,990
Product Cost			
Amazon COGS CA	17,318	0	0
Amazon COGS MX	2,289	2,747	3,296
Amazon COGS USA	2,109,891	2,531,869	3,038,243
Amazon COGS USA LLC	3,159	3,791	4,550
Faire COGS	33,494	40,193	48,232
Maisonette COGS	877	0	0
Nordstrom.com COGS	34,880	41,856	50,227
Return/Disposals COGS	35,182	42,218	50,662
Shopify COGS	124,267	149,121	178,945
Target COGS	264,761	317,713	381,255
Walmart COGS	5,226	6,271	7,526
Wholesales COGS	200,358	240,430	288,516
Total Product Cost	2,831,703	3,376,210	4,051,452
Promotional Rebates			
Promotional Rebates CA	1,798	0	0
Promotional Rebates USA	193,294	231,953	278,344
Promotional Rebates USA LLC	48	57	69
Total Promotional Rebates	195,140	232,010	278,413
Walmart Expenses			
Walmart Commission	3,381	4,057	4,868
Total Walmart Expenses	3,381	4,057	4,868
Total Cost of Goods Sold	9,953,964	11,647,407	13,975,873
Gross Profit	3,755,922	5,810,537	6,954,606
Expenses			
Advertising & marketing			
Google Ads	94,980	120,946	145,003
Meta Ads	72,585	92,429	110,814
Microsoft Ads	536	643	772
Other Ads	90,781	108,938	130,725

Total Advertising & marketing	258,883	322,956	387,314
Affiliate Fees	2,018	2,569	3,080
Bank Charges	5,416	6,897	8,269
Cloud Tools	80,558	102,582	122,986
Computer Expenses	15,099	19,227	23,051
Consulting Services	228,051	228,051	228,051
Dues & Subscriptions	74	94	113
Gifts	3,824	4,870	5,838
Gusto - Payroll			
Payroll Taxes	68,993	104,800	125,760
Simple IRA Benefits	41,346	75,184	90,221
Wages & Salaries	870,566	1,362,404	1,634,885
Total Gusto - Payroll	980,905	1,542,388	1,850,866
Health & Wellness Benefit	2,388	3,040	3,645
Inspection Charges	6,178	7,867	9,432
Insurance Expenses	36,458	46,426	55,660
Interest Expenses	81,493	122,240	122,240
Legal & Professional Expenses	0		
Accounting fees	21,201	21,201	21,201
Legal Fees	11,801	15,027	18,015
Professional Development	27,289	34,749	41,661
Total Legal & Professional Expenses	60,291	70,977	80,878
Mailbox Fees	421	536	643
Meals & Entertainment	8,470	10,786	12,931
Merchant Account Fees	33,328	42,439	50,880
Molding Fees	2,826	3,599	4,314
Office Supplies	13,181	16,785	20,123
Photography Services Expenses	18,843	23,995	28,767
Product Samples	12,760	16,248	19,480
Rent or Lease	35,153		
Research and Development	15,190	19,343	23,190
Sales Returns - Shipping Income	2,478	3,156	3,783
Taxes and Licenses	5,036	6,413	7,688
Training and Certification	379	483	579
Travel	8,792	11,195	13,422
Utilities	7,603	24,000	24,000
Website Services	265	338	405
Total Expenses	1,926,361	2,659,497	3,111,631
Net Operating Income	1,829,560	3,151,040	3,842,976
Other Income	0		
Interest Income	17,574	22,379	26,830
Legal Settlement Income	53,029	67,526	80,958
Total Other Income	70,603	89,905	107,788
Other Expenses	0		
Donation	190,015	324,095	395,076
Exchange Gain or Loss	16	20	20
Total Other Expenses	190,030	324,115	395,096
Net Other Income	(119,427)	(234,209)	(287,308)
Net Income	\$ 1,710,133	\$ 2,916,831	\$ 3,555,667
	11.9%	15.9%	16.2%

Seward Warehouse Consolidation and Expansion Project

Brand Overview

Parker Baby Co.

Founded by Sam and Kirsten Huebner in 2015 shortly after the birth of their twin daughters, [Parker Baby Co.](#) was established with the vision of simplifying parenthood through thoughtfully designed, practical baby products. Inspired by their personal parenting journey, the company has experienced significant growth, developing a loyal customer base. Parker Baby Co. products are sold exclusively online via ParkerBaby.com, Amazon.com, Babylist, Target.com, and Nordstrom.com, solidifying its presence in the premium baby product market.

Vision

We nurture and grow strong families



TallSlim

[TallSlim](#) was created to fill a market gap identified by its founder, Sam Huebner, who at 6'6" struggled for years to find well-fitting apparel. Historically, tall individuals faced limited clothing options, often settling for overly baggy "big and tall" items or ill-fitting regular clothing. TallSlim addresses this challenge directly, offering precision-tailored garments specifically designed to fit men ranging from 6'0" to 7'0". Initially starting with t-shirts, the brand has expanded to include joggers, hoodies, button-ups, and more, continually expanding its range to meet the needs of tall men seeking stylish, comfortable, and properly fitting apparel.

Vision

We empower tall, slim men to look and feel confident.



Project Summary

The Seward Warehouse Consolidation and Expansion Project involves the construction of a modern, 25,000-square-foot warehouse, light manufacturing and fulfillment center located in Seward, Nebraska. The facility will consolidate and integrate operations previously managed by multiple third-party logistics (3PL) providers and internal warehouses for Parker Baby Co. and TallSlim. By centralizing these operations, the project aims to drastically reduce operational costs, enhance fulfillment efficiency, and expand product offerings with in-house personalization through advanced embroidery and patch manufacturing.

capabilities. Total projected investment is estimated between \$3-4 million, financed through a combination of retained earnings, Tax Increment Financing (TIF), and the remaining funds financed through a local lending institution, Cattle Bank. This diversified financing approach ensures financial stability and leverages local economic partnerships. Anticipated savings include monthly reductions of \$30,000-\$40,000 in storage expenses and a 30%-40% improvement in outbound fulfillment costs.

Project Definition

The project strategically merges warehouse operations for two established eCommerce brands: Parker Baby Co., recognized for premium-quality baby products, and TallSlim, a specialized apparel brand catering to tall, slim men. This new facility will incorporate fulfillment services, returns management, inventory storage, and advanced light manufacturing under a single roof, thereby simplifying operations, reducing lead times, and enhancing customer satisfaction.

Justification and Need

Currently, operational fragmentation across multiple external and internal facilities generates inefficiencies, higher costs, slower fulfillment processes, and reduced agility in responding to changing consumer demands. By consolidating these operations into one centralized location, the Seward Warehouse addresses these inefficiencies and positions the business for sustained, scalable growth.

Moreover, the project aligns closely with our mission-driven approach, which prioritizes the empowerment of individuals and the nurturing of strong family units. We believe investing in this facility equates to investing in our most valuable asset—our employees. The new warehouse facility will provide stable, well-paying employment opportunities with compensation packages that exceed local market standards. Employees will benefit from comprehensive benefits, including a 3% SIMPLE IRA match, a minimum of 10 days of paid time off annually, 10 paid holidays, QSEHRA health reimbursement plans, and an annual paid volunteer day. Additionally, this initiative will stimulate local economic growth by creating desirable jobs, enhancing the community's tax base, and promoting economic stability and prosperity in Seward. These measures collectively foster a balanced, thriving, and

community-oriented workplace culture, underscoring our commitment to employee welfare and community development.

Market Analysis

The personalized product market, especially in baby and apparel segments, is experiencing significant growth driven primarily by millennials and Generation Z consumers who value individuality and uniqueness. The personalized baby product market alone is projected to reach \$31 billion by 2027. Parker Baby Co. and TallSlim stand to capitalize on these trends through the addition of specialized equipment enabling personalized embroidery and custom patch designs, providing competitive differentiation and increased market appeal.

Facility Plan

- **Location:** Seward, Nebraska (Strategically chosen for proximity to central transportation hubs, cost-effective logistics and skilled labor pool)
- **Facility Size:** ~25,000 square feet, state-of-the-art new construction
- **Projected Cost:** \$3-4 million
- **Operational Timeline:** Construction completed and fully operational within 12 months

Operational Plan

The facility will consolidate dispersed fulfillment operations from existing locations in Los Angeles, Salt Lake City, Dallas, and Parker, Colorado. Equipped with modern inventory management systems, logistics automation, and advanced embroidery manufacturing machinery, the new Seward location is expected to decrease average order fulfillment lead times by 30%-40%. The centralization will also achieve significant cost reductions, approximately \$30,000-\$40,000 monthly, enhancing profitability and customer service.

Organizational Structure

Existing Positions

- CEO (Strategic direction and oversight)
- Chief Culture Officer (Maintaining company culture, employee satisfaction, and community outreach)

New Positions Created

- Warehouse Development and Operations Manager (Facility oversight and logistics coordination)
- Amazon Account Manager (Maximizing sales and presence on Amazon)
- Amazon PPC Manager (Advertising and promotional strategies)
- Customer Experience Manager
- Bookkeeper (Financial recording and reporting)
- Photographer (Product imaging and marketing support)
- Warehouse Team Lead (Direct warehouse management)
- Warehouse Operators (3 positions, inventory and fulfillment tasks)

This clearly defined structure ensures optimal productivity, clear responsibilities, and streamlined operational efficiency.

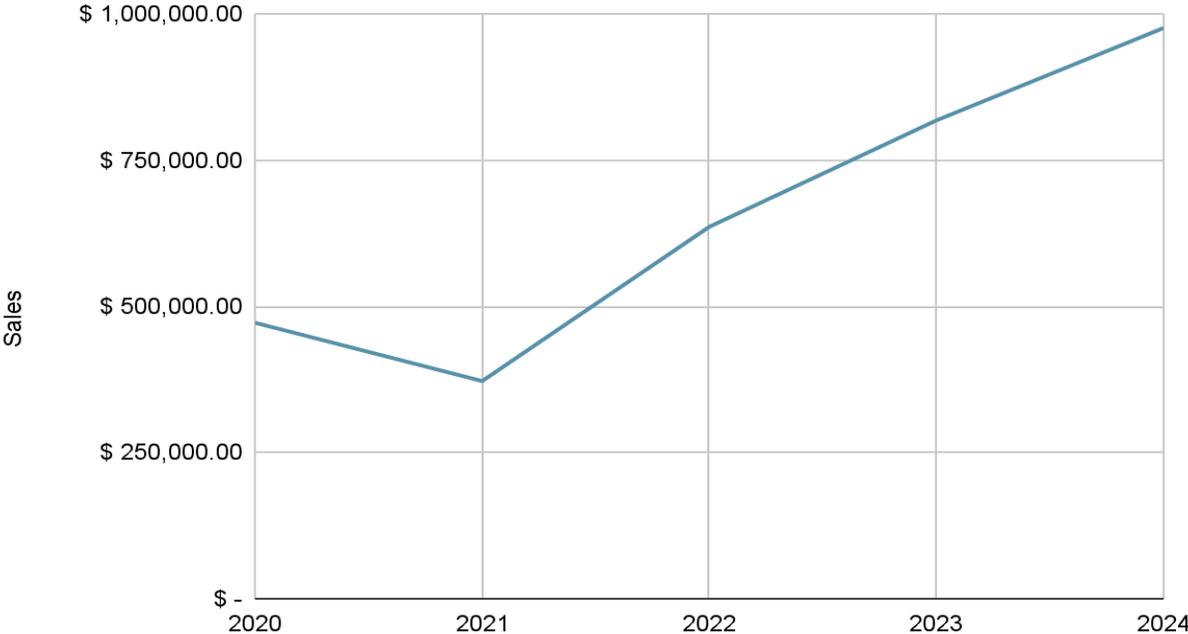
Financial Analysis

Between 2022 and 2024, the company exhibited consistent annual revenue growth of approximately 19%. The projected 2025 figures suggest even greater potential for expansion due to enhanced operational efficiencies and product diversification provided by the consolidated facility. Reduction in fulfillment expenses and storage costs will substantially enhance profitability margins, enabling further investment into strategic growth areas.

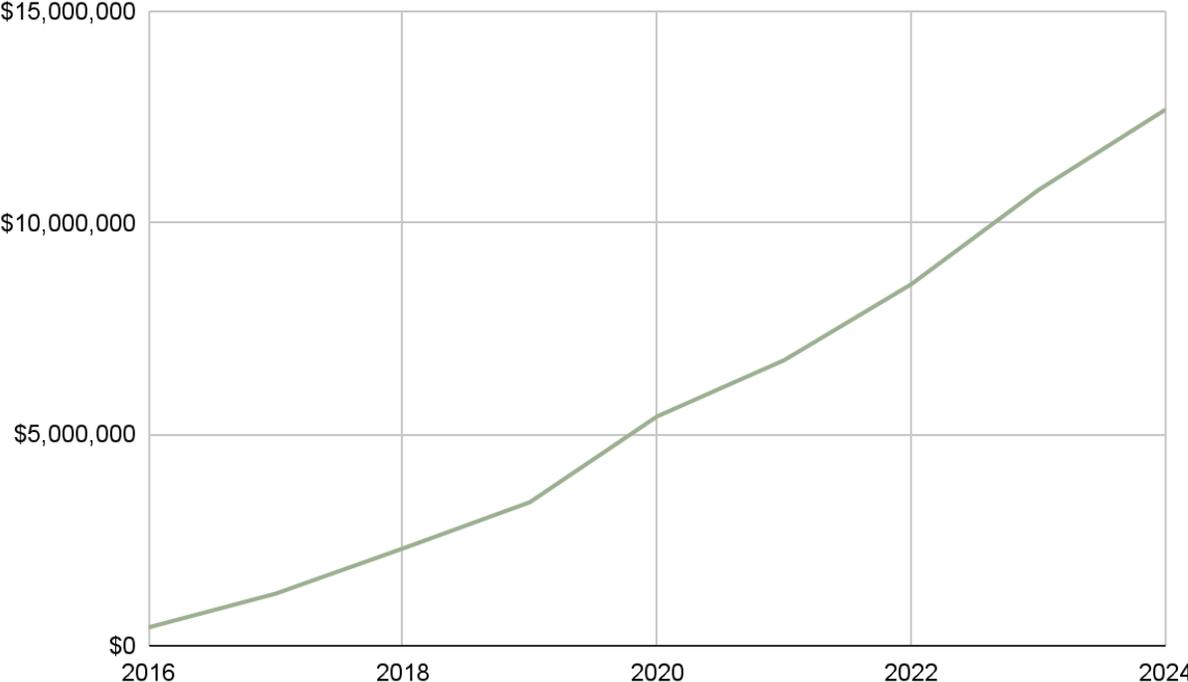


Graphs and Visual Data

Historical Revenue Growth (2020-2024): TallSlim



Historical Revenue Growth (2020-2024): Parker Baby Co.



Strategic Advantages and Risk Mitigation

Advantages

- Enhanced logistics management leading to considerable cost savings
- Strategic workforce investment promoting high employee retention and productivity
- Increased production capabilities and capacity to quickly respond to market trends

Risks

- Potential logistical complexities inherent in in-house fulfillment and manufacturing
- Cash flow constraints associated with upfront capital expenditures

Mitigation Strategies

- Recruitment of experienced operational management staff
- Investment in advanced inventory management and logistics systems to streamline operations
- Securing conservative, manageable financing structures to minimize financial risk

Conclusion

The Seward Warehouse Consolidation and Expansion Project represents a strategic leap forward in operational excellence, financial strength, and employee-focused growth. It underscores our commitment to innovation, efficiency, and community-oriented values. By consolidating operations, enhancing product offerings, and investing in our employees, Parker Baby Co. and TallSlim are poised to reinforce their market leadership, achieve sustainable growth, and positively impact both their employees and the wider community.

**REDEVELOPMENT AGREEMENT
(RETAIL WAREHOUSE CONSOLIDATION AND EXPANSION PROJECT)**

This Redevelopment Agreement is made and entered into effective as of the 17th day of June, 2025, by and between the Community Redevelopment Authority of the City of Seward, Nebraska (“CRA”) and _____, LLC, a Nebraska limited liability company (“Redeveloper”).

RECITALS

A. The CRA is a duly organized and existing community redevelopment authority, a body politic and corporate under the laws of the State of Nebraska, with lawful power and authority to enter into this Redevelopment Agreement.

B. The City of Seward, in furtherance of the purposes and pursuant to the provisions of the Act, has adopted a Redevelopment Plan for a blighted and substandard area designated by the City, including the Redevelopment Area.

C. Redeveloper owns or has site control and will own the Project Site located in the Redevelopment Area.

D. Redeveloper submitted a redevelopment project proposal to redevelop the Project Site.

E. The Redeveloper’s proposed redevelopment project will consist of the construction of a warehouse, office, and associated infrastructure improvements on the Project Site for use as an ecommerce manufacturing and fulfillment facility, as more particularly described on the attached and incorporated Exhibit “A”.

F. The CRA has approved Redeveloper’s proposed redevelopment project, including the utilization of tax-increment financing to provide for the construction of the eligible public improvements defined in this Redevelopment Agreement.

G. CRA and Redeveloper desire to enter into this Redevelopment Agreement to implement the redevelopment of the Project Site.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein set forth, CRA and Redeveloper do hereby covenant, agree and bind themselves as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

Section 1.01 Terms Defined in this Redevelopment Agreement.

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Redevelopment Agreement, such

definitions to be equally applicable to both the singular and plural forms and masculine, feminine and neuter gender of any of the terms defined:

A. “Act” means Article VIII, Section 12 of the Nebraska Constitution, NEB. REV. STAT. §§ 18-2101 through 18-2157, as amended, and acts amendatory thereof and supplemental thereto.

B. “Anticipated Tax Increment” means the Anticipated Tax Increment for this Project as set forth on the attached Exhibit “B”.

C. “City” means the City of Seward, Nebraska.

D. “CRA” means Community Redevelopment Authority of the City of Seward, Nebraska.

E. “Effective Date” means January 1, 2026 or January 1, 2027, pursuant to Section 3.01 of this Agreement.

F. “Eligible Project Costs” means only costs or expenses incurred by Redeveloper for Public Improvements and other items eligible for reimbursement under the Act.

G. “Minimum Project Valuation” means the amount of One Million Nine Hundred Forty Thousand Three Hundred Sixty-Two and No/100 Dollars (\$1,940,362.00).

H. “Private Improvements” means all the private improvements to be constructed on the Project Site as more particularly described on the attached and incorporated Exhibit “A”.

I. “Project” means the Project Site and includes improvements to the Project Site and adjacent thereto, including the Private Improvements and Public Improvements defined herein and described on Exhibit “A”.

J. “Project Completion Date” means September 30, 2026.

K. “Project Site” means all that certain real property situated in the City of Seward, Seward County, Nebraska, more particularly described on Exhibit “A”.

L. “Public Improvements” shall include all the public improvements more particularly described on Exhibit “A” which are eligible improvements under the Act. The costs of the Public Improvements include the debt service payments of the TIF Indebtedness.

M. “Redevelopment Agreement” means this Redevelopment Agreement between the CRA and Redeveloper with respect to the Project.

N. “Redeveloper” means _____, LLC, a Nebraska limited liability company.

O. “Redevelopment Area” means the Redevelopment Area that is set forth in the Redevelopment Plan.

P. “Redevelopment Plan” means the Redevelopment Plan for the Redevelopment Area by the CRA and approved by the City pursuant to the Act, as amended from time to time.

Q. “Tax Increment” means in accordance with NEB. REV. STAT. § 18-2147 of the Act, the difference between the ad valorem tax which is produced by the tax levy (fixed each year by the Seward County Board of Equalization) for the Project Site before the completion of the construction of the Private Improvements and the ad valorem tax which is produced by the tax levy for the Project Site after completion of construction of the Private Improvements as part of the Project.

R. “TIF Indebtedness” means the sums payable under any bonds, notes, loans and advances of money or other indebtedness, including interest thereon, issued by the CRA or the City secured in whole or in part by Tax Increment.

Section 1.02 Construction and Interpretation.

The provisions of this Redevelopment Agreement shall be construed and interpreted in accordance with the following provisions:

(a) This Redevelopment Agreement shall be interpreted in accordance with and governed by the laws of the State of Nebraska, including the Act.

(b) Wherever in this Redevelopment Agreement it is provided that any person may do or perform any act or thing the word “may” shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.

(c) The phrase “at any time” shall be construed as meaning “at any time or from time to time.”

(d) The word “including” shall be construed as meaning “including, but not limited to.”

(e) The words “will” and “shall” shall each be construed as mandatory.

(f) The words “herein,” “hereof,” “hereunder,” “hereinafter” and words of similar import shall refer to the Redevelopment Agreement as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.

(g) Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as the context may require.

(h) The captions to the sections of this Redevelopment Agreement are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

ARTICLE II REPRESENTATIONS

Section 2.01 Representations by the CRA.

The CRA makes the following representations and findings:

(a) The CRA is a duly organized and validly existing community redevelopment authority under the Act.

(b) The CRA deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Redeveloper for the redevelopment of the Project Site as specified herein.

(c) The Project will achieve the public purposes of the Act by, among other things, increasing employment, increasing the tax base, and lessening blighted and substandard conditions in the Redevelopment Area.

(d) The costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the CRA and have been found to be in the long-term best interest of the community impacted by the Project.

Section 2.02 Representations of Redeveloper.

Redeveloper makes the following representations and findings:

(a) Redeveloper is a Nebraska limited liability company in good standing and authorized to do business in Nebraska and has the power to enter into this Redevelopment Agreement and perform all obligations contained herein.

(b) The execution and delivery of the Redevelopment Agreement and the consummation of the transactions therein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which Redeveloper is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of Redeveloper contrary to the terms of any instrument or agreement.

(c) There is no litigation pending or to the best of its knowledge threatened against Redeveloper affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Project or the carrying into effect of this Redevelopment Agreement or, except as disclosed in writing to the CRA, as to any other matter materially affecting the ability of Redeveloper to perform its obligations hereunder.

(d) Redeveloper owns the Project Site in fee simple and free from any liens, encumbrances, or restrictions which would prevent the performance of this Redevelopment Agreement by Redeveloper.

(e) Pursuant to NEB. REV. STAT. § 18-2119, Redeveloper certifies to the CRA that Redeveloper does not intend to file an application with the Nebraska Department of Revenue to receive tax incentives under the ImagiNE Act.

(f) The Project would not be economically feasible without the use of tax increment financing.

(g) The Project would not occur in the Redevelopment Area without the use of tax increment financing.

ARTICLE III OBLIGATIONS OF THE CRA AND PUBLIC IMPROVEMENTS

Section 3.01 Capture of Tax Increment.

Subject to the contingencies described below and to all of the terms and conditions of this Redevelopment Agreement, commencing for the tax year of the Effective Date and continuing thereafter, the CRA shall capture the Tax Increment from the Private Improvements pursuant to the Nebraska Community Development Law. The CRA shall capture the Tax Increment generated by the Project Site for a total period of not to exceed fifteen (15) years after the Private Improvements have been included in the assessed valuation of the Project Site and the Project Site is generating the Tax Increment subject to capture by the CRA. The Effective Date shall be either January 1, 2026 or January 1, 2027, depending on the year of the first material increase in the assessed value of the Project Site following commencement of construction. Redeveloper shall notify the CDA prior to June 1, 2026 if it desires to have the Effective Date established as January 1, 2026. Otherwise, the Effective Date shall be January 1, 2027. The CRA shall file the "Notice to Divide Taxes" with the Seward County Assessor on or prior to July 1 in the year of the Effective Date.

Section 3.02 Issuance of TIF Indebtedness.

On or after thirty (30) days following the approval and execution of this Redevelopment Agreement, the CRA shall incur or issue TIF Indebtedness in an amount not to exceed Three Hundred Eighty Thousand Six Hundred Twenty Three

and No/100 Dollars (\$380,623.00), as calculated on the attached and incorporated Exhibit “B”. The TIF Indebtedness shall be issued by the CRA to Redeveloper. The TIF Indebtedness shall be issued in a TIF Promissory Note in the form attached hereto as Exhibit “E” (“Note”). The TIF Indebtedness shall not be a general obligation of the CRA or City which shall issue such Note solely as a conduit. If Redeveloper does not acquire and fund the TIF Indebtedness itself, Redeveloper shall locate a lender or other entity to acquire and fund the acquisition of the Note for the TIF Indebtedness. The TIF Indebtedness shall only be secured by a pledge or assignment of the Tax Increment, and any other security for the TIF Indebtedness as required by any lender shall be provided by Redeveloper. The issuance of the TIF Indebtedness may be accomplished by offset so that the Redeveloper retains the TIF Revenues and no bankable currency is exchanged at closing of the TIF Indebtedness and issuance of the Note, except as otherwise provided herein. If the TIF Indebtedness is not paid in full by the maturity date set forth on Exhibit “B”, all unpaid amounts shall be forgiven.

Section 3.03 Use of TIF Indebtedness.

The CRA will collect the Tax Increment and use said Tax Increment to pay debt service on the TIF Indebtedness incurred as provided in Section 3.02 of this Redevelopment Agreement. Notwithstanding the foregoing, the amount of the TIF Indebtedness that the CRA agrees to service and repay with the Tax Increment shall not exceed the amount of the Eligible Project Costs certified pursuant to Section 4.03. In addition, at or prior to the issuance of the Note, Redeveloper shall pay to the CRA an amount equal to the CRA’s reasonable and necessary cost of issuance, including attorney fees and a CRA administration fee in the amount of three percent (3%) of the TIF Indebtedness. The cost of issuance and CRA fees shall be paid prior to the issuance of the Note. The Tax Increment shall be paid pursuant to the terms of the Note and this Redevelopment Agreement.

Section 3.04 Creation of Fund.

CRA will create a special fund to collect and hold the receipts of the Tax Increment. Such special fund shall be used for no purpose other than to pay TIF Indebtedness issued pursuant to Section 3.02 above.

Section 3.05 Projected TIF Sources and Uses.

In addition to the TIF Indebtedness calculation formula set forth on Exhibit “B”, Redeveloper’s anticipated TIF sources and eligible uses are attached and incorporated for the parties’ reference as Exhibit “C”.

**ARTICLE IV
OBLIGATIONS OF REDEVELOPER**

Section 4.01 Evidence of Financial Ability.

Upon written request from the CRA to Redeveloper, Redeveloper shall provide to the CRA evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitment of Redeveloper in connection with construction of the Public Improvements and the Private Improvements. To the extent allowed by law, the CRA agrees to keep said information confidential. Such information shall state the amount and source of liquid assets on hand or immediately available to Redeveloper for use in constructing the Private Improvements; and shall state the amount and source of debt financing which is available, or irrevocably committed, to Redeveloper for use in completing the Private Improvements. Such information shall be provided in a form satisfactory to the CRA, and evidence of loan commitments shall include all of the documents evidencing the loan commitment, acceptance by Redeveloper, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan. Submittal of such financial information in a form satisfactory to the CRA shall be a condition precedent to the requirement of the CRA to proceed with its obligations under this Redevelopment Agreement.

Section 4.02 Construction of Project; Insurance.

(a) Redeveloper will complete the Public Improvements and the Private Improvements and install all equipment necessary to operate the Public Improvements and the Private Improvements no later than the Project Completion Date. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Public Improvements and the Private Improvements. Until construction of the Public Improvements and the Private Improvements has been completed, Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the CRA as to the actual progress of Redeveloper with respect to construction of the Public Improvements and the Private Improvements. Promptly after completion by Redeveloper of the Public Improvements and the Private Improvements, Redeveloper shall furnish to the CRA a Certificate of Completion in the form attached hereto as Exhibit "F" from Redeveloper's engineer or architect, or owner's representative. When accepted in writing by the CRA, the certification by Redeveloper shall be a conclusive determination of satisfaction of the agreements and covenants in this Redevelopment Agreement with respect to the obligations of Redeveloper to construct the Public Improvements and the Private Improvements.

(b) Any contractor chosen by Redeveloper or Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations (provided that Redeveloper may self-insure in lieu of obtaining and keeping in force such policy of insurance) and a penal bond as required by the Act. Any contractor chosen by Redeveloper or Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof (provided that Redeveloper may self-insure in lieu of obtaining and keeping in force such policy of insurance). This insurance shall insure

against the perils of fire and extended coverage and shall include “special causes of loss” insurance for physical loss or damage.

Section 4.03 Cost Certification.

Redeveloper shall submit to the CRA a certification of Eligible Project Costs in the form of the certification attached hereto as Exhibit “G” (“Eligible Project Costs Certification”), after expenditure of such project costs. Redeveloper may, at its option, submit one or more partial Eligible Project Costs Certifications prior to expenditure of all Eligible Project Costs providing certification of receipt of billings for work in progress. All Eligible Project Costs Certifications shall be subject to review and approval by the CRA. Determinations by the CRA whether costs included in the Eligible Project Costs Certification are properly included in Eligible Project Costs as defined in this Redevelopment Agreement shall be made in its sole discretion and shall be conclusive and binding on Redeveloper. All Eligible Project Costs shall be submitted to the CRA within thirty (30) days of the earlier of: (1) the date construction is actually completed for the Project or (2) the Project Completion Date.

The TIF Indebtedness shall not exceed the actual and certified Eligible Project Costs for the Project. In the event that the certified Eligible Project Costs for the Project are less than the TIF Indebtedness on the Project Completion Date, and said deficiency continues to exist thirty (30) days after Redeveloper’s receipt of written notice from the CRA detailing the same, the CRA shall reduce the TIF Indebtedness amount and Redeveloper shall repay to the CRA within ten (10) days of said cost certification any amount in excess of the Eligible Project Costs issued prior to the Eligible Project Costs Certification. If the CRA requests, Redeveloper shall, from time to time, furnish the CRA with satisfactory evidence as to the use and application of the Tax Increment.

Section 4.04 No Discrimination.

Redeveloper agrees and covenants for itself, its successors and assigns that as long as this Redevelopment Agreement is outstanding, it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Project.

Section 4.05 Pay Real Estate Taxes.

(a) Redeveloper anticipates creating a taxable real property valuation of the Project and Project Site of not less than the Minimum Project Valuation no later than the Project Completion Date. During the period of this Redevelopment

Agreement, Redeveloper, and any successors and assigns, will: (1) not protest a real estate property valuation of the Project Site to a sum less than the Minimum Project Valuation; and (2) not convey the Project Site or structures thereon to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes.

(b) Redeveloper acknowledges and understands that if the actual amount of Tax Increment is less than the anticipated amount of Tax Increment, the CRA shall not be liable for any shortfall or deficiency. If Redeveloper acquires the Note, Redeveloper agrees to forgive any shortfall in repayment of the TIF Indebtedness. If a lender or third party other than Redeveloper acquires the Note, Redeveloper shall make semi-annual payments in lieu of taxes (“Deficiency Payments”) to said lender or third party in the amount the Anticipated Tax Increment exceeds the actual Tax Increment. Said Deficiency Payments shall be made within thirty (30) days of written notice from the lender and/or CRA.

Section 4.06 No Assignment or Conveyance.

Redeveloper shall not convey, assign or transfer the Project Site or any interest therein prior to the termination of the fifteen (15) year period commencing on the Effective Date without the prior written consent of the CRA, which shall not be unreasonably withheld and which the CRA may make subject to any terms or conditions it reasonably deems appropriate, except for the following conveyance, which shall be permitted without consent of the CRA: (i) any conveyance as security for indebtedness incurred by Redeveloper for Project costs or any subsequent physical improvements to the Project Site (whether incurred prior to or after the effective date of this Redevelopment Agreement) with the outstanding principal amount of all such indebtedness secured by the Project Site which shall have lien priority over the obligations of Redeveloper pursuant to this Redevelopment Agreement; or (ii) any additional or subsequent conveyance as security for indebtedness incurred by Redeveloper for Project costs or any subsequent physical improvements to the premises provided that any such conveyance shall be subject to the obligations of Redeveloper pursuant to this Redevelopment Agreement.

**ARTICLE V
FINANCING REDEVELOPMENT PROJECT; ENCUMBRANCES**

Section 5.01 Financing.

Redeveloper shall pay all costs for the construction of the Private Improvements and the Public Improvements. Redeveloper shall be responsible for arranging all necessary financing for the construction of the Public Improvements and Private Improvements, including, with respect to the Public Improvements, the TIF Indebtedness.

Section 5.02 Encumbrances.

Redeveloper shall not create any lien, encumbrance or mortgage on the Project or the Project Site except, (a) encumbrances which secure indebtedness incurred to acquire, construct and equip the Project or for any other physical improvements to the Project Site, (b) easements and rights of entry granted by Redeveloper, (c) construction and materialman liens that may be filed in connection with the construction of the Private Improvements so long as any such lien is discharged or bonded within ninety (90) days of completion of the Private Improvements, and (d) any other liens so long as any such lien is satisfied and released or substitute security is posted in lieu thereof within ninety (90) days of Redeveloper receiving notice thereof.

Section 5.03 Mortgage Financing.

(a) Mortgage Holder Obligations. Each mortgage holder who obtains title to the Project Site or any part thereof as a result of foreclosure or other judicial proceedings or action in lieu thereof (referred to in this section as the “Mortgage Holder”) shall be obligated to require construction and completion of the Private Improvements and the Public Improvements by any person who subsequently obtains title to the Project Site or any part thereof from the Mortgage Holder; provided, however, the Mortgage Holder shall not be obligated by and shall be exempted from those provisions of this Redevelopment Agreement which require construction and completion of the Private Improvements and the Public Improvements. Additionally, no person, including the Mortgage Holder, may devote the Private Improvements and the Public Improvements thereon or any part thereof to any use or construct any improvements thereon other than those uses and improvements provided and permitted in accordance with this Redevelopment Agreement for the term of this Redevelopment Agreement.

(b) Copy of Notice of Default to Mortgagee. Whenever the CRA shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants in this Redevelopment Agreement, the CRA shall, at the same time, forward a copy of such notice or demand to each holder of any mortgage authorized by this Redevelopment Agreement at the last address of such holder as shown in the records of the CRA or as provided by such mortgagee.

(c) Mortgagee’s Option to Cure Defaults. If thirty (30) days after notice or demand with respect to any breach or default, such breach or default remains uncured, each holder shall (and every mortgage instrument made prior to acceptance by the CRA of the Certificate of Completion with respect to any of the Private Improvements or the Public Improvements by Redeveloper or its successors in interest shall so provide) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after notice or demand, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such period and the default cannot, in

the exercise of due diligence, be cured within such period, the holder shall have the right to diligently continue to cure the default.

(d) Mortgage Rights Applicable to Other Forms of Encumbrance. The rights and obligations of this Redevelopment Agreement relating to mortgages of the Project Site shall apply to any other type of encumbrance on the Project Site, and any of the stated rights, obligations and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance.

(e) Termination of Provisions. The provisions of this Section 5.03 shall terminate upon acceptance by the CRA of Redeveloper's Certificate of Completion.

ARTICLE VI DEFAULT, REMEDIES; INDEMNIFICATION

Section 6.01 Default.

In the event Redeveloper fails to perform or comply with any term, condition, or obligation of this Redevelopment Agreement and does not cure such defect within a period of ten (10) days after receiving written notice from the CRA specifying the nature of the breach of the Redevelopment Agreement, then Redeveloper shall be in default.

Section 6.02 Remedies.

In the event that Redeveloper is in default pursuant to Section 6.01, the CRA may pursue any remedy available at law or in equity, including without limitation, one or more of the following: (1) the CRA may terminate this Redevelopment Agreement and neither party shall have any further obligation hereunder, (2) the CRA may terminate the Note and declare said Note void and thereafter shall not be obligated to remit any Tax Increment as debt service thereon.

Section 6.03 Limitation of Liability; Indemnification.

(a) Notwithstanding anything in this Article VI or this Redevelopment Agreement to the contrary, neither the CRA, City, nor their officers, directors, employees, agents or their governing bodies shall have any pecuniary obligation or monetary liability under this Redevelopment Agreement. The obligation of the CRA on any TIF Indebtedness shall be limited solely to the Tax Increment pledged as security for such TIF Indebtedness. Specifically, but without limitation, neither City nor the CRA shall be liable for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder. Redeveloper releases the CRA and the City from and agrees that the CRA and the City shall not be liable for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Private Improvements.

(b) Redeveloper shall indemnify, defend (at the CRA's and/or the City's option) and hold harmless the CRA, the City, their respective employees, officials, agents, representatives and volunteers from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature, arising out of or in connection with any aspect of the acts, omissions, negligence or willful misconduct of Redeveloper, its employees, agents, officers, contractors or subcontractors, or Redeveloper's performance or failure to perform under the terms and conditions of this Redevelopment Agreement. Such indemnification, hold harmless and defense obligation shall exclude only such liability actions as arise directly out of the sole negligence or willful misconduct of the CRA or the City. The indemnification and defense obligations set forth herein shall survive the termination of this Redevelopment Agreement.

ARTICLE VII MISCELLANEOUS

Section 7.01 Memorandum.

A Memorandum of this Redevelopment Agreement shall be recorded with the Seward County Register of Deeds. The form of the Memorandum is attached as Exhibit "D" and incorporated by this reference.

Section 7.02 Governing Law.

This Redevelopment Agreement shall be governed by the laws of the State of Nebraska, including the Act.

Section 7.03 Binding Effect; Amendment.

This Redevelopment Agreement shall be binding on the parties hereto and their respective successors and assigns. This Redevelopment Agreement shall run with the Project Site. The Redevelopment Agreement shall not be amended except by a writing signed by the party to be bound.

Section 7.04 No Agency or Partnership.

This Redevelopment Agreement is not intended and shall not be construed to create the relationship of agent, employee, partnership, joint venture or association as between: (i) the CRA and/or the City; and (ii) Redeveloper, or any officer, employee, contractor or representative of Redeveloper. No joint employment is intended or created by this Redevelopment Agreement for any purpose. Redeveloper agrees to so inform its employees, agents, contractors and subcontractors who are involved in the implementation of or construction under this Redevelopment Agreement.

Section 7.05 Document Retention.

Redeveloper shall retain copies of all supporting documents that are associated with the Redevelopment Plan, Project, or this Redevelopment Agreement and that are received or generated by Redeveloper for three (3) years following the end of the last fiscal year in which ad valorem taxes are divided for the Project and provide such copies to the City as needed to comply with the City's retention requirements under the Act. Supporting documents shall include, but not be limited to, any cost-benefit analysis conducted pursuant to Section 18-2113 of the Act and any invoice, receipt, claim, or contract received or generated by Redeveloper that provides support for receipts or payments associated with the division of taxes.

Section 7.06 Notice to Redeveloper.

For the purpose of any notice requirement set forth in this Redevelopment Agreement, Redeveloper's address shall be:

_____, LLC
Attn: Sam Huebner
1312 17th St. PMB 70971
Denver, CO 80202

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the CRA and Redeveloper have signed this Redevelopment Agreement as of the date and year first above written.

CRA:
COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____
Greg Butcher, Secretary

By: _____
Timothy Moll, Chairman

REDEVELOPER:
_____, LLC, a Nebraska
limited liability company

By: _____
Kirsten Huebner, President

EXHIBIT “A”
DESCRIPTION OF PROJECT

The Project undertaken by Redeveloper on the Project Site, defined as the real estate legally described as:

Lot 14, Seward Rail Campus PUD Second Addition, City of Seward, Seward County, Nebraska.

The Project Site shall only include the portion of the above-described property that is within the corporate limits of the City of Seward.

The Project includes the following Public Improvements and Private Improvements, which shall be undertaken and completed by Redeveloper.

- (a) **Private Improvements.** The construction of an ecommerce manufacturing and fulfillment business facility on the Project Site, including an approximately 25,000 square foot insulated steel commercial warehouse, an approximately 3,200 square foot office, and related improvements.

- (b) **Public Improvements.** Site acquisition, grading, site preparation, along with other eligible public improvements on the Project Site and in the Redevelopment Area, which public improvements are eligible improvements under the Act pursuant to this Redevelopment Agreement; paid for, in part, by the Tax Increment created by the Private Improvements.

EXHIBIT "B"
TIF INDEBTEDNESS

1. Projected Base Value: \$182,000
2. Projected Minimum Final Value: \$1,940,362
3. Projected Incremental Valuation: \$1,758,362
4. Assumed Tax Levy: 1.443097
5. Anticipated Tax Increment: \$25,375 annually
6. Assumed Interest Rate: 0%
7. TIF Indebtedness:
 - a. **Principal Amount.** The principal amount of the TIF Indebtedness shall be equal to or less than \$380,623, which is the maximum amount, together with interest accruing thereon, which can be amortized by the Maturity Date, solely from the Tax Increment Revenues based upon the Anticipated Tax Increment.
 - b. **Payments.** Semi-annually commencing when real estate taxes are fully collected for the tax year of the Effective Date. The CRA shall utilize all Tax Increment received from the Project to pay debt service on the TIF Indebtedness until the TIF Indebtedness is fully repaid. Provided, however, the CRA does not warrant, represent, or guaranty that the Tax Increment will be sufficient to repay the entire amount of the TIF Indebtedness. The CRA has no obligation to make any payments other than the actual Tax Increment received from the Project.
 - c. **Maturity Date.** On or before December 31, 2041, if the Effective Date is established as January 1, 2026 pursuant to Section 3.01 of this Agreement, or December 31, 2042 if the Effective Date is established as January 1, 2027.
 - d. **TIF Period.** The period for the division of taxes for this Project shall be fifteen (15) years, commencing on the Effective Date. For example, if the Effective Date is January 1, 2026 (2026 taxes paid in 2027), the TIF Period will terminate on December 31, 2040 (2040 taxes due on December 31, 2040 but paid in 2041). Payment of ad valorem taxes in arrears pursuant to customary payments in Nebraska shall not affect the fifteen (15) year TIF period.

Note: All calculations are based on assumptions and estimates of future values that may be different than the values used herein or may vary from year to year.

**EXHIBIT “C”
PROJECTED TIF SOURCES AND USES**

1. TIF SOURCES:

Assumptions:

Tax Levy (2024)	1.443097
Interest Rate	0.0%
Number of Years	15

Property Valuation:

	Assessed Val.	Est. Taxes
Pre-Project	\$182,000	\$2,626
Completed Project	\$1,940,362	\$28,001
Difference	\$1,758,362	\$25,375

TIF Calculations:

Annual TIF Amount	\$25,375
Total TIF	\$380,623
TIF Indebtedness (Present Value)	\$380,623
less 3% Admin Fee	(\$11,419)
Approx. Cost of Issuance (actual cost TBD)	(\$7,500)
TIF Available to Redeveloper	\$361,704

2. TIF USES:

Site Acquisition	\$533,988
Site Preparation	\$100,000
Grading	\$75,000
Arch., Eng., and Legal Fees	\$190,000
Total estimated TIF eligible costs:	\$898,988

**EXHIBIT “D”
REDEVELOPMENT AGREEMENT
MEMORANDUM**

[On the following page]

After recording please return to:

Derek Bargmann
City of Seward
City Hall, 537 Main Street
Seward, NE 68434

**MEMORANDUM OF REDEVELOPMENT AGREEMENT
(Retail Warehouse Consolidation and Expansion Project)**

This Memorandum of Redevelopment Agreement (“Memorandum”) is made this ___ day of June, 2025 by and between the Community Redevelopment Authority of the City of Seward, Nebraska (“CRA”) and _____, LLC, a Nebraska limited liability company (“Redeveloper”).

1. **Redevelopment Agreement.** CRA and Redeveloper have entered into that certain Redevelopment Agreement dated as of this even date, describing the public improvements and the private improvements being made to real property owned by Redeveloper and legally described as:

Lot 14, Seward Rail Campus PUD Second Addition, City of Seward, Seward County, Nebraska (the “Project Site”).

2. **Tax Increment Financing.** The Redevelopment Agreement provides for the capture of the Tax Increment, as defined therein, by the CRA of the private improvements to be made by Redeveloper on the Project Site for a period not to exceed fifteen (15) years after the Effective Date set forth in the Redevelopment Agreement. The Tax Increment so captured by the CRA shall be used to make the public improvements as described in the Redevelopment Agreement.

3. **Remaining Terms.** The rest and remaining terms of the Redevelopment Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Redevelopment Agreement may be inspected at the CRA offices in Seward, Nebraska.

[SIGNATURE PAGE TO FOLLOW]

CRA:

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____ By: _____
_____, Secretary _____, Chairman

STATE OF NEBRASKA)
) ss.
COUNTY OF SEWARD)

The foregoing instrument was acknowledged before me this ___ day of _____, 2025, by _____ and _____, Chairman and Secretary respectively of the Community Redevelopment Authority of the City of Seward, Nebraska, a public body corporate and politic, on behalf of the Authority.

Notary Public

REDEVELOPER:

_____, LLC, a Nebraska
limited liability company

By: _____
Kirsten Huebner, President

STATE OF NEBRASKA)
) ss.
COUNTY OF SEWARD)

The foregoing instrument was acknowledged before me this ___ day of _____, 2025, by Kirsten Huebner, President of _____, LLC, on behalf of the company.

Notary Public

**EXHIBIT “E”
FORM OF TIF PROMISSORY NOTE**

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (“THE 1933 ACT”) AND MAY NOT BE TRANSFERRED, ASSIGNED, SOLD OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE 1933 ACT SHALL BE IN EFFECT WITH RESPECT THERETO AND THERE SHALL HAVE BEEN COMPLIANCE WITH THE 1933 ACT AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER, OR THERE SHALL HAVE BEEN DELIVERED TO THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA PRIOR TO TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION AN OPINION OF COUNSEL, SATISFACTORY TO THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA TO THE EFFECT THAT REGISTRATION UNDER THE 1933 ACT IS NOT REQUIRED.

UNITED STATES OF AMERICA
STATE OF NEBRASKA
COMMUNITY REDEVELOPMENT AUTHORITY
OF THE CITY OF SEWARD, NEBRASKA

REDEVELOPMENT REVENUE NOTE
(RETAIL WAREHOUSE CONSOLIDATION AND EXPANSION PROJECT)

Maturity Date	Interest Rate	Original Issuance Date
December 31, 204__	0%	
Registered Holder		Principal Amount
_____, LLC		\$380,623.00

THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA (the “Issuer”), a body politic and corporate organized and existing under the laws of the State of Nebraska, for value received hereby promises to pay, solely from the source and as hereinafter provided, to the Registered Holder identified above, or registered assigns, the Principal Amount identified above at the office of the City Treasurer, as Paying Agent and Registrar, and in like manner to pay solely from said source interest on said principal sum at the Interest Rate identified above from the Accrual Commencement Date (as defined herein) or from the most recent date to which interest has not been paid. Principal and accrued interest shall be payable in thirty (30) semi-annual installments due June 15, 202__, December 15, 202__, and each June 15 and December 15 thereafter through December 15, 204__, when all principal and accrued interest shall be due and payable. Except with respect to interest not punctually paid, the principal and interest on this Note will be paid by check or draft mailed to the Registered Holder in whose name this Note is registered at the close of business on the fifteenth calendar day next preceding the applicable maturity date at his address as it appears on such note registration books. The principal and interest of this Note is payable in any coin or currency of the United States of America which on the

respective dates of payment is legal tender for the payment of public and private debts. No interest shall accrue until the later of: (1) the date the taxes are due for the year of the Effective Date identified in the Redevelopment Agreement (which is December 31st of the year of the Effective Date); or (2) the date that the Redeveloper has submitted and the CDA has accepted the Cost Certification for the eligible costs for the Project (the "Accrual Commencement Date").

This Note is designated the Community Redevelopment Authority of the City of Seward, Nebraska Redevelopment Revenue Note (Retail Warehouse Consolidation and Expansion Project), aggregating Three Hundred Eighty Thousand Six Hundred Twenty Three and No/100 Dollars (\$380,623.00) ("Note") in principal amount which has been issued pursuant to the Section 12 of Article VIII of the Nebraska Constitution and NEB. REV. STAT. §§ 18-2101 through 18-2157, as amended and supplemented (the "Act") and under and pursuant to the terms of that certain Redevelopment Agreement between the Issuer and _____, LLC, a Nebraska limited liability company, for the Retail Warehouse Consolidation and Expansion Project (the "Redevelopment Agreement"), to aid in the financing of a redevelopment project pursuant to the Act. This Note does not represent a debt or pledge of the faith or credit of the Issuer or grant to the Registered Holder of this Note any right to have the Issuer levy any taxes or appropriate any funds for the payment of the principal hereof or the interest hereon nor is this Note a general obligation of the Issuer, or the individual officials, officers or agents thereof. This Note is payable solely and only out of the Tax Increment generated by the Project defined in the Redevelopment Agreement (the "Project"). All such revenue has been duly pledged for the purpose of paying this Note.

THIS NOTE AND THE INTEREST HEREON DOES NOT NOW AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA, OR THE CITY OF SEWARD, NEBRASKA, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION, NOR SHALL THIS NOTE AND THE INTEREST HEREON EVER GIVE RISE TO ANY PECUNIARY LIABILITY OF THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA, OR THE CITY OF SEWARD, NEBRASKA, A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

No recourse shall be had for the payment of the principal of or interest on this Note, or for any claim based hereon or upon any obligation, covenant or agreement contained in the Redevelopment Agreement against any past, present or future employee, member or elected official of the Issuer, or any incorporator, officer, director, member or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, officer, director or member as such is hereby expressly waived and released as a condition of and in consideration of the issuance of this Note.

It is hereby certified and recited and the Issuer has found: that the Project is an eligible “redevelopment project” as defined in the Act; that the issuance of this Note and the construction of the Project will promote the public welfare and carry out the purposes of the Act by, among other things, contributing to the development of a blighted and substandard area of the City of Seward, Nebraska, pursuant to a Redevelopment Plan adopted by the City; that all acts, conditions and things required to be done precedent to and in the issuance of this Note have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; and, that this Note does not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitations.

This Note is transferable only upon the books of the Issuer kept for that purpose at the office of the Registrar by the Registered Holder hereof in person, or by his duly authorized attorney, upon written documentation of transfer satisfactory to the Issuer and the Registrar duly executed by the Registered Holder and the assignee/transferee, together with a purchase letter in a form provided by Issuer and any other documentation required by the Issuer. Prior to the approval of any transfer of this Note, the Registered Holder shall pay all of the Issuer’s costs, including attorney’s fees, relating to the transfer of the Note. The Issuer and the Paying Agent may deem and treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and premium, if any, and interest due hereon and for all other purposes.

The Note is prepayable at any time in whole or in part, to the extent there are any funds in the debt service fund in excess of amounts necessary to pay scheduled debt service. Prepayments shall reduce the number, but not the amount, of scheduled debt service payments on the Note, in inverse order of maturity.

It is hereby certified and recited that all conditions, acts and things required by law and the Redevelopment Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed and that the issue of this Note, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by the laws of the State of Nebraska.

This Note shall not be entitled to any benefit or be valid or become obligatory for any purpose until this Note shall have been authenticated by the execution by the Registrar of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SEWARD, NEBRASKA has caused this Note to be signed in its name and on its behalf by the signature of its Chairman and attested by the signature of its Secretary, as of the Original Issuance Date identified above.

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____ By: _____
_____, Secretary _____, Chairman

CERTIFICATE OF AUTHENTICATION

City Treasurer, City of Seward as
Paying Agent and Registrar

By: _____
Authorized Signatory

EXHIBIT "F"
FORM OF CERTIFICATE OF COMPLETION
(Retail Warehouse Consolidation and Expansion Project)

The undersigned certifies, represents and warrants to the City of Seward, Nebraska, and the Community Redevelopment Authority of the City of Seward, Nebraska ("CRA") with regard to the following real property situated in the City of Seward, Seward County, Nebraska, to wit:

Lot 14, Seward Rail Campus PUD Second Addition, City of Seward, Seward County, Nebraska.

that the Private Improvements and Public Improvements required to be constructed by Redeveloper upon the above-described property have been satisfactorily completed in accordance with the requirements of the Redevelopment Agreement dated June 17, 2025, as referenced in the Memorandum of Redevelopment Agreement recorded as Instrument No. _____ in the office of the Register of Deeds for Seward County, Nebraska.

REDEVELOPER:

_____, LLC, a Nebraska
limited liability company

By: _____
Kirsten Huebner, President

CRA:

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
SEWARD, NEBRASKA

ATTEST:

By: _____
_____, Secretary

By: _____
_____, Chairman

EXHIBIT "G"
FORM OF A CERTIFICATION OF ELIGIBLE PROJECT COSTS

Date: _____

_____, LLC, a Nebraska limited liability company ("Redeveloper"), hereby certifies that it has incurred and paid the Eligible Costs indicated herein, pursuant to the terms of the Redevelopment Agreement between Redeveloper and the Community Redevelopment Authority of the City of Seward. The portion of the Project as indicated herein is substantially completed. Attached hereto are documents substantiating the actual Eligible Costs and payment by Redeveloper.

REDEVELOPMENT ELIGIBLE COSTS

Certified and Requested

	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
Total certified TIF eligible costs:	\$ _____ *

***Principal Amount of TIF Indebtedness shall not exceed \$380,623**

_____, LLC, a Nebraska
limited liability company

By: _____
Kirsten Huebner, President

COPIES OF PROOF OF PAYMENT ARE ATTACHED HERETO.

Approved the by Chairman of the CRA:

_____, Chairman

4907-9818-7336, v. 1
4907-9818-7336, v. 1
4907-9818-7336, v. 1

**AMENDMENT TO THE REDEVELOPMENT PLAN
OF THE CITY OF SEWARD, NEBRASKA**

(RETAIL WAREHOUSE CONSOLIDATION AND EXPANSION PROJECT)

The City of Seward, Nebraska (“City”) has undertaken a plan of redevelopment within the community pursuant to the adoption of the Redevelopment Plan for a certain redevelopment area in the City of Seward, as amended (the “Redevelopment Plan”). The Redevelopment Plan was approved by the City Council of the City as of November 15, 2011. The Redevelopment Plan serves as a guide for the implementation of redevelopment activities within certain areas of the City, as set forth in the Redevelopment Plan.

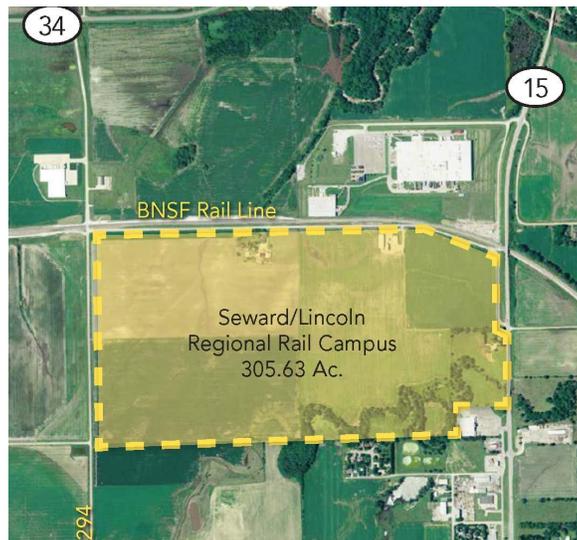
Pursuant to the Nebraska Community Development Law codified at Neb. Rev. Stat. §§ 18-2101 through 18-2157 (the “Act”), the City created the Community Redevelopment Authority of the City of Seward (“CRA”), which administers the Redevelopment Plan for the City.

The purpose of this Plan Amendment is to identify specific property within the redevelopment area that is in need of redevelopment to cause the removal of blight and substandard conditions identified as the site located in the in the City of Seward, Nebraska, and legally described on the attached and incorporated Exhibit “A” (the “Project Site”).

Project Site

The Project Site is located in the Redevelopment Area and, more particularly, in the Seward/Lincoln Regional Rail Campus, a 306-acre rail-served industrial park (the “Rail Campus Area”). The Project Site and the Rail Campus Area generally consists of vacant and underdeveloped land.

The Rail Campus Area is generally depicted below:



The Project Site is located in the Rail Campus Area, and is generally depicted below:



The current land use map set forth in the 2018 City of Seward Comprehensive Plan (“Comprehensive Plan”) identifies the current land use as open space. The future land use map set forth in the Comprehensive Plan designates the future land use of the Project Site as industrial. The current and future land use maps set forth in the Comprehensive Plan are incorporated into the Redevelopment Plan by this reference. Portions of the current land use map and future land use map are set forth below.

Current Land Use Map:



Future Land Use Map:



Additionally, the Project Site and Rail Campus Area have been the focus of the City for strategic growth as a rail campus for a variety of industrial and commercial uses, and the Comprehensive Plan identifies the Highway 15 Corridor as a primary

location for industrial and commercial development. The need for redevelopment of the Rail Campus Area in general has already been documented in the Redevelopment Plan.

The Project Site is in need of redevelopment. The CRA has considered whether redevelopment of the Project Site will conform to the general plan and the coordinated, adjusted, and harmonious development of the City and its environs. In this consideration, the CRA finds that such a redevelopment of the Project Site will promote the health, safety, morals, order, convenience, prosperity, and the general welfare of the community including, among other things, the promotion of safety from fire, the promotion of the healthful and convenient distribution of population, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary and unsafe dwelling accommodations or conditions of blight. Because redevelopment of the Project Site will require significant upfront costs, including, but not limited to, site preparation, grading, and public infrastructure improvements, the City is unlikely to attract businesses and/or development to the Rail Campus Area without the use of tax increment financing.

The redevelopment of the Project Site pursuant to this Plan Amendment will eliminate the current blight and substandard conditions of the Project Site and will further the purposes of the Act in conformity with the Redevelopment Plan. The CRA has approved multiple redevelopment projects to facilitate the overall redevelopment of the Rail Campus Area, and the development of the Project Site will further continue the implementation of the redevelopment of the Rail Campus Area, as set forth in the Redevelopment Plan

Only a portion of the Project Site is currently located within the corporate limits of the City, but the remainder of the Project Site has been identified for annexation. The Project Site and current City limit are depicted below.



The CRA's area of operation is defined to include "the area within the corporate limits of the city and such land outside the city as may come within the purview of sections 18-2123 and 18-2123.01." Neb. Rev. Stat. § 18-2103(1). Section 18-2123 states:

Upon a determination, by resolution, of the governing body of the city in which such land is located, that the acquisition and development of undeveloped vacant land, not within a substandard and blighted area, is essential to the proper clearance or redevelopment of substandard and blighted areas or a necessary part of the general community redevelopment program of the city, or that the acquisition and development of land outside the city, but within a radius of three miles thereof, is necessary or convenient to the proper clearance or redevelopment of one or more substandard and blighted areas within the city or is a necessary adjunct to the general community redevelopment program of the city, the acquisition, planning, and preparation for development or disposal of such land shall constitute a redevelopment project which may be undertaken by the authority in the manner provided in the Community Development Law.

The CRA is not seeking to have the City add the additional property to the Redevelopment Plan, because the Project Site is currently in the process of annexation. Section 18-2123 is being referenced to show the same conditions that would support such a request, if annexation was not being sought for the Project Site. The Project Site is within the City's ETJ, and the redevelopment of the area outside of corporate limits is necessary to redevelop the portion of the Project Site within City limits. The Project Site must be redeveloped as a whole parcel, even though the Project Site spans the corporate boundary of the City. It would not be feasible to only develop a portion of the Project Site for any purpose, and prohibiting the use of the entire property would significantly hinder the CRA's and the City's overall plan for development of the Rail Campus Area.

Annexation of the Project Site and the Rail Campus Area is in conformation with the Comprehensive Plan and general plan for development of the City. The ability to redevelop the entire Rail Campus Area was intended and anticipated, and is crucial to the success of the overall Rail Campus Redevelopment Plan. The Redevelopment Plan for the Rail Campus also specifically identified the intent to annex and redevelop the entire Rail Campus Area over time in connection with redevelopment of the Rail Campus Area:

While a portion of the Rail Campus Project Area is outside the corporate limits of the City of Seward, the City and the CRA contemplate that all of the land comprising the Rail Campus Project Area will be zoned for industrial use following annexation by the City of Seward of the portion outside City limits. The Rail Campus Project Area has been declared blighted and substandard and is eligible for the use of tax increment financing; provided, however, no redevelopment project shall be approved in the Rail Campus Project Area before the applicable property is annexed by the City.

Since the Project Site is currently partially annexed into the City, with the remainder of the lot currently being reviewed and considered for annexation through the normal procedures required by state law, it is not anticipated that Project will occur

outside of the CRA's area of operation. However, for clarity and to ensure that a redevelopment project using TIF only occurs in the CRA's area of operation, this Redevelopment Plan Amendment for the Project includes the following express condition: the redevelopment project shall be deemed to be limited and the real estate taxes for the Project Site shall only be divided for the portion of the Project Site that is within the corporate limits of the City. The portion of the parcel outside the corporate boundaries of the City can be developed as described herein to support the Project within the corporate limits of the City and for the furtherance of the plan for the redevelopment of the Rail Campus Area, but TIF can and shall only be utilized within the corporate limits of the City. The CRA and Redeveloper acknowledge and understand that if the enter Project Site is not annexed into the City, it could reduce the amount of TIF that the Redeveloper will receive because taxes may only be divided on a portion of the Project Site.

The Project

[REDACTED], LLC] (the "Redeveloper") has submitted a proposal for the Project and the redevelopment of the Project Site. The project under consideration will consist of the construction of an ecommerce manufacturing and fulfillment business facility on the Project Site, including an approximately 25,000 square foot insulated steel commercial warehouse, an approximately 3,200 square foot office, and related improvements (the "Project"). The facility will be utilized by two companies that are affiliates of the Redeveloper, Parker Baby Co. and TallSlim. Both companies are ecommerce brands that rely on significant warehousing and efficient shipping and delivery logistics, which makes the Rail Campus location a good location for the business.

As part of the Project, the CRA shall capture available tax increment from the Project Site to assist in payment for the public improvements listed as eligible expenditures under the Act in the Redevelopment Area. Such public improvements may include, but are not limited to: site acquisition, site preparation, grading, architectural, engineering and legal fees, and other eligible uses. The use of TIF to assist with the costs of the eligible public improvements will make the Project as designed feasible. Redeveloper shall be responsible for all other costs and expenses associated with the Project.

Redeveloper's goal is to commence construction in August, 2025 and complete construction in the summer of 2026. The base year for the Project is anticipated to be 2026 and the effective date for the division of taxes is anticipated to be January 1, 2027. However, the base year for the Project shall be 2025 and the effective date for the division of taxes shall be January 1, 2026 if the project receives a significant partial valuation during construction for the 2026 tax year.

The base value of the Project Site is anticipated to be \$182,000 which is the current assessed valuation of the Project Site. Pursuant to the Seward County Assessor's preliminary appraisal of the proposed project, the projected completed valuation of the Project is \$1,940,362. The preliminary appraisal is not binding and is based upon the information and assumptions provided from Redeveloper to the Assessor. The CRA does not make any representations to the final value of any project.

Redeveloper estimates that the total Project costs shall be approximately \$4,600,000. Redeveloper has identified multiple eligible TIF uses including the \$898,988 in TIF-eligible expenditures set forth below:

Site Acquisition	\$533,988
Site Preparation	\$100,000
Grading	\$75,000
Arch., Eng., and Legal Fees	\$190,000
<hr/> Total estimated TIF eligible costs:	<hr/> \$898,988

Based upon the anticipated completed valuation of \$1,940,362, and a 0.0% interest rate for the TIF Note, the Project will support approximately \$380,500 in TIF Indebtedness.¹ The identified TIF-eligible uses, together with the 3.0% CRA administration fee and cost of issuance which are additional TIF-eligible uses that Redeveloper shall be required to pay, exceed the anticipated TIF amount set forth above. The final, actual cost of all TIF-eligible expenses shall be certified by Redeveloper upon completion of construction. In addition to the TIF Indebtedness, Redeveloper has stated that the Project would be financed in part using investor equity and the remainder financed through a bank loan.

Statutory Elements

As described above, the Project envisions the capture of the incremental taxes created by the Project on the Project Site to pay for those eligible expenditures as set forth in the Act. This section includes a consideration of the statutory elements under the Nebraska Community Development Law.

A. Property Acquisition, Demolition and Disposal

No public acquisition of private property, relocation of families or businesses, or the sale of property by the CRA is necessary to accomplish the Project. Redeveloper recently purchased the Project Site from the City in preparation to undertake the Project. The City has followed all State and local laws regarding the sale of the Project Site, which was completed separate from and prior to this Redevelopment Plan Amendment.

B. Population Density

The proposed Project on the Project Site is an industrial project, involving the construction of an ecommerce retail warehouse business facility. The Project will not significantly affect population density in the project area.

C. Land Coverage

¹ For purposes of the TIF projections for this Project, the CRA (1) has assumed the Project will capture the full 15 years of tax increment and there will not be a partial valuation in the first year; and (2) has not accounted for any increases in the assessed value of the Project Site during the 15 year tax increment financing period. All of these assumptions will change the actual amount of the tax increment generated by the Project.

The facility will be approximately 28,200 square feet on the approximately 4.46 acre lot. The Project will meet the applicable land-coverage ratios and zoning requirements as required by the City of Seward.

D. Traffic Flow, Street Layouts, and Street Grades

The Project will increase traffic flow in and to the Project Site and the Rail Campus Area, including daily parcel delivery and pick-up for the shipping operations. The rail campus infrastructure is anticipated to be sufficient for the intended uses of the Project Site upon completion of the Project, and such increases in traffic are the intended result of the redevelopment of the Rail Campus Area. TIF from further development of the Rail Campus Area is anticipated to pay for additional infrastructure that would benefit the Project Site, but no such anticipated future improvements are necessary for the use and operation of the Project.

E. Parking

The Project includes a large concrete area. The exact number of parking stalls for the Project Site is still being determined, but the Redeveloper shall be responsible for meeting all requirements of the City of Seward Zoning regulations. Approval of this Plan Amendment does not circumvent or supersede any building code or zoning requirements for the building and the Project Site.

F. Zoning, Building Code, and Ordinances

The Project Site is located in the I-1 – Limited Industrial District. The Project is a permitted use in the I-1 District. Redeveloper shall be responsible for obtaining all necessary zoning approvals. Approval of this Plan Amendment does not authorize any use that does not comply with the City of Seward zoning ordinance. Redeveloper will be responsible for complying with the City of Seward zoning ordinance, and will obtain any zoning, building code, or ordinance changes that are necessary for the Project. As described above, the Project Site is currently in the process of annexation into the City and this project is subject to the annexation conditions set forth above.

Cost-Benefit Analysis

Pursuant to Section 18-2113 of the Act, the CRA must conduct a cost-benefit analysis for any redevelopment project that will utilize TIF. The Cost-Benefit Analysis for the Project is attached hereto as Exhibit “C” and incorporated by this reference.

Additional Project Information from Redeveloper

Redeveloper has represented that without the use of TIF, this Project would not be feasible and Redeveloper could not develop this Project on the Project Site. Redeveloper has further represented that it intends to file an application with the Department of Revenue to receive tax incentives under the ImagiNE Nebraska Act. Redeveloper has not yet filed such application but has indicated its intent to do so.

EXHIBIT "A"
Legal Description of the Project Site

The property is located at 1027 Worthman Boulevard in Seward (PID# 800231435). The property is legally described as follows:

Lot 14, Seward Rail Campus PUD Second Addition, City of Seward, Seward County, Nebraska.

The general location of the Project Site is depicted below:

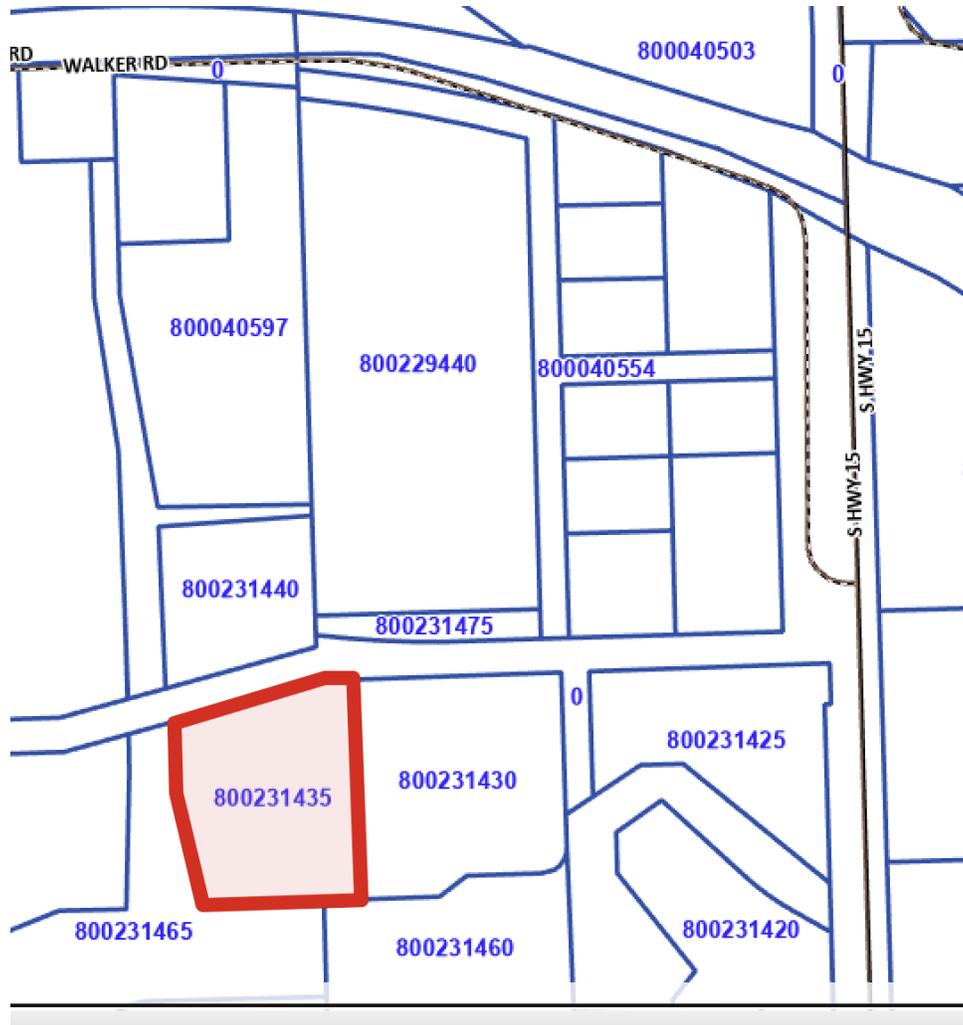


EXHIBIT "B"
PROJECTED TIF SOURCES AND USES

1. TIF SOURCES:

Assumptions:

Tax Levy (2024)	1.443097
Interest Rate	0.0%
Number of Years	15

Property Valuation:

	Assessed Val.	Est. Taxes
Pre-Project	\$182,000	\$2,626
Completed Project	\$1,940,362	\$28,001
Difference	\$1,758,362	\$25,375

TIF Calculations:

Annual TIF Amount	\$25,375
Total TIF	\$380,623
TIF Indebtedness (Present Value)	\$380,623
less 3% Admin Fee	(\$11,419)
Approx. Cost of Issuance (actual cost TBD)	(\$7,500)
TIF Available to Redeveloper	\$361,704

2. TIF USES:

Site Acquisition	\$533,988
Site Preparation	\$100,000
Grading	\$75,000
Arch., Eng., and Legal Fees	\$190,000
Total estimated TIF eligible costs:	\$898,988

EXHIBIT “C”
Cost Benefit Analysis
(Pursuant to Neb. Rev. Stat. § 18-2113)

The cost-benefit analysis for the MeyCo Holdings Redevelopment Project, as described in the Amendment to the Redevelopment Plan to which this cost-benefit analysis is attached, is presented below. The above-referenced project will utilize Tax Increment Financing funds authorized by Neb. Rev. Stat. § 18-2147.

1. Tax shifts resulting from the approval of the use of funds pursuant to Section 18-2147:

The taxes generated by the current value of the property shall continue to be allocated between taxing jurisdictions pursuant to standard statutory requirements. Only the incremental taxes created by the Project will be captured to pay eligible public expenditures. Since the incremental taxes would not exist without the use of TIF to support the Project, the true tax shift of this Project is a positive shift in taxes after 15 years. However, for the purposes of illustrating the incremental taxes used for TIF, the 15 year tax shift is as follows:

a.	Redevelopment Project Valuation:	\$182,000
b.	Projected Completed Project Assessed Valuation:	\$1,940,362
c.	Projected Tax Increment Base:	\$1,758,362
d.	Estimated Tax Levy:	1.443097
e.	Annual Projected Tax Shift:	\$25,375

Note: The Projected Tax Increment is based on assumed values and levy rates; actual amounts and rates will vary from those assumptions, and it is understood that the actual tax shift may vary materially from the projected amount. The levy rate is assumed to be the 2024 levy rate. There has been no accounting for incremental growth or change in the tax levy over the 15 year TIF period. There has been no accounting for any annual state property tax credit.

2. Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the redevelopment project:

a. Public infrastructure improvements and impacts:

No substantial adverse effects are anticipated on the public infrastructure and community public service needs. All public infrastructure and community public services required to serve the Project exist, are planned for construction by the City, or will be constructed as part of the overall Rail Campus Redevelopment. An ecommerce warehouse and fulfillment facility will be constructed on the currently vacant lot, but the intended uses should not increase any community public services in the City in a materially significant manner. The Rail Campus Area has been designated by the City as a target area for industrial/commercial growth, and the construction of the Project in the Rail Campus Area will serve the City’s goals and not have a negative impact.

b. Local Tax impacts (in addition to impacts of Tax Shifts described above):

The Project will create material tax and other public revenue for the City and other local taxing jurisdictions. While the use of tax increment financing will defer

receipt of a majority of new ad valorem real property taxes generated by the Project, the Project should generate immediate tax growth for the City. The businesses operated on the Project Site should generate immediate sales tax and personal property tax revenue that would otherwise not be produced. The Project will also require and pay for City services. It is not anticipated that the Project will have any material adverse impact on such City services, but will generate revenue providing support for those services.

3. Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project:

It is not anticipated that the Project will have a material adverse impact on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project. There should be a positive impact throughout the Redevelopment Area because the Project will ameliorate conditions of blight that might otherwise deter businesses from locating or expanding in the area.

4. Impacts on other employers and employees within the City and the immediate area that is located outside of the boundaries of the area of the redevelopment project:

Similar to the answer provided in Section 3, above, the Project should have a material positive impact on private sector businesses in and around the area outside the boundaries of the redevelopment project. The Project is not anticipated to impose a burden or have a negative impact on other local area employers. The Project should also encourage business owners to locate and/or relocate along the Highway 15 Corridor, which will allow for further growth of the community. The Project will result in relocating the warehouse and fulfillment centers for two ecommerce businesses to the City. This will bring the physical operations of existing ecommerce retailers to the City, which should create positive economic stimulation for the City without material impact on other local businesses.

5. Impacts on the student populations of school districts within the City:

It is not anticipated that the Project will have a material adverse impact on the student populations of the school district within the City. The school district should have the capacity to handle any minimal population increase from the Project.

6. Other impacts determined by the agency to be relevant to the consideration of costs and benefits arising from the redevelopment project:

It is anticipated that the Project will create up to 10 full-time jobs. The positions will have competitive salaries for the industry starting in the range of \$45,000 to \$95,000 annually. A benefits package including healthcare and retirement will be available to all full-time employees.

The relocation of Redeveloper's warehouse and fulfillment operations to Seward requires an industrial site with optimal transportation infrastructure. This is in line with the goals for the types of businesses to locate in the Rail Campus Area. The Comprehensive Plan identifies the Rail Campus as major focus of development and business recruiting, and the primary location for industrial uses with heavy traffic.

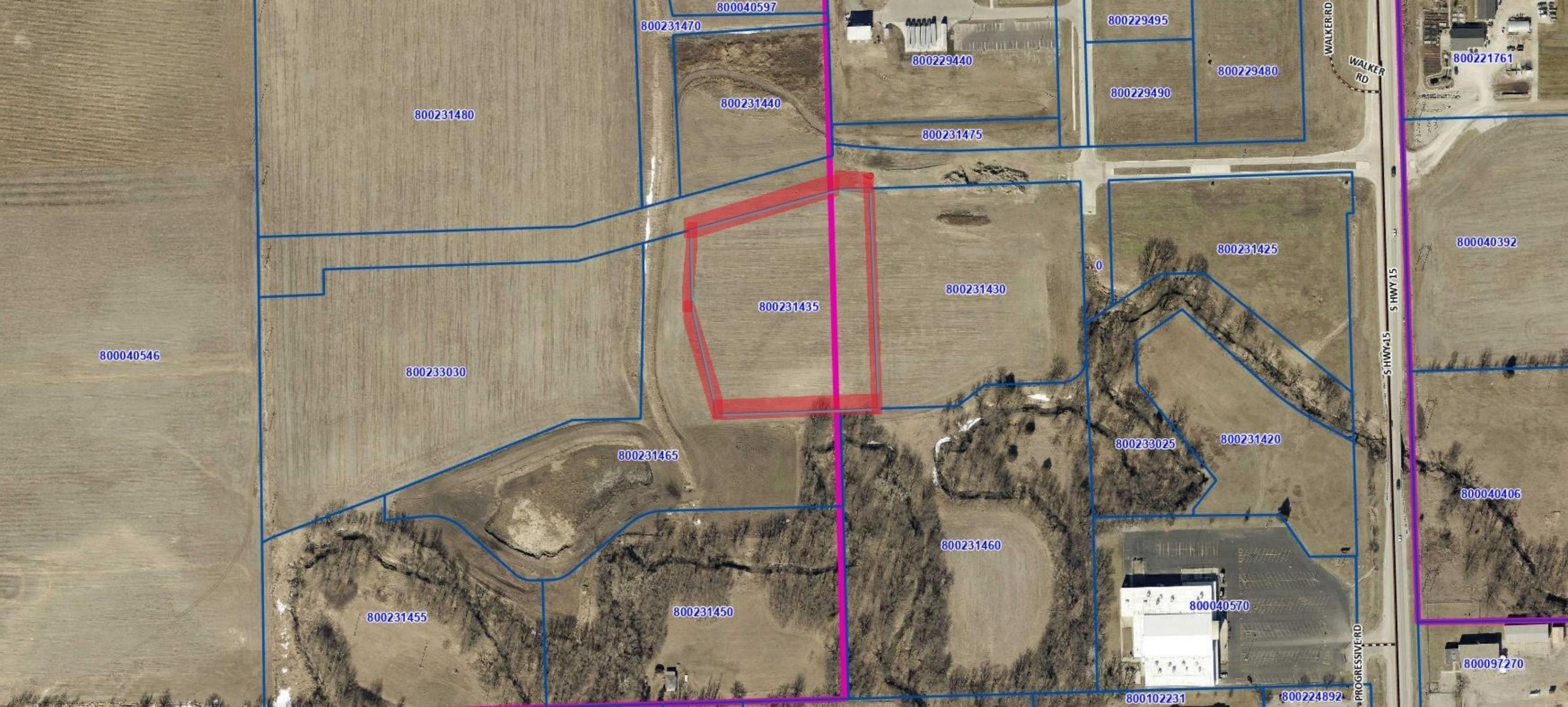
There are no other material impacts determined by the agency relevant to the consideration of the cost of benefits arising from the Project.

7. Summary of Findings:

The Project will facilitate the development of a blighted and substandard area of the City without the incurrence of significant public cost. Additionally, the Project will increase property tax revenue in the long-term. The benefits outweigh the costs of the proposed Project.

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800229480

800221761

800231480

800231440

800229490

800231475

WALKER RD

WALKER RD

800221761

800231425

800040392

800040546

800233030

800231435

800231430

SHWY 15

SHWY 15

0

800231465

800233025

800231420

800040406

800231455

800231450

800231460

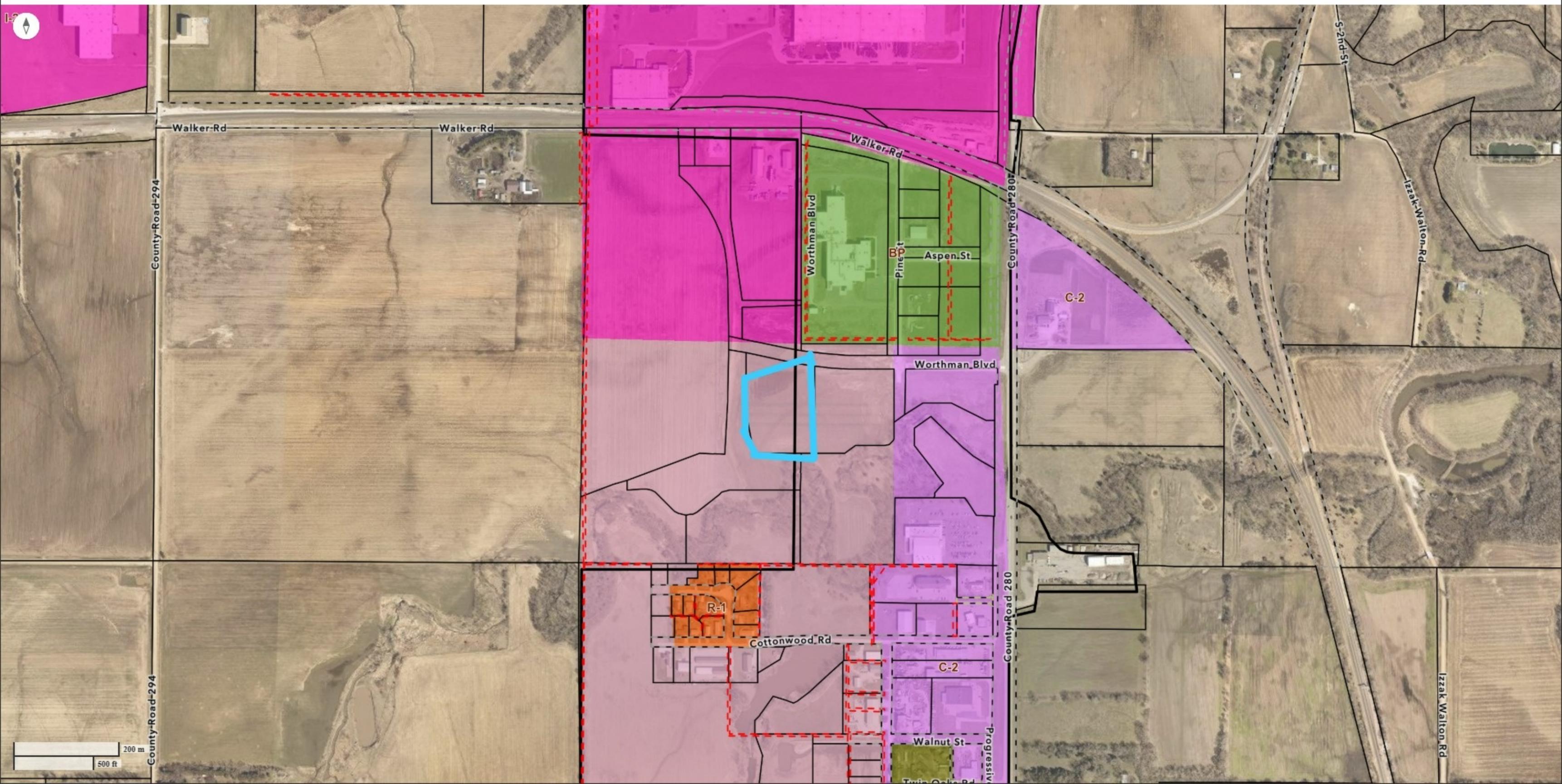
800040570

PROGRESSIVE RD

800097270

800102231

800224892



200 m
500 ft

County Road-294

Walker-Rd

Walker-Rd

Worthman Blvd

Walker-Rd

Pine St

Aspen St

County Road 280Z

C-2

Worthman Blvd

R-1

Cottonwood Rd

C-2

Walnut St

Progressive

Twin Oaks Rd

County Road 280

S 2nd St

Izzak Walton Rd

Izzak Walton Rd

4. Public Hearing 7:30pm: review a minor plat of Kruse Acres.

City of Seward Planning Commission
142 N 7th St, Seward, NE 68434

Staff Report
Tim Dworak, Building/Zoning &
Code Enforcement Director
402-643-2928 opt 3 opt 1

APPLICATION TYPE

Minor Subdivision Application

FINAL ACTION?

DEVELOPER/OWNER

Lincoln Community Foundation

PC HEARING DATE

June 9, 2025

RELATED APPLICATIONS

Rezone Application

PROPERTY ADDRESS, ZONING DISTRICT/USE

3027 Bluff Rd, AG, Agriculture/Residential

ADJACENT ZONING DISTRICTS/USE:

North, AG, Agriculture – Ann Gruntorad

East, RR, Residential – Richard Gokie

South, AG, Agriculture – Sandra Rocker

West, AG, Agriculture – Jon Propst

BRIEF SUMMARY OF REQUEST:

A Minor Subdivision plat review of Kruse Acres. This subdivision is for the purpose of creating a conforming residential lot.



APPLICATION CONTACT

Chip DeBuse, [REDACTED]

215 Centennial Mall, Ste 100, Lincoln, NE 68508

COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The plat is compatible with the Comprehensive Plan as low density residential.

ANALYSIS

This is a Minor Subdivision application to separate a parcel of land and combine it with a non-conforming lot for the purpose of conforming rural residential use. The remainder of the original lot used for Agriculture (AG) land use will remain as Agriculture Use. As part of the subdivision, a rezone will be required to allow Rural Residential Use of the property.

In accordance with ULDO Article 38 Subdivision Approvals and Procedures the Minor Subdivision Procedure is implemented here for the purpose of platting of the lots. The platted lots meet the minimum requirements for lots in a RR (Rural Residential) zone. The subject property is not served by city utilities and streets and does not require the extension of utilities and streets.

The notice of this Public Hearing was published in the Seward County Independent, letters were mailed to owners within 300 feet, and the subject land was posted.

APPROXIMATE LAND AREA:

8.18 acres or 356320.8 square feet +/-

LEGAL DESCRIPTION:

A PART OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 11 NORTH, RANGE 3 EAST OF THE 6TH P.M., SEWARD COUNTY, NEBRASKA

Prepared by

Tim Dworak

City of Seward Building - Zoning - Code Enforcement Director

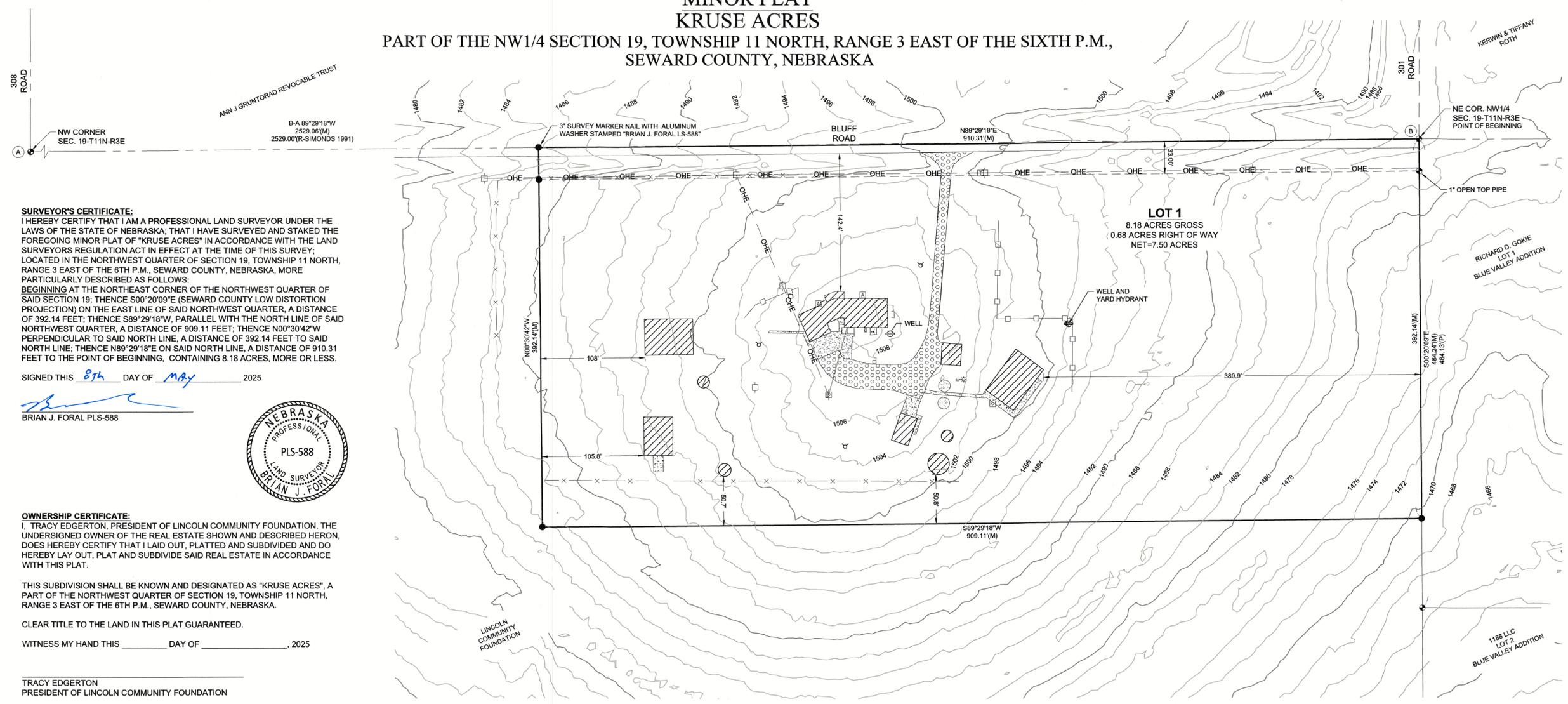
MINOR PLAT KRUSE ACRES

PART OF THE NW1/4 SECTION 19, TOWNSHIP 11 NORTH, RANGE 3 EAST OF THE SIXTH P.M., SEWARD COUNTY, NEBRASKA



JEO CONSULTING GROUP

JEO Consulting, Inc.
 1937 N Chestnut St
 Wahoo, NE 68066
 800.723.8567 | jeo.com
 Organization Certificate of
 Authorization Number: CA-0069



SURVEYOR'S CERTIFICATE:
 I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEBRASKA; THAT I HAVE SURVEYED AND STAKED THE FOREGOING MINOR PLAT OF "KRUSE ACRES" IN ACCORDANCE WITH THE LAND SURVEYORS REGULATION ACT IN EFFECT AT THE TIME OF THIS SURVEY; LOCATED IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 11 NORTH, RANGE 3 EAST OF THE 6TH P.M., SEWARD COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 19; THENCE S00°20'09"E (SEWARD COUNTY LOW DISTORTION PROJECTION) ON THE EAST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 392.14 FEET; THENCE S89°29'18"W, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 909.11 FEET; THENCE N00°30'42"W PERPENDICULAR TO SAID NORTH LINE, A DISTANCE OF 392.14 FEET TO SAID NORTH LINE; THENCE N89°29'18"E ON SAID NORTH LINE, A DISTANCE OF 910.31 FEET TO THE POINT OF BEGINNING, CONTAINING 8.18 ACRES, MORE OR LESS.

SIGNED THIS 8th DAY OF MAY, 2025

[Signature]
 BRIAN J. FORAL PLS-588



OWNERSHIP CERTIFICATE:
 I, TRACY EDGERTON, PRESIDENT OF LINCOLN COMMUNITY FOUNDATION, THE UNDERSIGNED OWNER OF THE REAL ESTATE SHOWN AND DESCRIBED HERON, DOES HEREBY CERTIFY THAT I LAID OUT, PLATTED AND SUBDIVIDED AND DO HEREBY LAY OUT, PLAT AND SUBDIVIDE SAID REAL ESTATE IN ACCORDANCE WITH THIS PLAT.

THIS SUBDIVISION SHALL BE KNOWN AND DESIGNATED AS "KRUSE ACRES", A PART OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 11 NORTH, RANGE 3 EAST OF THE 6TH P.M., SEWARD COUNTY, NEBRASKA.

CLEAR TITLE TO THE LAND IN THIS PLAT GUARANTEED.
 WITNESS MY HAND THIS _____ DAY OF _____, 2025

TRACY EDGERTON
 PRESIDENT OF LINCOLN COMMUNITY FOUNDATION

ACKNOWLEDGMENT OF NOTARY:

STATE OF NEBRASKA)
) SS
 COUNTY OF)

BEFORE ME, A NOTARY PUBLIC QUALIFIED IN SAID COUNTY, PERSONALLY CAME TRACY EDGERTON, PRESIDENT OF LINCOLN COMMUNITY FOUNDATION, KNOWN TO ME TO BE THE IDENTICAL PERSON WHO SIGNED THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HER VOLUNTARY ACT AND DEED.

WITNESS MY HAND AND NOTARIAL SEAL ON _____ DAY OF _____, 2025.

NOTARY PUBLIC _____ MY COMMISSION EXPIRES _____

PRESENT ZONING: AG-AGRICULTURE DISTRICT
 SETBACKS:
 AG FRONT YARD: 50'
 STREET SIDE YARD: 50'
 SIDE YARD: 25'
 REAR: 50'

PROPOSED ZONING: RR-RURAL RESIDENTIAL DISTRICT
 SETBACKS:
 RR FRONT YARD: 50'
 STREET SIDE YARD: 50'
 SIDE YARD: 25'
 REAR YARD: 50'

APPROVAL OF THE CITY OF SEWARD, NEBRASKA, ZONING ADMINISTRATOR:
 THIS MINOR PLAT OF "KRUSE ACRES" HAS BEEN SUBMITTED TO AND APPROVED BY THE CITY OF SEWARD, NEBRASKA, ZONING ADMINISTRATOR,

SIGNED THIS _____ DAY OF _____, 2025.

CITY OF SEWARD
 ZONING ADMINISTRATOR

APPROVAL OF THE PLANNING COMMISSION OF THE CITY OF SEWARD, NEBRASKA:
 THIS MINOR PLAT OF "KRUSE ACRES" HAS BEEN SUBMITTED TO AND APPROVED BY THE CITY OF SEWARD, NEBRASKA, PLANNING COMMISSION,

SIGNED THIS _____ DAY OF _____, 2025.

CHAIRPERSON _____ SECRETARY OF PLANNING COMMISSION _____

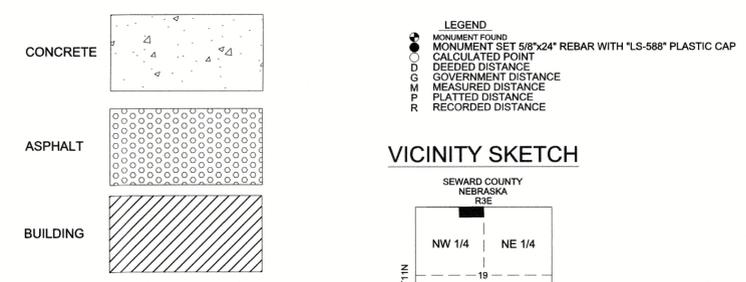
REGISTER OF DEEDS:
 ENTERED ON TRANSFER DEED THIS _____ DAY OF _____, 2025

FILED IN DRAWER _____ AT _____
 AS INSTRUMENT NO. _____

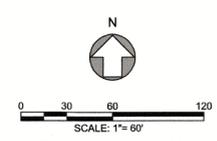
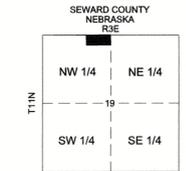
REGISTER OF DEEDS _____

FEE: _____

- (A) NW CORNER SECTION 19-T11N-R3E
 FOUND A 2" S.C.S.M. ALUMINUM CAP AS RECORDED BY SIMONDS, 3/12/1991, 0.9' DEEP.
 NW 46.37' TO A NAIL FOUND IN THE NE FACE OF A TELEPHONE RISER POST (2' ABOVE GROUND)
 NW 30.91' TO A NOTCH FOUND IN THE TOP WEST END OF A 30" CMP
 NNE 55.89' TO A NOTCH FOUND IN THE TOP NE END OF A 36"x58" ARCH CMP
 NE 51.91' TO A MAG NAIL WITH AN ALUMINUM WASHER STAMPED "BRIAN J. FORAL LS-588" SET IN THE SE FACE OF A POWER POLE (2' ABOVE GROUND)
 SSE 31.33' TO A MAG NAIL WITH AN ALUMINUM WASHER STAMPED "BRIAN J. FORAL LS-588" SET IN THE WEST FACE OF A POWER POLE (4' ABOVE GROUND)
 S 3' TO THE CENTERLINE OF AN ASPHALT ROAD EAST
 E 2' TO THE CENTERLINE OF A GRAVEL ROAD NORTH ON THE CENTERLINE OF A GRAVEL ROAD WEST
- (B) NE CORNER NW1/4 SECTION 19-T11N-R3E
 FOUND A 3/4" IRON PIPE AS RECORDED BY SIMONDS, 3/12/1991, 0.5' BELOW ASPHALT PAVING.
 NNW 54.82' TO A MAG NAIL WITH AN ALUMINUM WASHER STAMPED "BRIAN J. FORAL LS-588" SET IN THE TOP WEST END OF A 24" CMP
 NNE 31.33' TO A MAG NAIL WITH AN ALUMINUM WASHER STAMPED "BRIAN J. FORAL LS-588" SET IN THE TOP EAST END OF A 24" CMP
 ENE 102.50' TO A NAIL "X" FOUND IN THE SW FACE OF A POWER POLE (1.5' ABOVE GROUND)
 SSE 33.04' TO A MAG NAIL FOUND IN THE NORTH FACE OF A FENCE POST (2.5' ABOVE GROUND)
 S 33.01' TO A 1" OPEN TOP PIPE ON THE CENTERLINE OF AN EAST-WEST ASPHALT ROAD ON THE CENTERLINE OF A GRAVEL ROAD NORTH



VICINITY SKETCH



NOTE: ALL BEARINGS ARE SEWARD COUNTY LDP.

JEO Project No.: R250995
 Date: 5/8/2025
 QAQC:
 Field Book: SEWARD CO #18
 Field Crew: NF/GK
 Survey File No.: 2025-071
 Drawn By: BJB

US SURVEY FEET (SFT)

SHEET

800038622

800038711

301 RD
301 RD

800038738

BLUFF RD
BLUFF RD

800038789

800038754

800038770

800105303



5. Public Hearing 7:30pm: review a rezone application for Lot 1, Kruse Acres, located in part of the NW1/4 of Section 19, Township 11 North, Range 3 East of the 6th P.M., from AG Agricultural District to RR Rural Residential District.

City of Seward Planning Commission
142 N 7th St, Seward, NE 68434

Staff Report
Tim Dworak, Building/Zoning &
Code Enforcement Director
402-643-2928 opt 3 opt 1

APPLICATION TYPE

Rezone Application

FINAL ACTION?

DEVELOPER/OWNER

Lincoln Community Foundation

PC HEARING DATE

June 9, 2025

RELATED APPLICATIONS

Minor Plat Application

PROPERTY ADDRESS, ZONING DISTRICT/USE

3027 Bluff Rd, AG, Agriculture/Residential

ADJACENT ZONING DISTRICTS/USE:

North, AG, Agriculture – Ann Gruntorad

East, RR, Residential – Richard Gokie

South, AG, Agriculture – Sandra Rocker

West, AG, Agriculture – Jon Propst

BRIEF SUMMARY OF REQUEST:

A Rezone application to change the current zoning from AG (Agriculture) to RR (Rural Residential) for the purpose of creating a conforming rural residential lot.



APPLICATION CONTACT

Chip DeBuse, [REDACTED]

215 Centennial Mall, Ste 100, Lincoln, NE 68508

COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The plat is compatible with the Comprehensive Plan as low density residential.

ANALYSIS

Applicant is requesting a rezone from AG-Agricultural District to RR – Rural Residential District. A minor subdivision plat is subdividing a parcel of land for the purpose of single family home from agricultural land. An existing 1 acre non-conforming parcel already zoned RR is being combined with an existing home site to meet the zoning requirements for rural residential.

The current property is located outside the city limits of the City of Seward but is within the Extra Territorial Jurisdiction (ETJ) of the City of Seward.

The notice of this Public Hearing was published in the Seward County Independent, letters were mailed to owners within 300 feet, and the subject land was posted.

APPROXIMATE LAND AREA:

8.18 acres or 356320.8 square feet +/-

LEGAL DESCRIPTION:

A PART OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 11 NORTH, RANGE 3 EAST OF THE 6TH P.M., SEWARD COUNTY, NEBRASKA

Prepared by

Tim Dworak

City of Seward Building - Zoning - Code Enforcement Director

800038738

Bluff Rd

800038789

800038754

8001

ORDINANCE NO. 2025-

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF SEWARD, NEBRASKA; TO REZONE CERTAIN PROPERTY WITHIN THE EXTRA TERRITORIAL JURISDICTION OF THE CITY OF SEWARD, NEBRASKA NOW ZONED AG AGRICULTURAL DISTRICT, TO RR RURAL RESIDENTIAL; SPECIFICALLY, TRACTS OF LAND SOUTH OF BLUFF ROAD AND EAST OF 308TH RD; TO DESCRIBE THE PROPERTY REZONED; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

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

Section 1. PROPERTY REZONED. The following described property located within Extra Territorial Jurisdiction of the City of Seward, Nebraska is hereby rezoned from "AG Agricultural District", to "RR Rural Residential District" to wit:

A PART OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 11 NORTH, RANGE 3 EAST OF THE 6TH P.M., SEWARD COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 19; THENCE S00°20'09"E (SEWARD COUNTY LOW DISTORTION PROJECTION) ON THE EAST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 392.14 FEET; THENCE S89°29'18"W, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 909.11 FEET; THENCE N00°30'42"W PERPENDICULAR TO SAID NORTH LINE, A DISTANCE OF 392.14 FEET TO SAID NORTH LINE; THENCE N89°29'18"E ON SAID NORTH LINE, A DISTANCE OF 910.31 FEET TO THE POINT OF BEGINNING, CONTAINING 8.18 ACRES, MORE OR LESS. ALSO KNOWN AS LOT 1, KRUSE ACRES.

Section 2. USES PERMITTED. Uses permitted by the ordinance of the City of Seward, Nebraska for "RR Rural Residential District" are hereby and herein authorized for said area and land described in Section 1 of this ordinance.

Section 3. ZONING MAP AMENDED. The official map of the City of Seward, Nebraska is amended, and it is ordered that the above described land shall now be shown as "I2 General Industrial District."

Section 4. PAMPHLET FORM; PUBLICATION; WHEN OPERATIVE. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage, approval, and publication or posting as provided by law and city ordinance.

Passed and approved this _____ day of _____, 2025.

THE CITY OF SEWARD, NEBRASKA

Joshua Eickmeier, Mayor

ATTEST:

Derek Bargmann
City Clerk

6. Public Hearing 7:30pm: review a special use permit application located at in part of the South-Half of the Northeast Quarter of Section 22, Township 11 North, Range 3 East of the 6th P.M. to allow a telecommunications tower in the Agricultural Zoning District.

City of Seward Planning Commission
142 N 7th St, Seward, NE 68434

Staff Report

Tim Dworak, Building/Zoning &
Code Enforcement Director

402-643-2928 opt 3 opt 1

APPLICATION TYPE

Special Use permit

FINAL ACTION?

DEVELOPER/OWNER

Vertical Bridge, by Buell Consulting, Inc.

PC HEARING DATE

June 9, 2025

RELATED APPLICATIONS

PROPERTY ADDRESS, ZONING DISTRICT/USE

1545 252nd Rd, AG, Agriculture

ADJACENT ZONING DISTRICTS/USE:

North, RR, Single Family Residential – Paul & Joann Hoff, Joel & Gina Germer

North, R-2, Single Family Residential – Adam & Beth Greenquist, Thomas & Jeanne Gee, Charles Krutz

East, RR, Single Family Residential – Ryon & Marla Baumbach

East, AG Agriculture – Jones Farms

South, RR, Single Family Residential – Greg & Diane Hofer

South, AG Agriculture – Kenneth & Nancy Lieb

West, R-3, Residential – Douglas & Abbie Oberhauser, Jon Backencamp, Thomas & Kristi Rathje, Bill & Jennifer Evans

BRIEF SUMMARY OF REQUEST

To allow the installation of a Cell Tower for T-Mobile in an Agriculture District.



APPLICATION CONTACT

Woody Krog, [REDACTED]

9973 Valley View Road, Eden Prairie, MN 55344

COMPATIBILITY WITH THE COMPREHENSIVE PLAN

Use type matches the comprehensive plan.

ANALYSIS

A communication tower requires a special use permit per the use matrix in the ULDO Use Matrix Attachment 1.

A number of phone and zoom meetings with City Staff and Administration were held to discuss the site location and design standards. City Code § 410-31.8 Telecommunication Towers is included in the packet for review along with all supporting documents provided by the consultant.

The notice of this Public Hearing was published in the Seward County Independent, letters were mailed to owners within 300 feet, and the subject land was posted.

APPROXIMATE LAND AREA:

0.23 acres or 10,000 square feet +/-

LEGAL DESCRIPTION:

THAT PART OF THE SOUTH-HALF OF THE NORTHEAST QUARTER OF SECTION 22,
TOWNSHIP 11 NORTH, RANGE 3 EAST OF THE 6th P.M., SEWARD COUNTY, NEBRASKA, MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTH-HALF OF THE NORTHEAST QUARTER;
THENCE S88°53'47"W, ALONG THE NORTH LINE OF SAID SOUTH-HALF OF THE NORTHEAST
QUARTER, A DISTANCE OF 858.27 FEET; THENCE S01 °06'13"E, A DISTANCE OF 30.00 FEET TO THE
POINT OF BEGINNING; THENCE N88°53'47"E, A DISTANCE OF 100.00 FEET; THENCE S01 °06'13"E, A
DISTANCE OF 100.00 FEET; THENCE S88°53'47"W, A DISTANCE OF 100.00 FEET; THENCE N01
°06'13"W, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING. CONTAINING AN AREA OF
10,000 SQUARE FEET OR 0 .23 ACRES, MORE OR LESS. (PID 800039351)

Prepared by

Tim Dworak

City of Seward Building - Zoning - Code Enforcement Director

CONDITIONS OF APPROVAL – SPECIAL USE PERMIT # _____

As provided by the City of Seward Unified Land Development Ordinance, Article 44 Administrative Procedures and Penalties, section 410-44.3 Conditional Use Permits, this approval permits the _____

SITE SPECIFIC CONDITIONS:

- 1.
- 2.

STANDARD CONDITIONS:

1.



Application for Special Use Permit

Applications shall be submitted a minimum of 30 days prior to the City Planning Commission Meeting. City Planning Commission meets the 2nd Monday of each month.

Instructions:

1. Fill out the application form completely. Use additional sheets if needed.
2. Filing Fee is \$200. Notification Fee is \$100. Amount Due is \$300 payable to the City of Seward.
3. Contact the City of Seward Building & Zoning Director for questions.
- ~~4. Submit a list of property owners within 300 feet, prepared by a certified abstractor.~~

Permit No. _____

Date : 5/8/25

Applicants Name : VB BTS III, LLC (Vertical Bridge, by Buell Consulting, Inc., Woody Krog)

Applicants Address: 9973 Valley View Road, Eden Prairie, MN 55344

Phone Number: [REDACTED]

Email: [REDACTED]

Present use of Property: cropland and pasture

Requested use of Property : cell tower site

Present Zoning: AG

Legal Description: please see attached legal desc. of parent tract, lease area and easement

Provisions of the Zoning Regulations you are seeking for this permit:
410-31.8 (Telecommunications Towers) setback, height, landscaping
please see attached exhibit book for in-depth details

Number of Years for Permit (5 yrs, 10 yrs, etc): in perpetuity

Explain in detail what you propose to do: construct telecommunications & public utility facility with a tower, carrier equipment, util. backboard, fenced compound, access rd.

Adjoining Property Use: North: rural residential South: rural res. / tower site LO
West: residential and AG East: rural residential and AG

This authorizes the City of Seward Planning and Zoning Director to enter upon the property during normal working hours for the purpose of becoming familiar with the proposed situation. The Director may be accompanied by members of the City of Seward Planning Commission or Seward City Council.

Applicant Signature: Woody Krog, for VB BTS III, LLC

PO BOX 38 · 142 N 7th St. Seward, NE 68434
402-643-2928 Opt. 3, Opt. 1
tim.dworak@cityofsewardne.gov

Parent Tract

The South Half of the Northeast Quarter of Section 22, Township 11, Range 3 East of the 6th P.M., Seward

County, Nebraska.

Parcel ID: 800039351

Being a portion of the same property conveyed to Gregory P. Hofer and Diane J. Hofer, as Trustees of The Hofer

Family Trust, or any duly qualified successor Trustee thereof, pursuant to a written Trust Agreement dated

December 22, 2022 in Warranty Deed from Gregory P. Hofer and Diane J. Hofer, husband and wife dated

February 3, 2023 and recorded February 7, 2023 in Instrument No. 202300249.

Lease Area

THAT PART OF THE SOUTH-HALF OF THE NORTHEAST QUARTER OF SECTION 22,
TOWNSHIP 11 NORTH, RANGE 3 EAST OF THE 6th P.M., SEWARD COUNTY, NEBRASKA,
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTH-HALF OF THE NORTHEAST
QUARTER;

THENCE S88°53'47"W, ALONG THE NORTH LINE OF SAID SOUTH-HALF OF THE
NORTHEAST QUARTER, A DISTANCE OF 858.27 FEET;

THENCE S01°06'13"E, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING;

THENCE N88°53'47"E, A DISTANCE OF 100.00 FEET;

THENCE S01°06'13"E, A DISTANCE OF 100.00 FEET;

THENCE S88°53'47"W, A DISTANCE OF 100.00 FEET;

THENCE N01°06'13"W, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 10,000 SQUARE FEET OR 0.23 ACRES, MORE OR LESS.

Access Easement

THAT PART OF THE SOUTH-HALF OF THE NORTHEAST QUARTER OF SECTION 22,
TOWNSHIP 11 NORTH, RANGE 3 EAST OF THE 6th P.M., SEWARD COUNTY, NEBRASKA,
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTH-HALF OF THE NORTHEAST
QUARTER;

THENCE S88°53'47"W, ALONG THE NORTH LINE OF SAID SOUTH-HALF OF THE
NORTHEAST QUARTER, A DISTANCE OF 33.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF
252nd ROAD AND THE POINT OF BEGINNING;

THENCE S01°06'16"E, ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 30.00
FEET;

THENCE S88°53'47"W, A DISTANCE OF 825.27 FEET;

THENCE N01°06'13"W, A DISTANCE OF 30.00 FEET TO THE NORTH LINE OF SAID SOUTH-
HALF OF THE NORTHEAST QUARTER;

THENCE N88°53'47"E, ALONG SAID NORTH LINE, A DISTANCE OF 825.27 FEET TO THE
POINT OF BEGINNING.

CONTAINING AN AREA OF 24,758 SQUARE FEET OR 0.56 ACRES, MORE OR LESS.



BUELL CONSULTING, INC.
9973 Valley View Road
Eden Prairie, MN 55344
www.buellconsulting.com

May 8, 2025

Tim Dworak
Building/Zoning & Code Enforcement Director
142 N 7th Street
Seward, NE 68434

RE: Proposed VB BTS III, LLC Telecommunications Towers – Junto
unaddressed parcel, 252nd Road
Parcel Number: 800039351
Seward, NE 68434

Dear Mr. Dworak:

Buell Consulting, Inc. represents VB BTS III, LLC, who has finalized an agreement with the property owners of the site referenced above to develop and construct a Telecommunications Tower that will be available to be used by wireless carriers. The proposed shared use facility is designed to house the equipment necessary to provide clear and uninterrupted wireless telecommunications services to the residents and visitors of the City of Seward (the "City") and surrounding Seward County.

This proposed Telecommunications Tower is being constructed pursuant to the City of Seward Code of Ordinances (the "Code"). The proposed facility will consist of a 245'-0" tall self-support lattice tower with a 5'-0" lightning rod to be located within a 100'-0" X 100'-0" lease parcel. The proposed tower will be erected, owned, and operated by VB BTS III, LLC. VB BTS III, LLC has a commitment with T-Mobile, a wireless services provider, for this site. Additionally, the facility will be open for co-location to other wireless providers.

The facility is located in pasture and cropland in an AG Agricultural District zoning district in the extra-territorial jurisdiction area of the City. Pursuant to Section 410-31.8.D.(1)(c) of the Code, cellular telephone antenna facilities are allowed in the AG zone with a special/conditional use permit. Telecommunication Towers exceeding the maximum allowable height may be allowed in this district per section 410-31.8.B.(4) of the Code. Also, per section 410-31.8.B.(1), freestanding towers may be allowed a reduced setback requirement with evidence that the reduction does not constitute a hazard.

Due to the location of the proposed tower facility being a distance of about 800' from the centerline of the public right-of-way and on the back side of a high portion of ground where the base of the facility will not be able to be seen from the road or any existing surrounding residence, a waiver of Code section 410-31.8.B.(3) pertaining to landscaping is requested.



BUELL CONSULTING, INC.
9973 Valley View Road
Eden Prairie, MN 55344
www.buellconsulting.com

On behalf of the applicant VB BTS III, LLC, Buell Consulting, Inc. has submitted all required documentation for the proposed Telecommunications Tower facility in accordance City Code for this application to be deemed complete.

Should you have any questions please feel free to contact me. We look forward to working with you during the review and approval process. VB BTS II, LLC looks forward to helping provide the City with improved wireless coverage.

Respectfully submitted,

Woody Krog

Woody Krog
Site Development Agent
Buell Consulting, Inc.



March 12, 2025

Jennifer Schaumburg
VB BTS III, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487

B+T Group
1717 S. Boulder, Suite 300
Tulsa, OK 74119
(918) 587-4630
btwo@btgrp.com

Subject:	Fall Certification Letter	
Arcosa Designation:	Arcosa Project Number:	B572
	Arcosa Site Name:	Junto (US-NE-5160)
Engineering Firm Designation:	B+T Group Project Number:	25-000983
Site Data:	Junto (US-NE-5160)	
	245' Self Support Tower	

To Whom it May Concern:

As Requested by Arcosa Telecom Structures on behalf of VB BTS III, LLC, B+T Group is pleased to submit this "Fall Certification Letter" for the 245' Self Support Tower to be constructed at the **Junto (US-NE-5160)** site.

This tower will be designed in accordance with the TIA 222-H standard for Seward County, NE. The tower will be designed to support antennas and transmission lines for three wireless carriers. The design criteria are more particularly described as follows:

Design Wind Speed: 111mph 3-sec gust (no ice), 40mph 3-sec gust (1.5" ice)
Structure Class: II
Exposure Category: C
Topographic Category: 1

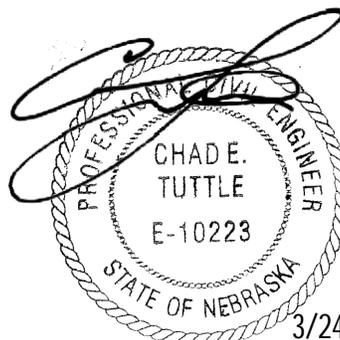
240'—Wireless Carrier 1 (CaAa= 40,000 sq in w/ (12) 1 5/8" transmission lines
230'—Wireless Carrier 2 (CaAa= 30,000 sq in w/ (12) 1 5/8" transmission lines
220'—Wireless Carrier 3 (CaAa= 30,000 sq in w/ (12) 1 5/8" transmission lines

It is our understanding that this Self Support Tower structure will be designed such that, if a failure were to occur due to a significant storm or other event, the tower would fall within a radius of 75' from the base of the structure with the top portion of the tower buckling over on the tower. Although the tower would not be designed to fail, stronger sections that required by analysis would be provided in the lower sections of the tower, resulting in an increased safety factor in the lower sections. In the highly unlikely event that this tower were to experience operational failure due to catastrophic wind loading, the design would enable the tower to fail through compression buckling. Failure in this manner would result in the upper portion of the tower buckling and folding over the lower portion, resulting in a fall radius of 75' from the base of the tower. It should be understood that this opinion does not consider unpredictable extreme catastrophic events for which the structure is not designed. However, any damage to surrounding property caused by the tower failing during such an event would be relatively insignificant when compared to the damage caused to the surrounding property by the event itself.

Please contact us should you have any questions concerning the safety and design of the self support tower.

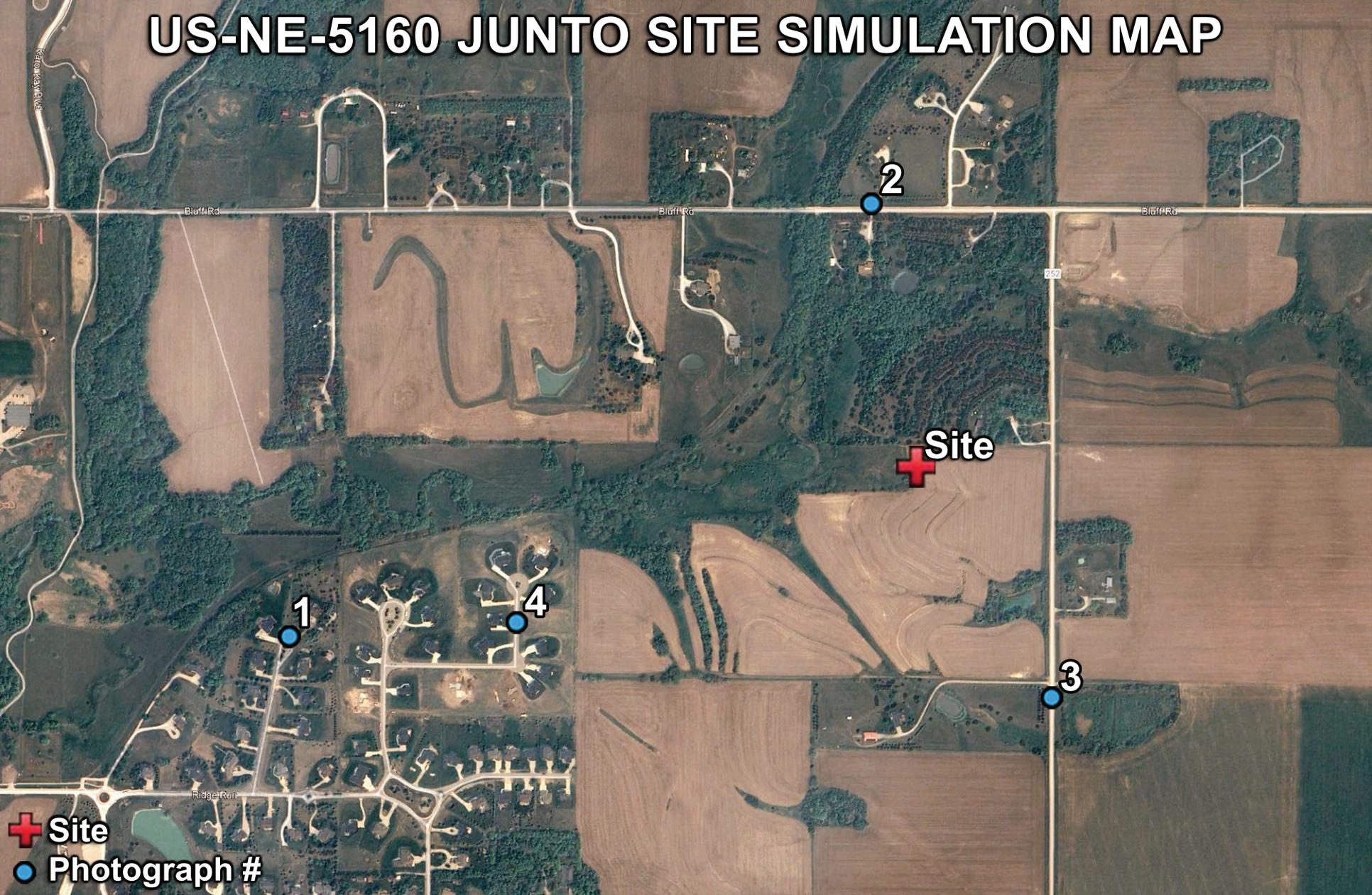
Letter prepared by: Clint Coody
Respectfully submitted by: B+T Group

Chad E. Tuttle, P.E.



3/24/2025

US-NE-5160 JUNTO SITE SIMULATION MAP



Katonkewy Drive

Bluff Rd

Bluff Rd

Bluff Rd

252

Ridge Run

2

1

4

3

Site

+ Site
● Photograph #



verticalbridge

**US-NE-5160
JUNTO**

1545 252ND ST, SEWARD, NE 68434

**245FT. SELF SUPPORT
TOWER SIMULATION**

View #1 from Wildwood
approximately 3,600ft. southwest of site



Existing View



verticalbridge

**US-NE-5160
JUNTO**

1545 252ND ST, SEWARD, NE 68434

**245FT. SELF SUPPORT
TOWER SIMULATION**

View #2 from Bluff Road
approximately 1,450ft. north of site



Existing View



verticalbridge

**US-NE-5160
JUNTO**

1545 252ND ST, SEWARD, NE 68434

**245FT. SELF SUPPORT
TOWER SIMULATION**

View #3 from 252nd Street
approximately 1,550ft. southeast of site



Existing View



verticalbridge

**US-NE-5160
JUNTO**

1545 252ND ST, SEWARD, NE 68434

**245FT. SELF SUPPORT
TOWER SIMULATION**

View #4 from Wildwood
approximately 2,375ft. southwest of site



Existing View



Certification of Compliance

Parcel ID: 800039351 (ON06319B)

Date: 3/13/2025

As a Manager at T-Mobile USA, LLC, I can attest to the following in regard to the proposed wireless communications system application, Site Number: ON06319B at Parcel ID 800039351 ("Proposed Facility"):

1. The application involves collocating six (6) antennas to the proposed telecommunications tower
2. All T-Mobile base station radios meet or exceed applicable Federal communications Commission's (FCC) regulations/requirements.
3. The Proposed Facility will:
 - a. Be operated at frequencies and power levels authorized by the FCC,
 - b. Comply with all current FCC guidelines, including OET Bulletin 65 for cumulative measurements of radio frequency power densities and electromagnetic fields, and
 - c. Not cause interference with existing operations
 - d. Comply at all times with current FCC regulations concerning interference with reception of television and radio broadcasts or any public safety frequencies servicing the city and its residents.

Signature:

Name: Jon Palmersheim

Title: Sr. RF Engineer

Date: 3/13/2025

(Above 3" Space for Recorder's Use Only)

Upon Recording Return to:

VB BTS III, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487
Attn: General Counsel

Site Name: Junto

Site Number: US-NE-5160

Commitment #: _____

MEMORANDUM OF OPTION TO LEASE

This Memorandum of Option to Lease (this "**Memorandum**") evidences an Option and Lease Agreement (the "**Agreement**") between **Gregory P. Hofer and Diane J. Hofer, as Trustees of The Hofer Family Trust, or any duly qualified successor Trustee thereof, pursuant to a written Trust Agreement dated December 22, 2022 ("Landlord")**, whose address is 1545 252nd Road, Seward, Nebraska 68434, and **VB BTS III, LLC**, a Delaware limited liability company ("**Tenant**"), whose address is 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida 33487, dated _____, 20____ (the "**Effective Date**"), for a portion (the "**Premises**") of the real property (the "**Property**") described in **Exhibit A** attached hereto.

Pursuant to the Agreement, Landlord has granted Tenant an exclusive option to lease the Premises (the "**Option**"). The Option commenced as of the Effective Date and shall continue in effect for a period of two (2) years from the Effective Date.

Landlord ratifies, restates and confirms the Agreement and, upon exercise of the Option, shall lease to Tenant the Premises, subject to the terms and conditions of the Agreement. The Agreement provides for the lease by Landlord to Tenant of the Premises for an initial term of five (5) years with seven (7) renewal option(s) of an additional five (5) years each, and further provides:

1. Landlord may assign the Agreement only in its entirety and only to a purchaser of the fee interest of the Property;
2. Under certain circumstances, Tenant has a right of first refusal to acquire the Premises or the Property from Landlord;
3. Under certain circumstances, Landlord may subdivide the Property without Tenant's prior written consent; and

4. The Agreement restricts Landlord's ability to utilize, or allow the utilization of the Property or real property owned by Landlord which is adjacent or contiguous to the Property for the construction, operation and/or maintenance of the Communications Facilities (as defined in the Agreement).

This Memorandum is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement. In the event of a conflict between the provisions of this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of Landlord and Tenant and shall inure to the benefit of their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK, SIGNATURES
BEGIN ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this MEMORANDUM OF OPTION TO LEASE effective as of the date last signed by a party hereto.

<p>WITNESSES:</p> <p>Name: _____</p> <p>Name: _____</p>	<p>LANDLORD:</p> <p>The Hofer Family Trust, or any duly qualified successor Trustee thereof, pursuant to a written Trust Agreement dated December 22, 2022</p> <p><i>Gregory P. Hofer</i> _____ Gregory P. Hofer, Trustee</p> <p>Date: <u>11-15-24</u></p> <p><i>Diane J. Hofer</i> _____ Diane J. Hofer, Trustee</p> <p>Date: <u>11-15-24</u></p>
---	--

STATE OF Nebraska
COUNTY OF Seward

The foregoing instrument was acknowledged before me this 15th day of November 2024; 2024 by Gregory P. Hofer and Diane J. Hofer, Trustees of The Hofer Family Trust, on behalf of the trust.

Jennifer A Thoreson

Notary Public

Print Name: Jennifer A Thoreson
My Commission Expires: 7-25-2026



EXHIBIT A
(TO MEMORANDUM OF OPTION TO LEASE)

The Property

(may be updated by Tenant upon receipt of final legal description from title)

South Half (S1/2) of the Northeast Quarter (NE1/4) of Section Twenty-two (22), Township Eleven (11), Range Three (3), East of the 6th P.M., Seward County, Nebraska.

Access and utilities serving the Premises (as defined in the Agreement) includes all easements of record as well as that portion of the Property designated by Landlord and Tenant for Tenant (and Tenant's guests, agents, customers, subtenants, licensees and assigns) ingress, egress, and utility purposes to and from a public right-of-way.

FILE s652.enr

--S.652--

S.652

One Hundred Fourth Congress

of the

United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday,
the third day of January, one thousand nine hundred and ninety-six

An Act

To promote competition and reduce regulation in order to secure
lower prices and higher quality services for American
telecommunications consumers and encourage the rapid deployment of
new telecommunications technologies.

[Italic->] Be it enacted by the Senate and House of
Representatives of the United States of America in Congress
assembled, [<-Italic]

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE- This Act may be cited as the `Telecommunications
Act of 1996'.

(b) REFERENCES- Except as otherwise expressly provided, whenever
in this Act an amendment or repeal is expressed in terms of an
amendment to, or repeal of, a section or other provision, the
reference shall be considered to be made to a section or other
provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; references.

Sec. 2. Table of contents.

Sec. 3. Definitions.

TITLE I--TELECOMMUNICATION SERVICES

SUBTITLE A--TELECOMMUNICATIONS SERVICES

Sec. 101. Establishment of part II of title II.

`PART II--DEVELOPMENT OF COMPETITIVE MARKETS

Sec. 102. Eligible telecommunications carriers.

Sec. 103. Exempt telecommunications companies.

Sec. 104. Nondiscrimination principle.

SUBTITLE B--SPECIAL PROVISIONS CONCERNING BELL OPERATING
COMPANIES

Sec. 151. Bell operating company provisions.

`PART III--SPECIAL PROVISIONS CONCERNING BELL OPERATING
COMPANIES

TITLE II--BROADCAST SERVICES

Sec. 201. Broadcast spectrum flexibility.

Sec. 202. Broadcast ownership.

- Sec. 203. Term of licenses.
- Sec. 204. Broadcast license renewal procedures.
- Sec. 205. Direct broadcast satellite service.
- Sec. 206. Automated ship distress and safety systems.
- Sec. 207. Restrictions on over-the-air reception devices.

TITLE III--CABLE SERVICES

- Sec. 301. Cable Act reform.
- Sec. 302. Cable service provided by telephone companies.

^PART V--VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

- Sec. 303. Preemption of franchising authority regulation of telecommunications services.
- Sec. 304. Competitive availability of navigation devices.
- Sec. 305. Video programming accessibility.

TITLE IV--REGULATORY REFORM

- Sec. 401. Regulatory forbearance.
- Sec. 402. Biennial review of regulations; regulatory relief.
- Sec. 403. Elimination of unnecessary Commission regulations and functions.

TITLE V--OBSCENITY AND VIOLENCE

SUBTITLE A--OBSCENE, HARASSING, AND WRONGFUL UTILIZATION OF TELECOMMUNICATIONS FACILITIES

- Sec. 501. Short title.
- Sec. 502. Obscene or harassing use of telecommunications facilities under the Communications Act of 1934.
- Sec. 503. Obscene programming on cable television.
- Sec. 504. Scrambling of cable channels for nonsubscribers.
- Sec. 505. Scrambling of sexually explicit adult video service programming.
- Sec. 506. Cable operator refusal to carry certain programs.
- Sec. 507. Clarification of current laws regarding communication of obscene materials through the use of computers.
- Sec. 508. Coercion and enticement of minors.
- Sec. 509. Online family empowerment.

SUBTITLE B--VIOLENCE

- Sec. 551. Parental choice in television programming.
- Sec. 552. Technology fund.

SUBTITLE C--JUDICIAL REVIEW

- Sec. 561. Expedited review.

TITLE VI--EFFECT ON OTHER LAWS

- Sec. 601. Applicability of consent decrees and other law.
- Sec. 602. Preemption of local taxation with respect to direct-to-home services.

TITLE VII--MISCELLANEOUS PROVISIONS

- Sec. 701. Prevention of unfair billing practices for information or

services provided over toll-free telephone calls.

Sec. 702. Privacy of customer information.

Sec. 703. Pole attachments.

Sec. 704. Facilities siting; radio frequency emission standards.

Sec. 705. Mobile services direct access to long distance carriers.

Sec. 706. Advanced telecommunications incentives.

Sec. 707. Telecommunications Development Fund.

Sec. 708. National Education Technology Funding Corporation.

Sec. 709. Report on the use of advanced telecommunications services for medical purposes.

Sec. 710. Authorization of appropriations.

SEC. 3. DEFINITIONS.

(a) ADDITIONAL DEFINITIONS- Section 3 (47 U.S.C. 153) is amended--

(1) in subsection (r)--

(A) by inserting `(A)' after `means'; and

(B) by inserting before the period at the end the following: `, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service'; and

(2) by adding at the end thereof the following:

`(33) AFFILIATE- The term `affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term `own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

`(34) AT&T CONSENT DECREE- The term `AT&T Consent Decree' means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

`(35) BELL OPERATING COMPANY- The term `Bell operating company'--

`(A) means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and

Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

`(B) includes any successor or assign of any such company that provides wireline telephone exchange service; but

`(C) does not include an affiliate of any such company, other than an affiliate described in subparagraph (A) or (B).

`(36) CABLE SERVICE- The term `cable service' has the meaning given such term in section 602.

`(37) CABLE SYSTEM- The term `cable system' has the meaning given such term in section 602.

`(38) CUSTOMER PREMISES EQUIPMENT- The term `customer premises equipment' means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

`(39) DIALING PARITY- The term `dialing parity' means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

`(40) EXCHANGE ACCESS- The term `exchange access' means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

`(41) INFORMATION SERVICE- The term `information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

`(42) INTERLATA SERVICE- The term `interLATA service' means telecommunications between a point located in a local access and transport area and a point located outside such area.

`(43) LOCAL ACCESS AND TRANSPORT AREA- The term `local access and transport area' or `LATA' means a contiguous geographic area--

`(A) established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

`(B) established or modified by a Bell operating company after such date of enactment and approved by the Commission.

`(44) LOCAL EXCHANGE CARRIER- The term 'local exchange carrier' means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.

`(45) NETWORK ELEMENT- The term 'network element' means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

`(46) NUMBER PORTABILITY- The term 'number portability' means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

`(47) RURAL TELEPHONE COMPANY- The term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity--

`(A) provides common carrier service to any local exchange carrier study area that does not include either--

`(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

`(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

`(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

`(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(48) TELECOMMUNICATIONS- The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(49) TELECOMMUNICATIONS CARRIER- The term 'telecommunications carrier' means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

(50) TELECOMMUNICATIONS EQUIPMENT- The term 'telecommunications equipment' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(51) TELECOMMUNICATIONS SERVICE- The term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'

(b) COMMON TERMINOLOGY- Except as otherwise provided in this Act, the terms used in this Act have the meanings provided in section 3 of the Communications Act of 1934 (47 U.S.C. 153), as amended by this section.

(c) STYLISTIC CONSISTENCY- Section 3 (47 U.S.C. 153) is amended--

(1) in subsections (e) and (n), by redesignating clauses (1), (2), and (3), as clauses (A), (B), and (C), respectively;

(2) in subsection (w), by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(3) in subsections (y) and (z), by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(4) by redesignating subsections (a) through (ff) as paragraphs (1) through (32);

(5) by indenting such paragraphs 2 em spaces;

(6) by inserting after the designation of each such paragraph--

(A) a heading, in a form consistent with the form of the heading of this subsection, consisting of the term defined by such paragraph, or the first term so defined if such

paragraph defines more than one term; and

(B) the words 'The term';

(7) by changing the first letter of each defined term in such paragraphs from a capital to a lower case letter (except for 'United States', 'State', 'State commission', and 'Great Lakes Agreement'); and

(8) by reordering such paragraphs and the additional paragraphs added by subsection (a) in alphabetical order based on the headings of such paragraphs and renumbering such paragraphs as so reordered.

(d) CONFORMING AMENDMENTS- The Act is amended--

(1) in section 225(a)(1), by striking 'section 3(h)' and inserting 'section 3';

(2) in section 332(d), by striking 'section 3(n)' each place it appears and inserting 'section 3'; and

(3) in sections 621(d)(3), 636(d), and 637(a)(2), by striking 'section 3(v)' and inserting 'section 3'.

TITLE I--TELECOMMUNICATION SERVICES

SUBTITLE A--TELECOMMUNICATIONS SERVICES

SEC. 101. ESTABLISHMENT OF PART II OF TITLE II.

(a) AMENDMENT- Title II is amended by inserting after section 229 (47 U.S.C. 229) the following new part:

'PART II--DEVELOPMENT OF COMPETITIVE MARKETS

'SEC. 251. INTERCONNECTION.

'(a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS- Each telecommunications carrier has the duty--

'(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

'(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

'(b) OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS- Each local exchange carrier has the following duties:

'(1) RESALE- The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

'(2) NUMBER PORTABILITY- The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

'(3) DIALING PARITY- The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no

unreasonable dialing delays.

`(4) ACCESS TO RIGHTS-OF-WAY- The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.

`(5) RECIPROCAL COMPENSATION- The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

`(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS-

In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

`(1) DUTY TO NEGOTIATE- The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

`(2) INTERCONNECTION- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

`(A) for the transmission and routing of telephone exchange service and exchange access;

`(B) at any technically feasible point within the carrier's network;

`(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

`(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

`(3) UNBUNDLED ACCESS- The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

`(4) RESALE- The duty--

`(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

`(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

`(5) NOTICE OF CHANGES- The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

`(6) COLLOCATION- The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

`(d) IMPLEMENTATION-

`(1) IN GENERAL- Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

`(2) ACCESS STANDARDS- In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether--

`(A) access to such network elements as are proprietary in nature is necessary; and

`(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

`(3) PRESERVATION OF STATE ACCESS REGULATIONS- In prescribing and enforcing regulations to implement the requirements of this

section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--

`(A) establishes access and interconnection obligations of local exchange carriers;

`(B) is consistent with the requirements of this section; and

`(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

`(e) NUMBERING ADMINISTRATION-

`(1) COMMISSION AUTHORITY AND JURISDICTION- The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

`(2) COSTS- The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

`(f) EXEMPTIONS, SUSPENSIONS, AND MODIFICATIONS-

`(1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES-

`(A) EXEMPTION- Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

`(B) STATE TERMINATION OF EXEMPTION AND IMPLEMENTATION

SCHEDULE- The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an

implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

`(C) LIMITATION ON EXEMPTION- The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on the date of enactment of the Telecommunications Act of 1996.

`(2) SUSPENSIONS AND MODIFICATIONS FOR RURAL CARRIERS- A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--

`(A) is necessary--

`(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

`(ii) to avoid imposing a requirement that is unduly economically burdensome; or

`(iii) to avoid imposing a requirement that is technically infeasible; and

`(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

`(g) CONTINUED ENFORCEMENT OF EXCHANGE ACCESS AND INTERCONNECTION

REQUIREMENTS- On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory

interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

`(h) DEFINITION OF INCUMBENT LOCAL EXCHANGE CARRIER-

`(1) DEFINITION- For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that--

`(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

`(B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

`(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

`(2) TREATMENT OF COMPARABLE CARRIERS AS INCUMBENTS- The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if--

`(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

`(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

`(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

`(i) SAVINGS PROVISION- Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201.

`SEC. 252. PROCEDURES FOR NEGOTIATION, ARBITRATION, AND APPROVAL
OF AGREEMENTS.

`(a) AGREEMENTS ARRIVED AT THROUGH NEGOTIATION-

`(1) VOLUNTARY NEGOTIATIONS- Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

`(2) MEDIATION- Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

`(b) AGREEMENTS ARRIVED AT THROUGH COMPULSORY ARBITRATION-

`(1) ARBITRATION- During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

`(2) DUTY OF PETITIONER-

`(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning--

`(i) the unresolved issues;

`(ii) the position of each of the parties with respect to those issues; and

`(iii) any other issue discussed and resolved by the parties.

`(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

`(3) OPPORTUNITY TO RESPOND- A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

`(4) ACTION BY STATE COMMISSION-

`(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the

response, if any, filed under paragraph (3).

`(B) The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

`(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

`(5) REFUSAL TO NEGOTIATE- The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

`(c) STANDARDS FOR ARBITRATION- In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

`(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;

`(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

`(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

`(d) PRICING STANDARDS-

`(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES-

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--

`(A) shall be--

`(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

 (B) may include a reasonable profit.

 (2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC-

 (A) IN GENERAL- For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

 (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

 (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

 (B) RULES OF CONSTRUCTION- This paragraph shall not be construed--

 (i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

 (ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

 (3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES- For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

 (e) APPROVAL BY STATE COMMISSION-

 (1) APPROVAL REQUIRED- Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

 (2) GROUNDS FOR REJECTION- The State commission may only reject--

 (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that--

`(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

`(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

`(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

`(3) PRESERVATION OF AUTHORITY- Notwithstanding paragraph (2), but subject to section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

`(4) SCHEDULE FOR DECISION- If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.

`(5) COMMISSION TO ACT IF STATE WILL NOT ACT- If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

`(6) REVIEW OF STATE COMMISSION ACTIONS- In a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the

requirements of section 251 and this section.

`(f) STATEMENTS OF GENERALLY AVAILABLE TERMS-

`(1) IN GENERAL- A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section.

`(2) STATE COMMISSION REVIEW- A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

`(3) SCHEDULE FOR REVIEW- The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission--

`(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

`(B) permit such statement to take effect.

`(4) AUTHORITY TO CONTINUE REVIEW- Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

`(5) DUTY TO NEGOTIATE NOT AFFECTED- The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251.

`(g) CONSOLIDATION OF STATE PROCEEDINGS- Where not inconsistent with the requirements of this Act, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this Act.

`(h) FILING REQUIRED- A State commission shall make a copy of each agreement approved under subsection (e) and each statement approved under subsection (f) available for public inspection and copying within 10 days after the agreement or statement is

approved. The State commission may charge a reasonable and nondiscriminatory fee to the parties to the agreement or to the party filing the statement to cover the costs of approving and filing such agreement or statement.

`(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS- A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

`(j) DEFINITION OF INCUMBENT LOCAL EXCHANGE CARRIER- For purposes of this section, the term `incumbent local exchange carrier' has the meaning provided in section 251(h).

`SEC. 253. REMOVAL OF BARRIERS TO ENTRY.

`(a) IN GENERAL- No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

`(b) STATE REGULATORY AUTHORITY- Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

`(c) STATE AND LOCAL GOVERNMENT AUTHORITY- Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

`(d) PREEMPTION- If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

`(e) COMMERCIAL MOBILE SERVICE PROVIDERS- Nothing in this section shall affect the application of section 332(c)(3) to commercial mobile service providers.

`(f) RURAL MARKETS- It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements

in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--

`(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and

`(2) to a provider of commercial mobile services.

`SEC. 254. UNIVERSAL SERVICE.

`(a) PROCEDURES TO REVIEW UNIVERSAL SERVICE REQUIREMENTS-

`(1) FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE- Within one month after the date of enactment of the Telecommunications Act of 1996, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations. In addition to the members of the Joint Board required under section 410(c), one member of such Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates. The Joint Board shall, after notice and opportunity for public comment, make its recommendations to the Commission 9 months after the date of enactment of the Telecommunications Act of 1996.

`(2) COMMISSION ACTION- The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (1) and shall complete such proceeding within 15 months after the date of enactment of the Telecommunications Act of 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.

`(b) UNIVERSAL SERVICE PRINCIPLES- The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

`(1) QUALITY AND RATES- Quality services should be available at just, reasonable, and affordable rates.

`(2) ACCESS TO ADVANCED SERVICES- Access to advanced telecommunications and information services should be provided in all regions of the Nation.

`(3) ACCESS IN RURAL AND HIGH COST AREAS- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

`(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS- All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

`(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS- There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

`(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES- Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

`(7) ADDITIONAL PRINCIPLES- Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

`(c) DEFINITION-

`(1) IN GENERAL- Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services--

`(A) are essential to education, public health, or public safety;

`(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

`(C) are being deployed in public telecommunications networks by telecommunications carriers; and

`(D) are consistent with the public interest, convenience, and necessity.

`(2) ALTERATIONS AND MODIFICATIONS- The Joint Board may, from time to time, recommend to the Commission modifications in the

definition of the services that are supported by Federal universal service support mechanisms.

`(3) SPECIAL SERVICES- In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h).

`(d) TELECOMMUNICATIONS CARRIER CONTRIBUTION- Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.

`(e) UNIVERSAL SERVICE SUPPORT- After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

`(f) STATE AUTHORITY- A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

`(g) INTEREXCHANGE AND INTERSTATE SERVICES- Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to

subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

`(h) TELECOMMUNICATIONS SERVICES FOR CERTAIN PROVIDERS-

`(1) IN GENERAL-

`(A) HEALTH CARE PROVIDERS FOR RURAL AREAS- A

telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.

`(B) EDUCATIONAL PROVIDERS AND LIBRARIES- All

telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. A telecommunications carrier providing service under this paragraph shall--

`(i) have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or

`(ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing

the support mechanisms to preserve and advance universal service.

`(2) **ADVANCED SERVICES**- The Commission shall establish competitively neutral rules--

`(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries; and

`(B) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.

`(3) **TERMS AND CONDITIONS**- Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.

`(4) **ELIGIBILITY OF USERS**- No entity listed in this subsection shall be entitled to preferential rates or treatment as required by this subsection, if such entity operates as a for-profit business, is a school described in paragraph (5)(A) with an endowment of more than \$50,000,000, or is a library not eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act (20 U.S.C. 335c et seq.).

`(5) **DEFINITIONS**- For purposes of this subsection:

`(A) **ELEMENTARY AND SECONDARY SCHOOLS**- The term 'elementary and secondary schools' means elementary schools and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

`(B) **HEALTH CARE PROVIDER**- The term 'health care provider' means--

`(i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

`(ii) community health centers or health centers providing health care to migrants;

`(iii) local health departments or agencies;

`(iv) community mental health centers;

`(v) not-for-profit hospitals;

`(vi) rural health clinics; and

`(vii) consortia of health care providers consisting of one or more entities described in clauses (i)

through (vi).

`(C) PUBLIC INSTITUTIONAL TELECOMMUNICATIONS USER- The term `public institutional telecommunications user' means an elementary or secondary school, a library, or a health care provider as those terms are defined in this paragraph.

`(i) CONSUMER PROTECTION- The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.

`(j) LIFELINE ASSISTANCE- Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.

`(k) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED- A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

`SEC. 255. ACCESS BY PERSONS WITH DISABILITIES.

`(a) DEFINITIONS- As used in this section--

`(1) DISABILITY- The term `disability' has the meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)(A)).

`(2) READILY ACHIEVABLE- The term `readily achievable' has the meaning given to it by section 301(9) of that Act (42 U.S.C. 12181(9)).

`(b) MANUFACTURING- A manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.

`(c) TELECOMMUNICATIONS SERVICES- A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.

`(d) COMPATIBILITY- Whenever the requirements of subsections (b) and (c) are not readily achievable, such a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

`(e) GUIDELINES- Within 18 months after the date of enactment of the Telecommunications Act of 1996, the Architectural and Transportation Barriers Compliance Board shall develop guidelines for accessibility of telecommunications equipment and customer premises equipment in conjunction with the Commission. The Board shall review and update the guidelines periodically.

`(f) NO ADDITIONAL PRIVATE RIGHTS AUTHORIZED- Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

`SEC. 256. COORDINATION FOR INTERCONNECTIVITY.

`(a) PURPOSE- It is the purpose of this section--

`(1) to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service through--

`(A) coordinated public telecommunications network planning and design by telecommunications carriers and other providers of telecommunications service; and

`(B) public telecommunications network interconnectivity, and interconnectivity of devices with such networks used to provide telecommunications service; and

`(2) to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

`(b) COMMISSION FUNCTIONS- In carrying out the purposes of this section, the Commission--

`(1) shall establish procedures for Commission oversight of coordinated network planning by telecommunications carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service; and

`(2) may participate, in a manner consistent with its authority and practice prior to the date of enactment of this section, in the development by appropriate industry standards-setting organizations of public telecommunications network interconnectivity standards that promote access to--

`(A) public telecommunications networks used to provide telecommunications service;

`(B) network capabilities and services by individuals with disabilities; and

`(C) information services by subscribers of rural telephone companies.

`(c) COMMISSION'S AUTHORITY- Nothing in this section shall be

construed as expanding or limiting any authority that the Commission may have under law in effect before the date of enactment of the Telecommunications Act of 1996.

`(d) DEFINITION- As used in this section, the term `public telecommunications network interconnectivity' means the ability of two or more public telecommunications networks used to provide telecommunications service to communicate and exchange information without degeneration, and to interact in concert with one another.

`SEC. 257. MARKET ENTRY BARRIERS PROCEEDING.

`(a) ELIMINATION OF BARRIERS- Within 15 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

`(b) NATIONAL POLICY- In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

`(c) PERIODIC REVIEW- Every 3 years following the completion of the proceeding required by subsection (a), the Commission shall review and report to Congress on--

`(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) and that can be prescribed consistent with the public interest, convenience, and necessity; and

`(2) the statutory barriers identified under subsection (a) that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity.

`SEC. 258. ILLEGAL CHANGES IN SUBSCRIBER CARRIER SELECTIONS.

`(a) PROHIBITION- No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

`(b) LIABILITY FOR CHARGES- Any telecommunications carrier that violates the verification procedures described in subsection (a) and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the

carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the Commission may prescribe. The remedies provided by this subsection are in addition to any other remedies available by law.

SEC. 259. INFRASTRUCTURE SHARING.

(a) REGULATIONS REQUIRED- The Commission shall prescribe, within one year after the date of enactment of the Telecommunications Act of 1996, regulations that require incumbent local exchange carriers (as defined in section 251(h)) to make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which such qualifying carrier has requested and obtained designation as an eligible telecommunications carrier under section 214(e).

(b) TERMS AND CONDITIONS OF REGULATIONS- The regulations prescribed by the Commission pursuant to this section shall--

(1) not require a local exchange carrier to which this section applies to take any action that is economically unreasonable or that is contrary to the public interest;

(2) permit, but shall not require, the joint ownership or operation of public switched network infrastructure and services by or among such local exchange carrier and a qualifying carrier;

(3) ensure that such local exchange carrier will not be treated by the Commission or any State as a common carrier for hire or as offering common carrier services with respect to any infrastructure, technology, information, facilities, or functions made available to a qualifying carrier in accordance with regulations issued pursuant to this section;

(4) ensure that such local exchange carrier makes such infrastructure, technology, information, facilities, or functions available to a qualifying carrier on just and reasonable terms and conditions that permit such qualifying carrier to fully benefit from the economies of scale and scope of such local exchange carrier, as determined in accordance with guidelines prescribed by the Commission in regulations issued pursuant to this section;

(5) establish conditions that promote cooperation between local exchange carriers to which this section applies and qualifying carriers;

(6) not require a local exchange carrier to which this

section applies to engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to consumers by the qualifying carrier in such local exchange carrier's telephone exchange area; and

`(7) require that such local exchange carrier file with the Commission or State for public inspection, any tariffs, contracts, or other arrangements showing the rates, terms, and conditions under which such carrier is making available public switched network infrastructure and functions under this section.

`(c) **INFORMATION CONCERNING DEPLOYMENT OF NEW SERVICES AND EQUIPMENT-** A local exchange carrier to which this section applies that has entered into an infrastructure sharing agreement under this section shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including any software or upgrades of software integral to the use or operation of such telecommunications equipment.

`(d) **DEFINITION-** For purposes of this section, the term 'qualifying carrier' means a telecommunications carrier that--

`(1) lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this section; and

`(2) offers telephone exchange service, exchange access, and any other service that is included in universal service, to all consumers without preference throughout the service area for which such carrier has been designated as an eligible telecommunications carrier under section 214(e).

`**SEC. 260. PROVISION OF TELEMESSAGING SERVICE.**

`(a) **NONDISCRIMINATION SAFEGUARDS-** Any local exchange carrier subject to the requirements of section 251(c) that provides telemessaging service--

`(1) shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access; and

`(2) shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services.

`(b) **EXPEDITED CONSIDERATION OF COMPLAINTS-** The Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (a) or the regulations thereunder that result in material financial harm to a provider of telemessaging service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged

violation occurred, the Commission shall, within 60 days after receipt of the complaint, order the local exchange carrier and any affiliates to cease engaging in such violation pending such final determination.

`(c) DEFINITION- As used in this section, the term `telemessaging service' means voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services.

`SEC. 261. EFFECT ON OTHER REQUIREMENTS.

`(a) COMMISSION REGULATIONS- Nothing in this part shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996 in fulfilling the requirements of this part, to the extent that such regulations are not inconsistent with the provisions of this part.

`(b) EXISTING STATE REGULATIONS- Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996, or from prescribing regulations after such date of enactment, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part.

`(c) ADDITIONAL STATE REQUIREMENTS- Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.'

(b) DESIGNATION OF PART I- Title II of the Act is further amended by inserting before the heading of section 201 the following new heading:

`PART I--COMMON CARRIER REGULATION'.

(c) STYLISTIC CONSISTENCY- The Act is amended so that--

(1) the designation and heading of each title of the Act shall be in the form and typeface of the designation and heading of this title of this Act; and

(2) the designation and heading of each part of each title of the Act shall be in the form and typeface of the designation and heading of part I of title II of the Act, as amended by subsection (a).

SEC. 102. ELIGIBLE TELECOMMUNICATIONS CARRIERS.

(a) IN GENERAL- Section 214 (47 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

`(e) PROVISION OF UNIVERSAL SERVICE-

`(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS- A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

`(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

`(B) advertise the availability of such services and the charges therefor using media of general distribution.

`(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS- A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

`(3) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR UNSERVED AREAS- If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier

for that community or portion thereof.

`(4) RELINQUISHMENT OF UNIVERSAL SERVICE- A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

`(5) SERVICE AREA DEFINED- The term `service area' means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, `service area' means such company's `study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.'

SEC. 103. EXEMPT TELECOMMUNICATIONS COMPANIES.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 and following) is amended by redesignating sections 34 and 35 as sections 35 and 36, respectively, and by inserting the following new section after section 33:

`SEC. 34. EXEMPT TELECOMMUNICATIONS COMPANIES.

`(a) DEFINITIONS- For purposes of this section--

`(1) EXEMPT TELECOMMUNICATIONS COMPANY- The term `exempt telecommunications company' means any person determined by the Federal Communications Commission to be engaged directly or indirectly, wherever located, through one or more affiliates (as defined in section 2(a)(11)(B)), and exclusively in the business of providing---

- `(A) telecommunications services;
- `(B) information services;
- `(C) other services or products subject to the jurisdiction of the Federal Communications Commission; or
- `(D) products or services that are related or incidental to the provision of a product or service described in subparagraph (A), (B), or (C).

No person shall be deemed to be an exempt telecommunications company under this section unless such person has applied to the Federal Communications Commission for a determination under this paragraph. A person applying in good faith for such a determination shall be deemed an exempt telecommunications company under this section, with all of the exemptions provided by this section, until the Federal Communications Commission makes such determination. The Federal Communications Commission shall make such determination within 60 days of its receipt of any such application filed after the enactment of this section and shall notify the Commission whenever a determination is made under this paragraph that any person is an exempt telecommunications company. Not later than 12 months after the date of enactment of this section, the Federal Communications Commission shall promulgate rules implementing the provisions of this paragraph which shall be applicable to applications filed under this paragraph after the effective date of such rules.

`(2) OTHER TERMS- For purposes of this section, the terms `telecommunications services' and `information services' shall have the same meanings as provided in the Communications Act of 1934.

`(b) STATE CONSENT FOR SALE OF EXISTING RATE-BASED FACILITIES- If a rate or charge for the sale of electric energy or natural gas (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) for, or in connection with, assets of a public utility company that is an associate company or affiliate of a registered holding company was in effect under the laws of any State as of December 19, 1995, the public utility company owning such assets may not sell such assets to an exempt telecommunications company that is an associate company or affiliate unless State commissions having jurisdiction over such public utility company approve such sale. Nothing in this subsection shall preempt the otherwise applicable authority of any State to approve or disapprove the sale of such assets. The approval of the Commission under this Act shall not be required for the sale of assets as provided in this subsection.

`(c) OWNERSHIP OF ETCS BY EXEMPT HOLDING COMPANIES-

Notwithstanding any provision of this Act, a holding company that is exempt under section 3 of this Act shall be permitted, without condition or limitation under this Act, to acquire and maintain an interest in the business of one or more exempt telecommunications companies.

`(d) OWNERSHIP OF ETCS BY REGISTERED HOLDING COMPANIES-

Notwithstanding any provision of this Act, a registered holding company shall be permitted (without the need to apply for, or receive, approval from the Commission, and otherwise without condition under this Act) to acquire and hold the securities, or an interest in the business, of one or more exempt telecommunications companies.

`(e) FINANCING AND OTHER RELATIONSHIPS BETWEEN ETCS AND REGISTERED HOLDING COMPANIES- The relationship between an exempt telecommunications company and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this Act: [*Italic->*]

Provided, [*Italic*] That--

`(1) section 11 of this Act shall not prohibit the ownership of an interest in the business of one or more exempt telecommunications companies by a registered holding company (regardless of activities engaged in or where facilities owned or operated by such exempt telecommunications companies are located), and such ownership by a registered holding company shall be deemed consistent with the operation of an integrated public utility system;

`(2) the ownership of an interest in the business of one or more exempt telecommunications companies by a registered holding company (regardless of activities engaged in or where facilities owned or operated by such exempt telecommunications companies are located) shall be considered as reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system;

`(3) the Commission shall have no jurisdiction under this Act over, and there shall be no restriction or approval required under this Act with respect to (A) the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt telecommunications company, or (B) the guarantee of a security of an exempt telecommunications company by a registered holding company; and

`(4) except for costs that should be fairly and equitably allocated among companies that are associate companies of a registered holding company, the Commission shall have no jurisdiction under this Act over the sales, service, and construction contracts between an exempt telecommunications

company and a registered holding company, its affiliates and associate companies.

^(f) REPORTING OBLIGATIONS CONCERNING INVESTMENTS AND ACTIVITIES

OF REGISTERED PUBLIC-UTILITY HOLDING COMPANY SYSTEMS-

^(1) OBLIGATIONS TO REPORT INFORMATION- Any registered holding company or subsidiary thereof that acquires or holds the securities, or an interest in the business, of an exempt telecommunications company shall file with the Commission such information as the Commission, by rule, may prescribe concerning--

^(A) investments and activities by the registered holding company, or any subsidiary thereof, with respect to exempt telecommunications companies, and

^(B) any activities of an exempt telecommunications company within the holding company system, that are reasonably likely to have a material impact on the financial or operational condition of the holding company system.

^(2) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION- If, based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of any registered holding company or any subsidiary thereof (including an exempt telecommunications company), the Commission may require such registered holding company to make additional reports and provide additional information.

^(3) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION- Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold the information from Congress, or prevent the Commission from complying with a request for information from any other Federal or State department or agency requesting the information for purposes within the scope of its jurisdiction. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

^(g) ASSUMPTION OF LIABILITIES- Any public utility company that is an associate company, or an affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an exempt

telecommunications company. Any public utility company that is an associate company, or an affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not assume any obligation or liability as guarantor, endorser, surety, or otherwise by the public utility company in respect of any security of an exempt telecommunications company.

`(h) PLEDGING OR MORTGAGING OF ASSETS- Any public utility company that is an associate company, or affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not pledge, mortgage, or otherwise use as collateral any assets of the public utility company or assets of any subsidiary company thereof for the benefit of an exempt telecommunications company.

`(i) PROTECTION AGAINST ABUSIVE AFFILIATE TRANSACTIONS- A public utility company may enter into a contract to purchase services or products described in subsection (a)(1) from an exempt telecommunications company that is an affiliate or associate company of the public utility company only if--

`(1) every State commission having jurisdiction over the retail rates of such public utility company approves such contract; or

`(2) such public utility company is not subject to State commission retail rate regulation and the purchased services or products--

`(A) would not be resold to any affiliate or associate company; or

`(B) would be resold to an affiliate or associate company and every State commission having jurisdiction over the retail rates of such affiliate or associate company makes the determination required by subparagraph (A).

The requirements of this subsection shall not apply in any case in which the State or the State commission concerned publishes a notice that the State or State commission waives its authority under this subsection.

`(j) NONPREEMPTION OF RATE AUTHORITY- Nothing in this Act shall preclude the Federal Energy Regulatory Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company may recover in rates the costs of products or services purchased from or sold to an associate company or affiliate that is an exempt telecommunications company, regardless of whether such costs are incurred through the direct or indirect purchase or sale of products or services from such associate company or affiliate.

`(k) RECIPROCAL ARRANGEMENTS PROHIBITED- Reciprocal arrangements

among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited.

`(l) BOOKS AND RECORDS- (1) Upon written order of a State commission, a State commission may examine the books, accounts, memoranda, contracts, and records of--

`(A) a public utility company subject to its regulatory authority under State law;

`(B) any exempt telecommunications company selling products or services to such public utility company or to an associate company of such public utility company; and

`(C) any associate company or affiliate of an exempt telecommunications company which sells products or services to a public utility company referred to in subparagraph (A), wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric or gas service in connection with the activities of such exempt telecommunications company.

`(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

`(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

`(4) Nothing in this section shall--

`(A) preempt applicable State law concerning the provision of records and other information; or

`(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

`(m) INDEPENDENT AUDIT AUTHORITY FOR STATE COMMISSIONS-

`(1) STATE MAY ORDER AUDIT- Any State commission with jurisdiction over a public utility company that--

`(A) is an associate company of a registered holding company; and

`(B) transacts business, directly or indirectly, with a subsidiary company, an affiliate or an associate company that is an exempt telecommunications company, may order an independent audit to be performed, no more frequently than on an annual basis, of all matters deemed relevant by the selected auditor that reasonably relate to retail rates: [Italic->] Provided [<-Italic] , That such matters relate, directly or indirectly, to transactions or transfers between the public utility company subject to its jurisdiction and such exempt telecommunications company.

`(2) SELECTION OF FIRM TO CONDUCT AUDIT- (A) If a State

commission orders an audit in accordance with paragraph (1), the public utility company and the State commission shall jointly select, within 60 days, a firm to perform the audit. The firm selected to perform the audit shall possess demonstrated qualifications relating to--

`(i) competency, including adequate technical training and professional proficiency in each discipline necessary to carry out the audit; and

`(ii) independence and objectivity, including that the firm be free from personal or external impairments to independence, and should assume an independent position with the State commission and auditee, making certain that the audit is based upon an impartial consideration of all pertinent facts and responsible opinions.

`(B) The public utility company and the exempt telecommunications company shall cooperate fully with all reasonable requests necessary to perform the audit and the public utility company shall bear all costs of having the audit performed.

`(3) AVAILABILITY OF AUDITOR'S REPORT- The auditor's report shall be provided to the State commission not later than 6 months after the selection of the auditor, and provided to the public utility company not later than 60 days thereafter.

`(n) APPLICABILITY OF TELECOMMUNICATIONS REGULATION- Nothing in this section shall affect the authority of the Federal Communications Commission under the Communications Act of 1934, or the authority of State commissions under State laws concerning the provision of telecommunications services, to regulate the activities of an exempt telecommunications company.'

SEC. 104. NONDISCRIMINATION PRINCIPLE.

Section 1 (47 U.S.C. 151) is amended by inserting after `to all the people of the United States' the following: `, without discrimination on the basis of race, color, religion, national origin, or sex,'.

SUBTITLE B--SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

SEC. 151. BELL OPERATING COMPANY PROVISIONS.

(a) ESTABLISHMENT OF PART III OF TITLE II- Title II is amended by adding at the end of part II (as added by section 101) the following new part:

`PART III--SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

`SEC. 271. BELL OPERATING COMPANY ENTRY INTO INTERLATA SERVICES.

`(a) GENERAL LIMITATION- Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA

services except as provided in this section.

`(b) INTERLATA SERVICES TO WHICH THIS SECTION APPLIES-

`(1) IN-REGION SERVICES- A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating in any of its in-region States (as defined in subsection (i)) if the Commission approves the application of such company for such State under subsection (d)(3).

`(2) OUT-OF-REGION SERVICES- A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating outside its in-region States after the date of enactment of the Telecommunications Act of 1996, subject to subsection (j).

`(3) INCIDENTAL INTERLATA SERVICES- A Bell operating company, or any affiliate of a Bell operating company, may provide incidental interLATA services (as defined in subsection (g)) originating in any State after the date of enactment of the Telecommunications Act of 1996.

`(4) TERMINATION- Nothing in this section prohibits a Bell operating company or any of its affiliates from providing termination for interLATA services, subject to subsection (j).

`(c) REQUIREMENTS FOR PROVIDING CERTAIN IN-REGION INTERLATA SERVICES-

`(1) AGREEMENT OR STATEMENT- A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought.

`(A) PRESENCE OF A FACILITIES-BASED COMPETITOR- A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall

not be considered to be telephone exchange services.

`(B) FAILURE TO REQUEST ACCESS- A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f). For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252, or (ii) violated the terms of an agreement approved under section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

`(2) SPECIFIC INTERCONNECTION REQUIREMENTS-

`(A) AGREEMENT REQUIRED- A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought--

`(i)(I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or

`(II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B), and

`(ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

`(B) COMPETITIVE CHECKLIST- Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

`(i) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).

`(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).

`(iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the

Bell operating company at just and reasonable rates in accordance with the requirements of section 224.

`(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

`(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

`(vi) Local switching unbundled from transport, local loop transmission, or other services.

`(vii) Nondiscriminatory access to--

`(I) 911 and E911 services;

`(II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

`(III) operator call completion services.

`(viii) White pages directory listings for customers of the other carrier's telephone exchange service.

`(ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

`(x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

`(xi) Until the date by which the Commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

`(xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).

`(xiii) Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).

`(xiv) Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

`(d) ADMINISTRATIVE PROVISIONS-

`(1) APPLICATION TO COMMISSION- On and after the date of

enactment of the Telecommunications Act of 1996, a Bell operating company or its affiliate may apply to the Commission for authorization to provide interLATA services originating in any in-region State. The application shall identify each State for which the authorization is sought.

`(2) CONSULTATION-

`(A) CONSULTATION WITH THE ATTORNEY GENERAL- The Commission shall notify the Attorney General promptly of any application under paragraph (1). Before making any determination under this subsection, the Commission shall consult with the Attorney General, and if the Attorney General submits any comments in writing, such comments shall be included in the record of the Commission's decision. In consulting with and submitting comments to the Commission under this paragraph, the Attorney General shall provide to the Commission an evaluation of the application using any standard the Attorney General considers appropriate. The Commission shall give substantial weight to the Attorney General's evaluation, but such evaluation shall not have any preclusive effect on any Commission decision under paragraph (3).

`(B) CONSULTATION WITH STATE COMMISSIONS- Before making any determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

`(3) DETERMINATION- Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination approving or denying the authorization requested in the application for each State. The Commission shall not approve the authorization requested in an application submitted under paragraph (1) unless it finds that--

`(A) the petitioning Bell operating company has met the requirements of subsection (c)(1) and--

`(i) with respect to access and interconnection provided pursuant to subsection (c)(1)(A), has fully implemented the competitive checklist in subsection (c)(2)(B); or

`(ii) with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B), such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B);

`(B) the requested authorization will be carried out in

accordance with the requirements of section 272; and
`C) the requested authorization is consistent with the public interest, convenience, and necessity.

The Commission shall state the basis for its approval or denial of the application.

`4) LIMITATION ON COMMISSION- The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).

`5) PUBLICATION- Not later than 10 days after issuing a determination under paragraph (3), the Commission shall publish in the Federal Register a brief description of the determination.

`6) ENFORCEMENT OF CONDITIONS-

`A) COMMISSION AUTHORITY- If at any time after the approval of an application under paragraph (3), the Commission determines that a Bell operating company has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing--

`i) issue an order to such company to correct the deficiency;

`ii) impose a penalty on such company pursuant to title V; or

`iii) suspend or revoke such approval.

`B) RECEIPT AND REVIEW OF COMPLAINTS- The Commission shall establish procedures for the review of complaints concerning failures by Bell operating companies to meet conditions required for approval under paragraph (3).

Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

`e) LIMITATIONS-

`1) JOINT MARKETING OF LOCAL AND LONG DISTANCE SERVICES-

Until a Bell operating company is authorized pursuant to subsection (d) to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier.

`2) INTRALATA TOLL DIALING PARITY-

`A) PROVISION REQUIRED- A Bell operating company granted authority to provide interLATA services under subsection (d) shall provide intraLATA toll dialing parity throughout that State coincident with its exercise of that authority.

`(B) LIMITATION- Except for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require a Bell operating company to implement intraLATA toll dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after the date of enactment of the Telecommunications Act of 1996, whichever is earlier. Nothing in this subparagraph precludes a State from issuing an order requiring intraLATA toll dialing parity in that State prior to either such date so long as such order does not take effect until after the earlier of either such dates.

`(f) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES- Neither subsection (a) nor section 273 shall prohibit a Bell operating company or affiliate from engaging, at any time after the date of enactment of the Telecommunications Act of 1996, in any activity to the extent authorized by, and subject to the terms and conditions contained in, an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree if such order was entered on or before such date of enactment, to the extent such order is not reversed or vacated on appeal. Nothing in this subsection shall be construed to limit, or to impose terms or conditions on, an activity in which a Bell operating company is otherwise authorized to engage under any other provision of this section.

`(g) DEFINITION OF INCIDENTAL INTERLATA SERVICES- For purposes of this section, the term 'incidental interLATA services' means the interLATA provision by a Bell operating company or its affiliate--

`(1)(A) of audio programming, video programming, or other programming services to subscribers to such services of such company or affiliate;

`(B) of the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services;

`(C) to distributors of audio programming or video programming that such company or affiliate owns or controls, or is licensed by the copyright owner of such programming (or by an assignee of such owner) to distribute; or

`(D) of alarm monitoring services;

`(2) of two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5);

`(3) of commercial mobile services in accordance with section

332(c) of this Act and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;

`(4) of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA;

`(5) of signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier; or

`(6) of network control signaling information to, and receipt of such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

`(h) LIMITATIONS- The provisions of subsection (g) are intended to be narrowly construed. The interLATA services provided under subparagraph (A), (B), or (C) of subsection (g)(1) are limited to those interLATA transmissions incidental to the provision by a Bell operating company or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public. The Commission shall ensure that the provision of services authorized under subsection (g) by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market.

`(i) ADDITIONAL DEFINITIONS- As used in this section--

`(1) IN-REGION STATE- The term 'in-region State' means a State in which a Bell operating company or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on the day before the date of enactment of the Telecommunications Act of 1996.

`(2) AUDIO PROGRAMMING SERVICES- The term 'audio programming services' means programming provided by, or generally considered to be comparable to programming provided by, a radio broadcast station.

`(3) VIDEO PROGRAMMING SERVICES; OTHER PROGRAMMING SERVICES- The terms 'video programming service' and 'other programming services' have the same meanings as such terms have under section 602 of this Act.

`(j) CERTAIN SERVICE APPLICATIONS TREATED AS IN-REGION SERVICE APPLICATIONS- For purposes of this section, a Bell operating company application to provide 800 service, private line service, or their equivalents that--

`(1) terminate in an in-region State of that Bell operating

company, and

`(2) allow the called party to determine the interLATA carrier, shall be considered an in-region service subject to the requirements of subsection (b)(1).

`SEC. 272. SEPARATE AFFILIATE; SAFEGUARDS.

`(a) SEPARATE AFFILIATE REQUIRED FOR COMPETITIVE ACTIVITIES-

`(1) IN GENERAL- A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) may not provide any service described in paragraph (2) unless it provides that service through one or more affiliates that--

`(A) are separate from any operating company entity that is subject to the requirements of section 251(c); and

`(B) meet the requirements of subsection (b).

`(2) SERVICES FOR WHICH A SEPARATE AFFILIATE IS REQUIRED- The services for which a separate affiliate is required by paragraph (1) are:

`(A) Manufacturing activities (as defined in section 273(h)).

`(B) Origination of interLATA telecommunications services, other than--

`(i) incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g);

`(ii) out-of-region services described in section 271(b)(2); or

`(iii) previously authorized activities described in section 271(f).

`(C) InterLATA information services, other than electronic publishing (as defined in section 274(h)) and alarm monitoring services (as defined in section 275(e)).

`(b) STRUCTURAL AND TRANSACTIONAL REQUIREMENTS- The separate affiliate required by this section--

`(1) shall operate independently from the Bell operating company;

`(2) shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate;

`(3) shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate;

`(4) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company; and

`(5) shall conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis

with any such transactions reduced to writing and available for public inspection.

`(c) NONDISCRIMINATION SAFEGUARDS- In its dealings with its affiliate described in subsection (a), a Bell operating company--

`(1) may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards; and

`(2) shall account for all transactions with an affiliate described in subsection (a) in accordance with accounting principles designated or approved by the Commission.

`(d) BIENNIAL AUDIT-

`(1) GENERAL REQUIREMENT- A company required to operate a separate affiliate under this section shall obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under subsection (b).

`(2) RESULTS SUBMITTED TO COMMISSION; STATE COMMISSIONS- The auditor described in paragraph (1) shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection. Any party may submit comments on the final audit report.

`(3) ACCESS TO DOCUMENTS- For purposes of conducting audits and reviews under this subsection--

`(A) the independent auditor, the Commission, and the State commission shall have access to the financial accounts and records of each company and of its affiliates necessary to verify transactions conducted with that company that are relevant to the specific activities permitted under this section and that are necessary for the regulation of rates;

`(B) the Commission and the State commission shall have access to the working papers and supporting materials of any auditor who performs an audit under this section; and

`(C) the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

`(e) FULFILLMENT OF CERTAIN REQUESTS- A Bell operating company and an affiliate that is subject to the requirements of section 251(c)--

`(1) shall fulfill any requests from an unaffiliated entity

for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;

`(2) shall not provide any facilities, services, or information concerning its provision of exchange access to the affiliate described in subsection (a) unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions;

`(3) shall charge the affiliate described in subsection (a), or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service; and

`(4) may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.

`(f) SUNSET-

`(1) MANUFACTURING AND LONG DISTANCE- The provisions of this section (other than subsection (e)) shall cease to apply with respect to the manufacturing activities or the interLATA telecommunications services of a Bell operating company 3 years after the date such Bell operating company or any Bell operating company affiliate is authorized to provide interLATA telecommunications services under section 271(d), unless the Commission extends such 3-year period by rule or order.

`(2) INTERLATA INFORMATION SERVICES- The provisions of this section (other than subsection (e)) shall cease to apply with respect to the interLATA information services of a Bell operating company 4 years after the date of enactment of the Telecommunications Act of 1996, unless the Commission extends such 4-year period by rule or order.

`(3) PRESERVATION OF EXISTING AUTHORITY- Nothing in this subsection shall be construed to limit the authority of the Commission under any other section of this Act to prescribe safeguards consistent with the public interest, convenience, and necessity.

`(g) JOINT MARKETING-

`(1) AFFILIATE SALES OF TELEPHONE EXCHANGE SERVICES- A Bell operating company affiliate required by this section may not market or sell telephone exchange services provided by the Bell

operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.

`(2) BELL OPERATING COMPANY SALES OF AFFILIATE SERVICES- A

Bell operating company may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d).

`(3) RULE OF CONSTRUCTION- The joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection (c).

`(h) TRANSITION- With respect to any activity in which a Bell operating company is engaged on the date of enactment of the Telecommunications Act of 1996, such company shall have one year from such date of enactment to comply with the requirements of this section.

`SEC. 273. MANUFACTURING BY BELL OPERATING COMPANIES.

`(a) AUTHORIZATION- A Bell operating company may manufacture and provide telecommunications equipment, and manufacture customer premises equipment, if the Commission authorizes that Bell operating company or any Bell operating company affiliate to provide interLATA services under section 271(d), subject to the requirements of this section and the regulations prescribed thereunder, except that neither a Bell operating company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates.

`(b) COLLABORATION; RESEARCH AND ROYALTY AGREEMENTS-

`(1) COLLABORATION- Subsection (a) shall not prohibit a Bell operating company from engaging in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.

`(2) CERTAIN RESEARCH ARRANGEMENTS; ROYALTY AGREEMENTS- Subsection (a) shall not prohibit a Bell operating company from--

`(A) engaging in research activities related to manufacturing, and

`(B) entering into royalty agreements with manufacturers of telecommunications equipment.

`(c) INFORMATION REQUIREMENTS-

`(1) INFORMATION ON PROTOCOLS AND TECHNICAL REQUIREMENTS-

Each Bell operating company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect

to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Each such company shall report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

`(2) DISCLOSURE OF INFORMATION- A Bell operating company shall not disclose any information required to be filed under paragraph (1) unless that information has been filed promptly, as required by regulation by the Commission.

`(3) ACCESS BY COMPETITORS TO INFORMATION- The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers have access to the information with respect to the protocols and technical requirements for connection with and use of telephone exchange service facilities that a Bell operating company makes available to any manufacturing affiliate or any unaffiliated manufacturer.

`(4) PLANNING INFORMATION- Each Bell operating company shall provide, to interconnecting carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.

`(d) MANUFACTURING LIMITATIONS FOR STANDARD-SETTING ORGANIZATIONS-

`(1) APPLICATION TO BELL COMMUNICATIONS RESEARCH OR MANUFACTURERS- Bell Communications Research, Inc., or any successor entity or affiliate--

`(A) shall not be considered a Bell operating company or a successor or assign of a Bell operating company at such time as it is no longer an affiliate of any Bell operating company; and

`(B) notwithstanding paragraph (3), shall not engage in manufacturing telecommunications equipment or customer premises equipment as long as it is an affiliate of more than 1 otherwise unaffiliated Bell operating company or successor or assign of any such company.

Nothing in this subsection prohibits Bell Communications Research, Inc., or any successor entity, from engaging in any activity in which it is lawfully engaged on the date of enactment of the Telecommunications Act of 1996. Nothing provided in this subsection shall render Bell Communications Research, Inc., or any successor entity, a common carrier under title II of this Act. Nothing in this subsection restricts any manufacturer from engaging in any activity in which it is lawfully engaged on the date of enactment of the

Telecommunications Act of 1996.

`(2) PROPRIETARY INFORMATION- Any entity which establishes standards for telecommunications equipment or customer premises equipment, or generic network requirements for such equipment, or certifies telecommunications equipment or customer premises equipment, shall be prohibited from releasing or otherwise using any proprietary information, designated as such by its owner, in its possession as a result of such activity, for any purpose other than purposes authorized in writing by the owner of such information, even after such entity ceases to be so engaged.

`(3) MANUFACTURING SAFEGUARDS- (A) Except as prohibited in paragraph (1), and subject to paragraph (6), any entity which certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity shall only manufacture a particular class of telecommunications equipment or customer premises equipment for which it is undertaking or has undertaken, during the previous 18 months, certification activity for such class of equipment through a separate affiliate.

`(B) Such separate affiliate shall--

- `(i) maintain books, records, and accounts separate from those of the entity that certifies such equipment, consistent with generally acceptable accounting principles;
- `(ii) not engage in any joint manufacturing activities with such entity; and
- `(iii) have segregated facilities and separate employees with such entity.

`(C) Such entity that certifies such equipment shall--

- `(i) not discriminate in favor of its manufacturing affiliate in the establishment of standards, generic requirements, or product certification;
- `(ii) not disclose to the manufacturing affiliate any proprietary information that has been received at any time from an unaffiliated manufacturer, unless authorized in writing by the owner of the information; and
- `(iii) not permit any employee engaged in product certification for telecommunications equipment or customer premises equipment to engage jointly in sales or marketing of any such equipment with the affiliated manufacturer.

`(4) STANDARD-SETTING ENTITIES- Any entity that is not an accredited standards development organization and that establishes industry-wide standards for telecommunications equipment or customer premises equipment, or industry-wide generic network requirements for such equipment, or that

certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity, shall--

`(A) establish and publish any industry-wide standard for, industry-wide generic requirement for, or any substantial modification of an existing industry-wide standard or industry-wide generic requirement for, telecommunications equipment or customer premises equipment only in compliance with the following procedure--

`(i) such entity shall issue a public notice of its consideration of a proposed industry-wide standard or industry-wide generic requirement;

`(ii) such entity shall issue a public invitation to interested industry parties to fund and participate in such efforts on a reasonable and nondiscriminatory basis, administered in such a manner as not to unreasonably exclude any interested industry party;

`(iii) such entity shall publish a text for comment by such parties as have agreed to participate in the process pursuant to clause (ii), provide such parties a full opportunity to submit comments, and respond to comments from such parties;

`(iv) such entity shall publish a final text of the industry-wide standard or industry-wide generic requirement, including the comments in their entirety, of any funding party which requests to have its comments so published; and

`(v) such entity shall attempt, prior to publishing a text for comment, to agree with the funding parties as a group on a mutually satisfactory dispute resolution process which such parties shall utilize as their sole recourse in the event of a dispute on technical issues as to which there is disagreement between any funding party and the entity conducting such activities, except that if no dispute resolution process is agreed to by all the parties, a funding party may utilize the dispute resolution procedures established pursuant to paragraph (5) of this subsection;

`(B) engage in product certification for telecommunications equipment or customer premises equipment manufactured by unaffiliated entities only if--

`(i) such activity is performed pursuant to published criteria;

`(ii) such activity is performed pursuant to auditable criteria; and

`(iii) such activity is performed pursuant to

available industry-accepted testing methods and standards, where applicable, unless otherwise agreed upon by the parties funding and performing such activity;

`(C) not undertake any actions to monopolize or attempt to monopolize the market for such services; and

`(D) not preferentially treat its own telecommunications equipment or customer premises equipment, or that of its affiliate, over that of any other entity in establishing and publishing industry-wide standards or industry-wide generic requirements for, and in certification of, telecommunications equipment and customer premises equipment.

`(5) ALTERNATE DISPUTE RESOLUTION- Within 90 days after the date of enactment of the Telecommunications Act of 1996, the Commission shall prescribe a dispute resolution process to be utilized in the event that a dispute resolution process is not agreed upon by all the parties when establishing and publishing any industry-wide standard or industry-wide generic requirement for telecommunications equipment or customer premises equipment, pursuant to paragraph (4)(A)(v). The Commission shall not establish itself as a party to the dispute resolution process. Such dispute resolution process shall permit any funding party to resolve a dispute with the entity conducting the activity that significantly affects such funding party's interests, in an open, nondiscriminatory, and unbiased fashion, within 30 days after the filing of such dispute. Such disputes may be filed within 15 days after the date the funding party receives a response to its comments from the entity conducting the activity. The Commission shall establish penalties to be assessed for delays caused by referral of frivolous disputes to the dispute resolution process.

`(6) SUNSET- The requirements of paragraphs (3) and (4) shall terminate for the particular relevant activity when the Commission determines that there are alternative sources of industry-wide standards, industry-wide generic requirements, or product certification for a particular class of telecommunications equipment or customer premises equipment available in the United States. Alternative sources shall be deemed to exist when such sources provide commercially viable alternatives that are providing such services to customers. The Commission shall act on any application for such a determination within 90 days after receipt of such application, and shall receive public comment on such application.

`(7) ADMINISTRATION AND ENFORCEMENT AUTHORITY- For the purposes of administering this subsection and the regulations prescribed thereunder, the Commission shall have the same

remedial authority as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

`(8) DEFINITIONS- For purposes of this subsection:

`(A) The term `affiliate' shall have the same meaning as in section 3 of this Act, except that, for purposes of paragraph (1)(B)--

`(i) an aggregate voting equity interest in Bell Communications Research, Inc., of at least 5 percent of its total voting equity, owned directly or indirectly by more than 1 otherwise unaffiliated Bell operating company, shall constitute an affiliate relationship; and

`(ii) a voting equity interest in Bell Communications Research, Inc., by any otherwise unaffiliated Bell operating company of less than 1 percent of Bell Communications Research's total voting equity shall not be considered to be an equity interest under this paragraph.

`(B) The term `generic requirement' means a description of acceptable product attributes for use by local exchange carriers in establishing product specifications for the purchase of telecommunications equipment, customer premises equipment, and software integral thereto.

`(C) The term `industry-wide' means activities funded by or performed on behalf of local exchange carriers for use in providing wireline telephone exchange service whose combined total of deployed access lines in the United States constitutes at least 30 percent of all access lines deployed by telecommunications carriers in the United States as of the date of enactment of the Telecommunications Act of 1996.

`(D) The term `certification' means any technical process whereby a party determines whether a product, for use by more than one local exchange carrier, conforms with the specified requirements pertaining to such product.

`(E) The term `accredited standards development organization' means an entity composed of industry members which has been accredited by an institution vested with the responsibility for standards accreditation by the industry.

`(e) BELL OPERATING COMPANY EQUIPMENT PROCUREMENT AND SALES-

`(1) NONDISCRIMINATION STANDARDS FOR MANUFACTURING- In the procurement or awarding of supply contracts for telecommunications equipment, a Bell operating company, or any entity acting on its behalf, for the duration of the requirement for a separate subsidiary including manufacturing

under this Act--

`(A) shall consider such equipment, produced or supplied by unrelated persons; and

`(B) may not discriminate in favor of equipment produced or supplied by an affiliate or related person.

`(2) PROCUREMENT STANDARDS- Each Bell operating company or any entity acting on its behalf shall make procurement decisions and award all supply contracts for equipment, services, and software on the basis of an objective assessment of price, quality, delivery, and other commercial factors.

`(3) NETWORK PLANNING AND DESIGN- A Bell operating company shall, to the extent consistent with the antitrust laws, engage in joint network planning and design with local exchange carriers operating in the same area of interest. No participant in such planning shall be allowed to delay the introduction of new technology or the deployment of facilities to provide telecommunications services, and agreement with such other carriers shall not be required as a prerequisite for such introduction or deployment.

`(4) SALES RESTRICTIONS- Neither a Bell operating company engaged in manufacturing nor a manufacturing affiliate of such a company shall restrict sales to any local exchange carrier of telecommunications equipment, including software integral to the operation of such equipment and related upgrades.

`(5) PROTECTION OF PROPRIETARY INFORMATION- A Bell operating company and any entity it owns or otherwise controls shall protect the proprietary information submitted for procurement decisions from release not specifically authorized by the owner of such information.

`(f) ADMINISTRATION AND ENFORCEMENT AUTHORITY- For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell operating company or any affiliate thereof as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

`(g) ADDITIONAL RULES AND REGULATIONS- The Commission may prescribe such additional rules and regulations as the Commission determines are necessary to carry out the provisions of this section, and otherwise to prevent discrimination and cross-subsidization in a Bell operating company's dealings with its affiliate and with third parties.

`(h) DEFINITION- As used in this section, the term 'manufacturing' has the same meaning as such term has under the AT&T Consent Decree.

SEC. 274. ELECTRONIC PUBLISHING BY BELL OPERATING COMPANIES.

(a) LIMITATIONS- No Bell operating company or any affiliate may engage in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, except that nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture operated in accordance with this section from engaging in the provision of electronic publishing.

(b) SEPARATED AFFILIATE OR ELECTRONIC PUBLISHING JOINT VENTURE REQUIREMENTS- A separated affiliate or electronic publishing joint venture shall be operated independently from the Bell operating company. Such separated affiliate or joint venture and the Bell operating company with which it is affiliated shall--

(1) maintain separate books, records, and accounts and prepare separate financial statements;

(2) not incur debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the Bell operating company;

(3) carry out transactions (A) in a manner consistent with such independence, (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (C) in a manner that is auditable in accordance with generally accepted auditing standards;

(4) value any assets that are transferred directly or indirectly from the Bell operating company to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies;

(5) between a separated affiliate and a Bell operating company--

(A) have no officers, directors, and employees in common after the effective date of this section; and

(B) own no property in common;

(6) not use for the marketing of any product or service of the separated affiliate or joint venture, the name, trademarks, or service marks of an existing Bell operating company except for names, trademarks, or service marks that are owned by the entity that owns or controls the Bell operating company;

(7) not permit the Bell operating company--

(A) to perform hiring or training of personnel on behalf of a separated affiliate;

(B) to perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that it provides

under tariff or contract subject to the provisions of this section; or

`(C) to perform research and development on behalf of a separated affiliate;

`(8) each have performed annually a compliance review--

`(A) that is conducted by an independent entity for the purpose of determining compliance during the preceding calendar year with any provision of this section; and

`(B) the results of which are maintained by the separated affiliate or joint venture and the Bell operating company for a period of 5 years subject to review by any lawful authority; and

`(9) within 90 days of receiving a review described in paragraph (8), file a report of any exceptions and corrective action with the Commission and allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under this section.

`(c) JOINT MARKETING-

`(1) IN GENERAL- Except as provided in paragraph (2)--

`(A) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate; and

`(B) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.

`(2) PERMISSIBLE JOINT ACTIVITIES-

`(A) JOINT TELEMARKETING- A Bell operating company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher: [*Italic->*] Provided, [*<-Italic*] That if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms.

`(B) TEAMING ARRANGEMENTS- A Bell operating company may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher if (i) the Bell operating company only provides facilities, services, and basic telephone service information as authorized by this section, and (ii) the Bell operating

company does not own such teaming or business arrangement.

`(C) ELECTRONIC PUBLISHING JOINT VENTURES- A Bell operating company or affiliate may participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not a Bell operating company, affiliate, or separated affiliate to provide electronic publishing services, if the Bell operating company or affiliate has not more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture. Officers and employees of a Bell operating company or affiliate participating in an electronic publishing joint venture may not have more than 50 percent of the voting control over the electronic publishing joint venture. In the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize the Bell operating company or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80 percent. A Bell operating company participating in an electronic publishing joint venture may provide promotion, marketing, sales, or advertising personnel and services to such joint venture.

`(d) BELL OPERATING COMPANY REQUIREMENT- A Bell operating company under common ownership or control with a separated affiliate or electronic publishing joint venture shall provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing.

`(e) PRIVATE RIGHT OF ACTION-

`(1) DAMAGES- Any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may file a complaint with the Commission or bring suit as provided in section 207 of this Act, and such Bell operating company, affiliate, or separated affiliate shall be liable as provided in section 206 of this Act; except that damages may not be awarded for a violation that is discovered by a compliance review as required by subsection (b)(7) of this section and corrected within 90 days.

`(2) CEASE AND DESIST ORDERS- In addition to the provisions of paragraph (1), any person claiming that any act or practice

of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may make application to the Commission for an order to cease and desist such violation or may make application in any district court of the United States of competent jurisdiction for an order enjoining such acts or practices or for an order compelling compliance with such requirement.

`(f) SEPARATED AFFILIATE REPORTING REQUIREMENT- Any separated affiliate under this section shall file with the Commission annual reports in a form substantially equivalent to the Form 10-K required by regulations of the Securities and Exchange Commission.

`(g) EFFECTIVE DATES-

`(1) TRANSITION- Any electronic publishing service being offered to the public by a Bell operating company or affiliate on the date of enactment of the Telecommunications Act of 1996 shall have one year from such date of enactment to comply with the requirements of this section.

`(2) SUNSET- The provisions of this section shall not apply to conduct occurring after 4 years after the date of enactment of the Telecommunications Act of 1996.

`(h) DEFINITION OF ELECTRONIC PUBLISHING-

`(1) IN GENERAL- The term `electronic publishing' means the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.

`(2) EXCEPTIONS- The term `electronic publishing' shall not include the following services:

`(A) Information access, as that term is defined by the AT&T Consent Decree.

`(B) The transmission of information as a common carrier.

`(C) The transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access electronic publishing services, which do not affect the presentation of such electronic publishing services to users.

`(D) Voice storage and retrieval services, including voice messaging and electronic mail services.

`(E) Data processing or transaction processing services that do not involve the generation or alteration of the content of information.

`(F) Electronic billing or advertising of a Bell operating company's regulated telecommunications services.

`(G) Language translation or data format conversion.

`(H) The provision of information necessary for the management, control, or operation of a telephone company telecommunications system.

`(I) The provision of directory assistance that provides names, addresses, and telephone numbers and does not include advertising.

`(J) Caller identification services.

`(K) Repair and provisioning databases and credit card and billing validation for telephone company operations.

`(L) 911-E and other emergency assistance databases.

`(M) Any other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information.

`(N) Any upgrades to these network services that do not involve the generation or alteration of the content of information.

`(O) Video programming or full motion video entertainment on demand.

`(i) ADDITIONAL DEFINITIONS- As used in this section--

`(1) The term `affiliate' means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, a Bell operating company. Such term shall not include a separated affiliate.

`(2) The term `basic telephone service' means any wireline telephone exchange service, or wireline telephone exchange service facility, provided by a Bell operating company in a telephone exchange area, except that such term does not include--

`(A) a competitive wireline telephone exchange service provided in a telephone exchange area where another entity provides a wireline telephone exchange service that was provided on January 1, 1984, or

`(B) a commercial mobile service.

`(3) The term `basic telephone service information' means network and customer information of a Bell operating company and other information acquired by a Bell operating company as a result of its engaging in the provision of basic telephone service.

`(4) The term `control' has the meaning that it has in 17 C.F.R. 240.12b-2, the regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or any successor provision to such section.

`(5) The term `electronic publishing joint venture' means a joint venture owned by a Bell operating company or affiliate that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

`(6) The term `entity' means any organization, and includes corporations, partnerships, sole proprietorships, associations, and joint ventures.

`(7) The term `inbound telemarketing' means the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.

`(8) The term `own' with respect to an entity means to have a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement.

`(9) The term `separated affiliate' means a corporation under common ownership or control with a Bell operating company that does not own or control a Bell operating company and is not owned or controlled by a Bell operating company and that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

`(10) The term `Bell operating company' has the meaning provided in section 3, except that such term includes any entity or corporation that is owned or controlled by such a company (as so defined) but does not include an electronic publishing joint venture owned by such an entity or corporation.

`SEC. 275. ALARM MONITORING SERVICES.

`(a) DELAYED ENTRY INTO ALARM MONITORING-

`(1) PROHIBITION- No Bell operating company or affiliate thereof shall engage in the provision of alarm monitoring services before the date which is 5 years after the date of enactment of the Telecommunications Act of 1996.

`(2) EXISTING ACTIVITIES- Paragraph (1) does not prohibit or limit the provision, directly or through an affiliate, of alarm monitoring services by a Bell operating company that was engaged in providing alarm monitoring services as of November 30, 1995, directly or through an affiliate. Such Bell operating company or affiliate may not acquire any equity interest in, or

obtain financial control of, any unaffiliated alarm monitoring service entity after November 30, 1995, and until 5 years after the date of enactment of the Telecommunications Act of 1996, except that this sentence shall not prohibit an exchange of customers for the customers of an unaffiliated alarm monitoring service entity.

`(b) NONDISCRIMINATION- An incumbent local exchange carrier (as defined in section 251(h)) engaged in the provision of alarm monitoring services shall--

`(1) provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions; and

`(2) not subsidize its alarm monitoring services either directly or indirectly from telephone exchange service operations.

`(c) EXPEDITED CONSIDERATION OF COMPLAINTS- The Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (b) or the regulations thereunder that result in material financial harm to a provider of alarm monitoring service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations, the Commission shall, within 60 days after receipt of the complaint, order the incumbent local exchange carrier (as defined in section 251(h)) and its affiliates to cease engaging in such violation pending such final determination.

`(d) USE OF DATA- A local exchange carrier may not record or use in any fashion the occurrence or contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of such local exchange carrier, or any other entity. Any regulations necessary to enforce this subsection shall be issued initially within 6 months after the date of enactment of the Telecommunications Act of 1996.

`(e) DEFINITION OF ALARM MONITORING SERVICE- The term `alarm monitoring service' means a service that uses a device located at a residence, place of business, or other fixed premises--

`(1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and

`(2) to transmit a signal regarding such threat by means of transmission facilities of a local exchange carrier or one of

its affiliates to a remote monitoring center to alert a person at such center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat,

but does not include a service that uses a medical monitoring device attached to an individual for the automatic surveillance of an ongoing medical condition.

SEC. 276. PROVISION OF PAYPHONE SERVICE.

(a) NONDISCRIMINATION SAFEGUARDS- After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service--

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

(b) REGULATIONS-

(1) CONTENTS OF REGULATIONS- In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that--

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding;

(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on

the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest; and

`(E) provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.

`(2) PUBLIC INTEREST TELEPHONES- In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

`(3) EXISTING CONTRACTS- Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996.

`(c) STATE PREEMPTION- To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.

`(d) DEFINITION- As used in this section, the term 'payphone service' means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.'

(b) REVIEW OF ENTRY DECISIONS- Section 402(b) (47 U.S.C. 402(b)) is amended--

(1) in paragraph (6), by striking '(3), and (4)' and inserting '(3), (4), and (9)'; and

(2) by adding at the end the following new paragraph:

`(9) By any applicant for authority to provide interLATA services under section 271 of this Act whose application is denied by the Commission.'

TITLE II--BROADCAST SERVICES

SEC. 201. BROADCAST SPECTRUM FLEXIBILITY.

Title III is amended by inserting after section 335 (47 U.S.C. 335) the following new section:

`SEC. 336. BROADCAST SPECTRUM FLEXIBILITY.

`(a) COMMISSION ACTION- If the Commission determines to issue additional licenses for advanced television services, the Commission--

`(1) should limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both); and

`(2) shall adopt regulations that allow the holders of such licenses to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.

`(b) CONTENTS OF REGULATIONS- In prescribing the regulations required by subsection (a), the Commission shall--

`(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services;

`(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies;

`(3) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person, except that no ancillary or supplementary service shall have any rights to carriage under section 614 or 615 or be deemed a multichannel video programming distributor for purposes of section 628;

`(4) adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services, and may adopt regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

`(5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

`(c) RECOVERY OF LICENSE- If the Commission grants a license for advanced television services to a person that, as of the date of such issuance, is licensed to operate a television broadcast station or holds a permit to construct such a station (or both), the Commission shall, as a condition of such license, require that either the additional license or the original license held by the licensee be surrendered to the Commission for reallocation or reassignment (or both) pursuant to Commission regulation.

`(d) PUBLIC INTEREST REQUIREMENT- Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity. In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest. Any violation of the Commission rules applicable to ancillary or supplementary services shall reflect upon the licensee's qualifications for renewal of its license.

`(e) FEES-

`(1) SERVICES TO WHICH FEES APPLY- If the regulations prescribed pursuant to subsection (a) permit a licensee to offer ancillary or supplementary services on a designated frequency--

`(A) for which the payment of a subscription fee is required in order to receive such services, or

`(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish a program to assess and collect from the licensee for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in subparagraphs (A) and (B) of paragraph (2).

`(2) COLLECTION OF FEES- The program required by paragraph (1) shall--

`(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

`(B) recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of this Act and the Commission's regulations thereunder; and

`(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

`(3) TREATMENT OF REVENUES-

`(A) GENERAL RULE- Except as provided in subparagraph (B), all proceeds obtained pursuant to the regulations required by this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

`(B) RETENTION OF REVENUES- Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this section and regulating and supervising advanced television services. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis.

`(4) REPORT- Within 5 years after the date of enactment of the Telecommunications Act of 1996, the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.

`(f) EVALUATION- Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program. Such evaluation shall include--

`(1) an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services;

`(2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and

`(3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees.

`(g) DEFINITIONS- As used in this section:

`(1) ADVANCED TELEVISION SERVICES- The term 'advanced television services' means television services provided using digital or other advanced technology as further defined in the opinion, report, and order of the Commission entitled 'Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service', MM Docket 87-268, adopted September 17, 1992, and successor proceedings.

`(2) DESIGNATED FREQUENCIES- The term 'designated frequency' means each of the frequencies designated by the Commission for licenses for advanced television services.

`(3) HIGH DEFINITION TELEVISION- The term 'high definition television' refers to systems that offer approximately twice the vertical and horizontal resolution of receivers generally

available on the date of enactment of the Telecommunications Act of 1996, as further defined in the proceedings described in paragraph (1) of this subsection.'

SEC. 202. BROADCAST OWNERSHIP.

(a) NATIONAL RADIO STATION OWNERSHIP RULE CHANGES REQUIRED- The Commission shall modify section 73.3555 of its regulations (47 C.F.R. 73.3555) by eliminating any provisions limiting the number of AM or FM broadcast stations which may be owned or controlled by one entity nationally.

(b) LOCAL RADIO DIVERSITY-

(1) APPLICABLE CAPS- The Commission shall revise section 73.3555(a) of its regulations (47 C.F.R. 73.3555) to provide that--

(A) in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

(B) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and

(D) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.

(2) EXCEPTION- Notwithstanding any limitation authorized by this subsection, the Commission may permit a person or entity to own, operate, or control, or have a cognizable interest in, radio broadcast stations if the Commission determines that such ownership, operation, control, or interest will result in an increase in the number of radio broadcast stations in operation.

(c) TELEVISION OWNERSHIP LIMITATIONS-

(1) NATIONAL OWNERSHIP LIMITATIONS- The Commission shall modify its rules for multiple ownership set forth in section 73.3555 of its regulations (47 C.F.R. 73.3555)--

(A) by eliminating the restrictions on the number of television stations that a person or entity may directly or indirectly own, operate, or control, or have a cognizable interest in, nationwide; and

(B) by increasing the national audience reach limitation for television stations to 35 percent.

(2) LOCAL OWNERSHIP LIMITATIONS- The Commission shall conduct a rulemaking proceeding to determine whether to retain, modify, or eliminate its limitations on the number of television stations that a person or entity may own, operate, or control, or have a cognizable interest in, within the same television market.

(d) RELAXATION OF ONE-TO-A-MARKET- With respect to its enforcement of its one-to-a-market ownership rules under section 73.3555 of its regulations, the Commission shall extend its waiver policy to any of the top 50 markets, consistent with the public interest, convenience, and necessity.

(e) DUAL NETWORK CHANGES- The Commission shall revise section 73.658(g) of its regulations (47 C.F.R. 658(g)) to permit a television broadcast station to affiliate with a person or entity that maintains 2 or more networks of television broadcast stations unless such dual or multiple networks are composed of--

(1) two or more persons or entities that, on the date of enactment of the Telecommunications Act of 1996, are `networks' as defined in section 73.3613(a)(1) of the Commission's regulations (47 C.F.R. 73.3613(a)(1)); or

(2) any network described in paragraph (1) and an English-language program distribution service that, on such date, provides 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television homes (as measured by a national ratings service).

(f) CABLE CROSS OWNERSHIP-

(1) ELIMINATION OF RESTRICTIONS- The Commission shall revise section 76.501 of its regulations (47 C.F.R. 76.501) to permit a person or entity to own or control a network of broadcast stations and a cable system.

(2) SAFEGUARDS AGAINST DISCRIMINATION- The Commission shall revise such regulations if necessary to ensure carriage, channel positioning, and nondiscriminatory treatment of nonaffiliated broadcast stations by a cable system described in paragraph (1).

(g) LOCAL MARKETING AGREEMENTS- Nothing in this section shall be construed to prohibit the origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission.

(h) FURTHER COMMISSION REVIEW- The Commission shall review its rules adopted pursuant to this section and all of its ownership

rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

(i) ELIMINATION OF STATUTORY RESTRICTION- Section 613(a) (47 U.S.C. 533(a)) is amended--

- (1) by striking paragraph (1);
- (2) by redesignating paragraph (2) as subsection (a);
- (3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;
- (4) by striking `and' at the end of paragraph (1) (as so redesignated);
- (5) by striking the period at the end of paragraph (2) (as so redesignated) and inserting `; and'; and
- (6) by adding at the end the following new paragraph:
`3) shall not apply the requirements of this subsection to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l).'

SEC. 203. TERM OF LICENSES.

Section 307(c) (47 U.S.C. 307(c)) is amended to read as follows:

`(c) TERMS OF LICENSES-

`(1) INITIAL AND RENEWAL LICENSES- Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed 8 years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, the public interest, convenience, or necessity would be served by such action.

`(2) MATERIALS IN APPLICATION- In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the

considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings.

`(3) CONTINUATION PENDING DECISION- Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect.'

SEC. 204. BROADCAST LICENSE RENEWAL PROCEDURES.

(a) RENEWAL PROCEDURES-

(1) AMENDMENT- Section 309 (47 U.S.C. 309) is amended by adding at the end thereof the following new subsection:

`(k) BROADCAST STATION RENEWAL PROCEDURES-

`(1) STANDARDS FOR RENEWAL- If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license--

`(A) the station has served the public interest, convenience, and necessity;

`(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

`(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

`(2) CONSEQUENCE OF FAILURE TO MEET STANDARD- If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.

`(3) STANDARDS FOR DENIAL- If the Commission determines, after notice and opportunity for a hearing as provided in subsection (e), that a licensee has failed to meet the requirements specified in paragraph (1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall--

`(A) issue an order denying the renewal application filed by such licensee under section 308; and

`(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

`(4) COMPETITOR CONSIDERATION PROHIBITED- In making the determinations specified in paragraph (1) or (2), the

Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.'

(2) CONFORMING AMENDMENT- Section 309(d) (47 U.S.C. 309(d)) is amended by inserting after `with subsection (a)' each place it appears the following: `(or subsection (k) in the case of renewal of any broadcast station license).'

(b) SUMMARY OF COMPLAINTS ON VIOLENT PROGRAMMING- Section 308 (47 U.S.C. 308) is amended by adding at the end the following new subsection:

`(d) SUMMARY OF COMPLAINTS- Each applicant for the renewal of a commercial or noncommercial television license shall attach as an exhibit to the application a summary of written comments and suggestions received from the public and maintained by the licensee (in accordance with Commission regulations) that comment on the applicant's programming, if any, and that are characterized by the commentor as constituting violent programming.'

(c) EFFECTIVE DATE- The amendments made by this section apply to applications filed after May 1, 1995.

SEC. 205. DIRECT BROADCAST SATELLITE SERVICE.

(a) DBS SIGNAL SECURITY- Section 705(e)(4) (47 U.S.C. 605(e)(4)) is amended by inserting `or direct-to-home satellite services,' after `programming,'.

(b) FCC JURISDICTION OVER DIRECT-TO-HOME SATELLITE SERVICES- Section 303 (47 U.S.C. 303) is amended by adding at the end thereof the following new subsection:

`(v) Have exclusive jurisdiction to regulate the provision of direct-to-home satellite services. As used in this subsection, the term `direct-to-home satellite services' means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.'

SEC. 206. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

Part II of title III is amended by inserting after section 364 (47 U.S.C. 362) the following new section:

`SEC. 365. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

`Notwithstanding any provision of this Act or any other provision of law or regulation, a ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention shall not be required to be equipped with a radio telegraphy station operated by one or more radio officers or operators. This section shall take effect for each vessel upon a determination by the United States Coast Guard that such vessel has

the equipment required to implement the Global Maritime Distress and Safety System installed and operating in good working condition.'

SEC. 207. RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES.

Within 180 days after the date of enactment of this Act, the Commission shall, pursuant to section 303 of the Communications Act of 1934, promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.

TITLE III--CABLE SERVICES

SEC. 301. CABLE ACT REFORM.

(a) DEFINITIONS-

(1) DEFINITION OF CABLE SERVICE- Section 602(6)(B) (47 U.S.C. 522(6)(B)) is amended by inserting `or use' after `the selection'.

(2) CHANGE IN DEFINITION OF CABLE SYSTEM- Section 602(7) (47 U.S.C. 522(7)) is amended by striking `(B) a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way;' and inserting `(B) a facility that serves subscribers without using any public right-of-way;'.

(b) RATE DEREGULATION-

(1) UPPER TIER REGULATION- Section 623(c) (47 U.S.C. 543(c)) is amended--

(A) in paragraph (1)(B), by striking `subscriber, franchising authority, or other relevant State or local government entity' and inserting `franchising authority (in accordance with paragraph (3))';

(B) in paragraph (1)(C), by striking `such complaint' and inserting `the first complaint filed with the franchising authority under paragraph (3)'; and

(C) by striking paragraph (3) and inserting the following:

`(3) REVIEW OF RATE CHANGES- The Commission shall review any complaint submitted by a franchising authority after the date of enactment of the Telecommunications Act of 1996 concerning an increase in rates for cable programming services and issue a final order within 90 days after it receives such a complaint, unless the parties agree to extend the period for such review. A franchising authority may not file a complaint under this paragraph unless, within 90 days after such increase becomes effective it receives subscriber complaints.

`(4) SUNSET OF UPPER TIER RATE REGULATION- This subsection

shall not apply to cable programming services provided after March 31, 1999.'

(2) SUNSET OF UNIFORM RATE STRUCTURE IN MARKETS WITH EFFECTIVE COMPETITION- Section 623(d) (47 U.S.C. 543(d)) is amended by adding at the end thereof the following: `This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.'

(3) EFFECTIVE COMPETITION- Section 623(1)(1) (47 U.S.C. 543(1)(1)) is amended--

(A) by striking `or' at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting `; or'; and

(C) by adding at the end the following:

`(D) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.'

(c) GREATER DEREGULATION FOR SMALLER CABLE COMPANIES- Section

623

(47 U.S.C 543) is amended by adding at the end thereof the following:

`(m) SPECIAL RULES FOR SMALL COMPANIES-

`(1) IN GENERAL- Subsections (a), (b), and (c) do not apply to a small cable operator with respect to--

`(A) cable programming services, or

`(B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994,

in any franchise area in which that operator services 50,000 or

fewer subscribers.

`(2) DEFINITION OF SMALL CABLE OPERATOR- For purposes of this subsection, the term `small cable operator' means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.'

(d) MARKET DETERMINATIONS-

(1) MARKET DETERMINATIONS; EXPEDITED DECISIONMAKING- Section 614(h)(1)(C) (47 U.S.C. 534(h)(1)(C)) is amended--

(A) by striking `in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991,' in clause (i) and inserting `by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns,'; and

(B) by striking clause (iv) and inserting the following:

`(iv) Within 120 days after the date on which a request is filed under this subparagraph (or 120 days after the date of enactment of the Telecommunications Act of 1996, if later), the Commission shall grant or deny the request.'

(2) APPLICATION TO PENDING REQUESTS- The amendment made by paragraph (1) shall apply to--

(A) any request pending under section 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C)) on the date of enactment of this Act; and

(B) any request filed under that section after that date.

(e) TECHNICAL STANDARDS- Section 624(e) (47 U.S.C. 544(e)) is amended by striking the last two sentences and inserting the following: `No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.'

(f) CABLE EQUIPMENT COMPATIBILITY- Section 624A (47 U.S.C. 544A) is amended--

(1) in subsection (a) by striking `and' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting `; and'; and by adding at the end the following new paragraph:

`(4) compatibility among televisions, video cassette recorders, and cable systems can be assured with narrow technical standards that mandate a minimum degree of common design and operation, leaving all features, functions, protocols, and other product and service options for selection through open competition in the market.';

(2) in subsection (c)(1)--

(A) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(B) by inserting before such redesignated subparagraph (B) the following new subparagraph:

`(A) the need to maximize open competition in the market for all features, functions, protocols, and other product and service options of converter boxes and other cable converters unrelated to the descrambling or decryption of cable television signals;'; and

(3) in subsection (c)(2)--

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively; and

(B) by inserting after subparagraph (C) the following new subparagraph:

`(D) to ensure that any standards or regulations developed under the authority of this section to ensure compatibility between televisions, video cassette recorders, and cable systems do not affect features, functions, protocols, and other product and service options other than those specified in paragraph (1)(B), including telecommunications interface equipment, home automation communications, and computer network services;';

(g) SUBSCRIBER NOTICE- Section 632 (47 U.S.C. 552) is amended--

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

`(c) SUBSCRIBER NOTICE- A cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion. Notwithstanding section 623(b)(6) or any other provision of this Act, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.'.

(h) PROGRAM ACCESS- Section 628 (47 U.S.C. 548) is amended by adding at the end the following:

`(j) COMMON CARRIERS- Any provision that applies to a cable operator under this section shall apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall apply to any satellite cable programming vendor in which such common carrier has an attributable interest. For the

purposes of this subsection, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite cable programming vendor (or its parent company).'

(i) ANTITRAFFICKING- Section 617 (47 U.S.C. 537) is amended--

(1) by striking subsections (a) through (d); and

(2) in subsection (e), by striking '(e)' and all that follows through 'a franchising authority' and inserting 'A franchising authority'.

(j) AGGREGATION OF EQUIPMENT COSTS- Section 623(a) (47 U.S.C. 543(a)) is amended by adding at the end the following new paragraph:

“(7) AGGREGATION OF EQUIPMENT COSTS-

“(A) IN GENERAL- The Commission shall allow cable operators, pursuant to any rules promulgated under subsection (b)(3), to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.

“(B) REVISION TO COMMISSION RULES; FORMS- Within 120 days of the date of enactment of the Telecommunications Act of 1996, the Commission shall issue revisions to the appropriate rules and forms necessary to implement subparagraph (A).’.

(k) TREATMENT OF PRIOR YEAR LOSSES-

(1) AMENDMENT- Section 623 (48 U.S.C. 543) is amended by adding at the end thereof the following:

“(n) TREATMENT OF PRIOR YEAR LOSSES- Notwithstanding any other provision of this section or of section 612, losses associated with a cable system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.’.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall be applicable to any rate proposal filed on or after September 4, 1993, upon which no final action has been taken by December 1, 1995.

SEC. 302. CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.

(a) PROVISIONS FOR REGULATION OF CABLE SERVICE PROVIDED BY

TELEPHONE COMPANIES- Title VI (47 U.S.C. 521 et seq.) is amended by adding at the end the following new part:

PART V--VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

SEC. 651. REGULATORY TREATMENT OF VIDEO PROGRAMMING SERVICES.

(a) LIMITATIONS ON CABLE REGULATION-

(1) RADIO-BASED SYSTEMS- To the extent that a common carrier (or any other person) is providing video programming to subscribers using radio communication, such carrier (or other person) shall be subject to the requirements of title III and section 652, but shall not otherwise be subject to the requirements of this title.

(2) COMMON CARRIAGE OF VIDEO TRAFFIC- To the extent that a common carrier is providing transmission of video programming on a common carrier basis, such carrier shall be subject to the requirements of title II and section 652, but shall not otherwise be subject to the requirements of this title. This paragraph shall not affect the treatment under section 602(7)(C) of a facility of a common carrier as a cable system.

(3) CABLE SYSTEMS AND OPEN VIDEO SYSTEMS- To the extent that a common carrier is providing video programming to its subscribers in any manner other than that described in paragraphs (1) and (2)--

(A) such carrier shall be subject to the requirements of this title, unless such programming is provided by means of an open video system for which the Commission has approved a certification under section 653; or

(B) if such programming is provided by means of an open video system for which the Commission has approved a certification under section 653, such carrier shall be subject to the requirements of this part, but shall be subject to parts I through IV of this title only as provided in 653(c).

(4) ELECTION TO OPERATE AS OPEN VIDEO SYSTEM- A common carrier that is providing video programming in a manner described in paragraph (1) or (2), or a combination thereof, may elect to provide such programming by means of an open video system that complies with section 653. If the Commission approves such carrier's certification under section 653, such carrier shall be subject to the requirements of this part, but shall be subject to parts I through IV of this title only as provided in 653(c).

(b) LIMITATIONS ON INTERCONNECTION OBLIGATIONS- A local exchange carrier that provides cable service through an open video system or a cable system shall not be required, pursuant to title II of this

Act, to make capacity available on a nondiscriminatory basis to any other person for the provision of cable service directly to subscribers.

`(c) ADDITIONAL REGULATORY RELIEF- A common carrier shall not be required to obtain a certificate under section 214 with respect to the establishment or operation of a system for the delivery of video programming.

`SEC. 652. PROHIBITION ON BUY OUTS.

`(a) ACQUISITIONS BY CARRIERS- No local exchange carrier or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier may purchase or otherwise acquire directly or indirectly more than a 10 percent financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier's telephone service area.

`(b) ACQUISITIONS BY CABLE OPERATORS- No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area.

`(c) JOINT VENTURES- A local exchange carrier and a cable operator whose telephone service area and cable franchise area, respectively, are in the same market may not enter into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within such market.

`(d) EXCEPTIONS-

`(1) RURAL SYSTEMS- Notwithstanding subsections (a), (b), and (c) of this section, a local exchange carrier (with respect to a cable system located in its telephone service area) and a cable operator (with respect to the facilities of a local exchange carrier used to provide telephone exchange service in its cable franchise area) may obtain a controlling interest in, management interest in, or enter into a joint venture or partnership with the operator of such system or facilities for the use of such system or facilities to the extent that--

`(A) such system or facilities only serve incorporated or unincorporated--

`(i) places or territories that have fewer than 35,000 inhabitants; and

`(ii) are outside an urbanized area, as defined by the Bureau of the Census; and

`(B) in the case of a local exchange carrier, such

system, in the aggregate with any other system in which such carrier has an interest, serves less than 10 percent of the households in the telephone service area of such carrier.

`(2) JOINT USE- Notwithstanding subsection (c), a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

`(3) ACQUISITIONS IN COMPETITIVE MARKETS- Notwithstanding subsections (a) and (c), a local exchange carrier may obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as `the subject cable system'), if--

`(A) the subject cable system operates in a television market that is not in the top 25 markets, and such market has more than 1 cable system operator, and the subject cable system is not the cable system with the most subscribers in such television market;

`(B) the subject cable system and the cable system with the most subscribers in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

`(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 cable system operators with the most subscribers as such operators existed on May 1, 1995; and

`(D) the system with the most subscribers in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as such operators existed on May 1, 1995.

`(4) EXEMPT CABLE SYSTEMS- Subsection (a) does not apply to any cable system if--

`(A) the cable system serves no more than 17,000 cable subscribers, of which no less than 8,000 live within an urban area, and no less than 6,000 live within a nonurbanized area as of June 1, 1995;

`(B) the cable system is not owned by, or under common ownership or control with, any of the 50 largest cable system operators in existence on June 1, 1995; and

`(C) the cable system operates in a television market

that was not in the top 100 television markets as of June 1, 1995.

`(5) SMALL CABLE SYSTEMS IN NONURBAN AREAS- Notwithstanding subsections (a) and (c), a local exchange carrier with less than \$100,000,000 in annual operating revenues (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may purchase or otherwise acquire more than a 10 percent financial interest in, or any management interest in, or enter into a joint venture or partnership with, any cable system within the local exchange carrier's telephone service area that serves no more than 20,000 cable subscribers, if no more than 12,000 of those subscribers live within an urbanized area, as defined by the Bureau of the Census.

`(6) WAIVERS- The Commission may waive the restrictions of subsections (a), (b), or (c) only if--

`(A) the Commission determines that, because of the nature of the market served by the affected cable system or facilities used to provide telephone exchange service--

`(i) the affected cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions;

`(ii) the system or facilities would not be economically viable if such provisions were enforced; or

`(iii) the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; and

`(B) the local franchising authority approves of such waiver.

`(e) DEFINITION OF TELEPHONE SERVICE AREA- For purposes of this section, the term 'telephone service area' when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier provided telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its telephone exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier.

`SEC. 653. ESTABLISHMENT OF OPEN VIDEO SYSTEMS.

`(a) OPEN VIDEO SYSTEMS-

`(1) CERTIFICATES OF COMPLIANCE- A local exchange carrier may provide cable service to its cable service subscribers in its

telephone service area through an open video system that complies with this section. To the extent permitted by such regulations as the Commission may prescribe consistent with the public interest, convenience, and necessity, an operator of a cable system or any other person may provide video programming through an open video system that complies with this section. An operator of an open video system shall qualify for reduced regulatory burdens under subsection (c) of this section if the operator of such system certifies to the Commission that such carrier complies with the Commission's regulations under subsection (b) and the Commission approves such certification. The Commission shall publish notice of the receipt of any such certification and shall act to approve or disapprove any such certification within 10 days after receipt of such certification.

`(2) DISPUTE RESOLUTION- The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder. Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages proceeding, the Commission may, in the case of any violation of this section, require carriage, award damages to any person denied carriage, or any combination of such sanctions. Any aggrieved party may seek any other remedy available under this Act.

`(b) COMMISSION ACTIONS-

`(1) REGULATIONS REQUIRED- Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary (including any reconsideration) to prescribe regulations that--

`(A) except as required pursuant to section 611, 614, or 615, prohibit an operator of an open video system from discriminating among video programming providers with regard to carriage on its open video system, and ensure that the rates, terms, and conditions for such carriage are just and reasonable, and are not unjustly or unreasonably discriminatory;

`(B) if demand exceeds the channel capacity of the open video system, prohibit an operator of an open video system and its affiliates from selecting the video programming services for carriage on more than one-third of the activated channel capacity on such system, but nothing in this subparagraph shall be construed to limit the number of channels that the carrier and its affiliates may offer to provide directly to subscribers;

`(C) permit an operator of an open video system to carry

on only one channel any video programming service that is offered by more than one video programming provider (including the local exchange carrier's video programming affiliate): [Italic->] Provided, [<-Italic] That subscribers have ready and immediate access to any such video programming service;

`(D) extend to the distribution of video programming over open video systems the Commission's regulations concerning sports exclusivity (47 C.F.R. 76.67), network nonduplication (47 C.F.R. 76.92 et seq.), and syndicated exclusivity (47 C.F.R. 76.151 et seq.); and

`(E)(i) prohibit an operator of an open video system from unreasonably discriminating in favor of the operator or its affiliates with regard to material or information (including advertising) provided by the operator to subscribers for the purposes of selecting programming on the open video system, or in the way such material or information is presented to subscribers;

`(ii) require an operator of an open video system to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers;

`(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

`(iv) prohibit an operator of an open video system from omitting television broadcast stations or other unaffiliated video programming services carried on such system from any navigational device, guide, or menu.

`(2) CONSUMER ACCESS- Subject to the requirements of paragraph (1) and the regulations thereunder, nothing in this section prohibits a common carrier or its affiliate from negotiating mutually agreeable terms and conditions with over-the-air broadcast stations and other unaffiliated video programming providers to allow consumer access to their signals on any level or screen of any gateway, menu, or other program guide, whether provided by the carrier or its affiliate.

`(c) REDUCED REGULATORY BURDENS FOR OPEN VIDEO SYSTEMS-

`(1) IN GENERAL- Any provision that applies to a cable operator under--

`(A) sections 613 (other than subsection (a) thereof), 616, 623(f), 628, 631, and 634 of this title, shall apply,

`(B) sections 611, 614, and 615 of this title, and section 325 of title III, shall apply in accordance with the regulations prescribed under paragraph (2), and

`(C) sections 612 and 617, and parts III and IV (other than sections 623(f), 628, 631, and 634), of this title shall not apply, to any operator of an open video system for which the Commission has approved a certification under this section.

`(2) IMPLEMENTATION-

`(A) COMMISSION ACTION- In the rulemaking proceeding to prescribe the regulations required by subsection (b)(1), the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in paragraph (1)(B) of this subsection. The Commission shall complete all action (including any reconsideration) to prescribe such regulations no later than 6 months after the date of enactment of the Telecommunications Act of 1996.

`(B) FEES- An operator of an open video system under this part may be subject to the payment of fees on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority or other governmental entity, in lieu of the franchise fees permitted under section 622. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the franchise area, as determined in accordance with regulations prescribed by the Commission. An operator of an open video system may designate that portion of a subscriber's bill attributable to the fee under this subparagraph as a separate item on the bill.

`(3) REGULATORY STREAMLINING- With respect to the establishment and operation of an open video system, the requirements of this section shall apply in lieu of, and not in addition to, the requirements of title II.

`(4) TREATMENT AS CABLE OPERATOR- Nothing in this Act precludes a video programming provider making use of an open video system from being treated as an operator of a cable system for purposes of section 111 of title 17, United States Code.

`(d) DEFINITION OF TELEPHONE SERVICE AREA- For purposes of this section, the term 'telephone service area' when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier is offering telephone exchange service.'

(b) CONFORMING AND TECHNICAL AMENDMENTS-

(1) REPEAL- Subsection (b) of section 613 (47 U.S.C. 533(b)) is repealed.

(2) DEFINITIONS- Section 602 (47 U.S.C. 531) is amended--

(A) in paragraph (7), by striking ` , or (D)' and inserting the following: ` , unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title; or (E)';

(B) by redesignating paragraphs (12) through (19) as paragraphs (13) through (20), respectively; and

(C) by inserting after paragraph (11) the following new paragraph:

`(12) the term `interactive on-demand services' means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;'

(3) TERMINATION OF VIDEO-DIALTONE REGULATIONS- The Commission's regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87-266 shall cease to be effective on the date of enactment of this Act.

This paragraph shall not be construed to require the termination of any video-dialtone system that the Commission has approved before the date of enactment of this Act.

SEC. 303. PREEMPTION OF FRANCHISING AUTHORITY REGULATION OF TELECOMMUNICATIONS SERVICES.

(a) PROVISION OF TELECOMMUNICATIONS SERVICES BY A CABLE OPERATOR-

Section 621(b) (47 U.S.C. 541(b)) is amended by adding at the end thereof the following new paragraph:

`(3)(A) If a cable operator or affiliate thereof is engaged in the provision of telecommunications services--

`(i) such cable operator or affiliate shall not be required to obtain a franchise under this title for the provision of telecommunications services; and

`(ii) the provisions of this title shall not apply to such cable operator or affiliate for the provision of telecommunications services.

`(B) A franchising authority may not impose any requirement under this title that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

`(C) A franchising authority may not order a cable operator or affiliate thereof--

`(i) to discontinue the provision of a telecommunications service, or

`(ii) to discontinue the operation of a cable system, to the

extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this title with respect to the provision of such telecommunications service.

`(D) Except as otherwise permitted by sections 611 and 612, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise.'

(b) FRANCHISE FEES- Section 622(b) (47 U.S.C. 542(b)) is amended by inserting `to provide cable services' immediately before the period at the end of the first sentence thereof.

SEC. 304. COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES.

Part III of title VI is amended by inserting after section 628 (47 U.S.C. 548) the following new section:

`SEC. 629. COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES.

`(a) COMMERCIAL CONSUMER AVAILABILITY OF EQUIPMENT USED TO ACCESS

SERVICES PROVIDED BY MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS-

The Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. Such regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, to consumers, if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service.

`(b) PROTECTION OF SYSTEM SECURITY- The Commission shall not prescribe regulations under subsection (a) which would jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service.

`(c) WAIVER- The Commission shall waive a regulation adopted

under subsection (a) for a limited time upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider, that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Upon an appropriate showing, the Commission shall grant any such waiver request within 90 days of any application filed under this subsection, and such waiver shall be effective for all service providers and products in that category and for all providers of services and products.

`(d) AVOIDANCE OF REDUNDANT REGULATIONS-

`(1) COMMERCIAL AVAILABILITY DETERMINATIONS- Determinations made or regulations prescribed by the Commission with respect to commercial availability to consumers of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, before the date of enactment of the Telecommunications Act of 1996 shall fulfill the requirements of this section.

`(2) REGULATIONS- Nothing in this section affects section 64.702(e) of the Commission's regulations (47 C.F.R. 64.702(e)) or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

`(e) SUNSET- The regulations adopted under this section shall cease to apply when the Commission determines that--

`(1) the market for the multichannel video programming distributors is fully competitive;

`(2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and

`(3) elimination of the regulations would promote competition and the public interest.

`(f) COMMISSION'S AUTHORITY- Nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before the date of enactment of the Telecommunications Act of 1996.'

SEC. 305. VIDEO PROGRAMMING ACCESSIBILITY.

Title VII is amended by inserting after section 712 (47 U.S.C. 612) the following new section:

`SEC. 713. VIDEO PROGRAMMING ACCESSIBILITY.

`(a) COMMISSION INQUIRY- Within 180 days after the date of enactment of the Telecommunications Act of 1996, the Federal Communications Commission shall complete an inquiry to ascertain

the level at which video programming is closed captioned. Such inquiry shall examine the extent to which existing or previously published programming is closed captioned, the size of the video programming provider or programming owner providing closed captioning, the size of the market served, the relative audience shares achieved, or any other related factors. The Commission shall submit to the Congress a report on the results of such inquiry.

`(b) ACCOUNTABILITY CRITERIA- Within 18 months after such date of enactment, the Commission shall prescribe such regulations as are necessary to implement this section. Such regulations shall ensure that--

`(1) video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions, except as provided in subsection (d); and

`(2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions, except as provided in subsection (d).

`(c) DEADLINES FOR CAPTIONING- Such regulations shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming.

`(d) EXEMPTIONS- Notwithstanding subsection (b)--

`(1) the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming;

`(2) a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with contracts in effect on the date of enactment of the Telecommunications Act of 1996, except that nothing in this section shall be construed to relieve a video programming provider of its obligations to provide services required by Federal law; and

`(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would result in an undue burden.

`(e) UNDUEN BURDEN- The term `undue burden' means significant difficulty or expense. In determining whether the closed captions necessary to comply with the requirements of this paragraph would

result in an undue economic burden, the factors to be considered include--

`(1) the nature and cost of the closed captions for the programming;

`(2) the impact on the operation of the provider or program owner;

`(3) the financial resources of the provider or program owner; and

`(4) the type of operations of the provider or program owner.

`(f) VIDEO DESCRIPTIONS INQUIRY- Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission's report shall assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate.

`(g) VIDEO DESCRIPTION- For purposes of this section, 'video description' means the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

`(h) PRIVATE RIGHTS OF ACTIONS PROHIBITED- Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.'

TITLE IV--REGULATORY REFORM

SEC. 401. REGULATORY FORBEARANCE.

Title I is amended by inserting after section 9 (47 U.S.C. 159) the following new section:

`SEC. 10. COMPETITION IN PROVISION OF TELECOMMUNICATIONS SERVICE.

`(a) REGULATORY FLEXIBILITY- Notwithstanding section 332(c)(1)(A) of this Act, the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that--

`(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service

are just and reasonable and are not unjustly or unreasonably discriminatory;

`(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

`(3) forbearance from applying such provision or regulation is consistent with the public interest.

`(b) **COMPETITIVE EFFECT TO BE WEIGHED-** In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

`(c) **PETITION FOR FORBEARANCE-** Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers. Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a). The Commission may grant or deny a petition in whole or in part and shall explain its decision in writing.

`(d) **LIMITATION-** Except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.

`(e) **STATE ENFORCEMENT AFTER COMMISSION FORBEARANCE-** A State commission may not continue to apply or enforce any provision of this Act that the Commission has determined to forbear from applying under subsection (a).'

SEC. 402. BIENNIAL REVIEW OF REGULATIONS; REGULATORY RELIEF.

(a) **BIENNIAL REVIEW-** Title I is amended by inserting after section 10 (as added by section 401) the following new section:

`SEC. 11. REGULATORY REFORM.

`(a) **BIENNIAL REVIEW OF REGULATIONS-** In every even-numbered year (beginning with 1998), the Commission--

`(1) shall review all regulations issued under this Act in

effect at the time of the review that apply to the operations or activities of any provider of telecommunications service; and

`(2) shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.

`(b) EFFECT OF DETERMINATION- The Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest.'

(b) REGULATORY RELIEF-

(1) Streamlined procedures for changes in charges, classifications, regulations, or practices-

(A) Section 204(a) (47 U.S.C. 204(a)) is amended--

(i) by striking `12 months' the first place it appears in paragraph (2)(A) and inserting `5 months';

(ii) by striking `effective,' and all that follows in paragraph (2)(A) and inserting `effective.>'; and

(iii) by adding at the end thereof the following:

`(3) A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period, as is appropriate.'

(B) Section 208(b) (47 U.S.C. 208(b)) is amended--

(i) by striking `12 months' the first place it appears in paragraph (1) and inserting `5 months'; and

(ii) by striking `filed,' and all that follows in paragraph (1) and inserting `filed.'

(2) EXTENSIONS OF LINES UNDER SECTION 214; ARMIS REPORTS- The Commission shall permit any common carrier--

(A) to be exempt from the requirements of section 214 of the Communications Act of 1934 for the extension of any line; and

(B) to file cost allocation manuals and ARMIS reports annually, to the extent such carrier is required to file such manuals or reports.

(3) FORBEARANCE AUTHORITY NOT LIMITED- Nothing in this subsection shall be construed to limit the authority of the Commission to waive, modify, or forbear from applying any of the requirements to which reference is made in paragraph (1) under any other provision of this Act or other law.

(4) EFFECTIVE DATE OF AMENDMENTS- The amendments made by

paragraph (1) of this subsection shall apply with respect to any charge, classification, regulation, or practice filed on or after one year after the date of enactment of this Act.

(c) CLASSIFICATION OF CARRIERS- In classifying carriers according to section 32.11 of its regulations (47 C.F.R. 32.11) and in establishing reporting requirements pursuant to part 43 of its regulations (47 C.F.R. part 43) and section 64.903 of its regulations (47 C.F.R. 64.903), the Commission shall adjust the revenue requirements to account for inflation as of the release date of the Commission's Report and Order in CC Docket No. 91-141, and annually thereafter. This subsection shall take effect on the date of enactment of this Act.

SEC. 403. ELIMINATION OF UNNECESSARY COMMISSION REGULATIONS AND FUNCTIONS.

(a) MODIFICATION OF AMATEUR RADIO EXAMINATION PROCEDURES-

Section

4(f)(4) (47 U.S.C. 154(f)(4)) is amended--

(1) in subparagraph (A)--

(A) by inserting `or administering' after `for purposes of preparing';

(B) by inserting `of' after `than the class'; and

(C) by inserting `or administered' after `for which the examination is being prepared';

(2) by striking subparagraph (B);

(3) in subparagraph (H), by striking `(A), (B), and (C)' and inserting `(A) and (B)';

(4) in subparagraph (J)--

(A) by striking `or (B)'; and

(B) by striking the last sentence; and

(5) by redesignating subparagraphs (C) through (J) as subparagraphs (B) through (I), respectively.

(b) AUTHORITY TO DESIGNATE ENTITIES TO INSPECT- Section 4(f)(3) (47 U.S.C. 154(f)(3)) is amended by inserting before the period at the end the following: `: and [*Italic->*] Provided further, [*<-Italic*] That, in the alternative, an entity designated by the Commission may make the inspections referred to in this paragraph'.

(c) EXPEDITING INSTRUCTIONAL TELEVISION FIXED SERVICE PROCESSING-

Section 5(c)(1) (47 U.S.C. 155(c)(1)) is amended by striking the last sentence and inserting the following: `Except for cases involving the authorization of service in the instructional television fixed service, or as otherwise provided in this Act, nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other than persons referred to in paragraph (2) or (3) of section 556(b) of title 5,

United States Code, of any hearing to which such section applies.'.

(d) REPEAL SETTING OF DEPRECIATION RATES- The first sentence of section 220(b) (47 U.S.C. 220(b)) is amended by striking `shall prescribe for such carriers' and inserting `may prescribe, for such carriers as it determines to be appropriate,'.

(e) USE OF INDEPENDENT AUDITORS- Section 220(c) (47 U.S.C. 220(c)) is amended by adding at the end thereof the following: `The Commission may obtain the services of any person licensed to provide public accounting services under the law of any State to assist with, or conduct, audits under this section. While so employed or engaged in conducting an audit for the Commission under this section, any such person shall have the powers granted the Commission under this subsection and shall be subject to subsection (f) in the same manner as if that person were an employee of the Commission.'.

(f) DELEGATION OF EQUIPMENT TESTING AND CERTIFICATION TO PRIVATE

LABORATORIES- Section 302 (47 U.S.C. 302) is amended by adding at the end the following:

`(e) The Commission may--

`(1) authorize the use of private organizations for testing and certifying the compliance of devices or home electronic equipment and systems with regulations promulgated under this section;

`(2) accept as prima facie evidence of such compliance the certification by any such organization; and

`(3) establish such qualifications and standards as it deems appropriate for such private organizations, testing, and certification.'.

(g) MAKING LICENSE MODIFICATION UNIFORM- Section 303(f) (47 U.S.C. 303(f)) is amended by striking `unless, after a public hearing,' and inserting `unless'.

(h) ELIMINATE FCC JURISDICTION OVER GOVERNMENT-OWNED SHIP RADIO

STATIONS-

(1) Section 305 (47 U.S.C. 305) is amended by striking subsection (b) and redesignating subsections (c) and (d) as (b) and (c), respectively.

(2) Section 382(2) (47 U.S.C. 382(2)) is amended by striking `except a vessel of the United States Maritime Administration, the Inland and Coastwise Waterways Service, or the Panama Canal Company,'.

(i) PERMIT OPERATION OF DOMESTIC SHIP AND AIRCRAFT RADIOS WITHOUT

LICENSE- Section 307(e) (47 U.S.C. 307(e)) is amended to read as

follows:

`(e)(1) Notwithstanding any license requirement established in this Act, if the Commission determines that such authorization serves the public interest, convenience, and necessity, the Commission may by rule authorize the operation of radio stations without individual licenses in the following radio services: (A) the citizens band radio service; (B) the radio control service; (C) the aviation radio service for aircraft stations operated on domestic flights when such aircraft are not otherwise required to carry a radio station; and (D) the maritime radio service for ship stations navigated on domestic voyages when such ships are not otherwise required to carry a radio station.

`(2) Any radio station operator who is authorized by the Commission to operate without an individual license shall comply with all other provisions of this Act and with rules prescribed by the Commission under this Act.

`(3) For purposes of this subsection, the terms `citizens band radio service', `radio control service', `aircraft station' and `ship station' shall have the meanings given them by the Commission by rule.'

(j) EXPEDITED LICENSING FOR FIXED MICROWAVE SERVICE- Section 309(b)(2) (47 U.S.C. 309(b)(2)) is amended by striking subparagraph (A) and redesignating subparagraphs (B) through (G) as subparagraphs (A) through (F), respectively.

(k) FOREIGN DIRECTORS- Section 310(b) (47 U.S.C. 310(b)) is amended--

(1) in paragraph (3), by striking `of which any officer or director is an alien or'; and

(2) in paragraph (4), by striking `of which any officer or more than one-fourth of the directors are aliens, or'.

(l) LIMITATION ON SILENT STATION AUTHORIZATIONS- Section 312 (47 U.S.C. 312) is amended by adding at the end the following:

`(g) If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.'

(m) MODIFICATION OF CONSTRUCTION PERMIT REQUIREMENT- Section 319(d) is amended by striking the last two sentences and inserting the following: `With respect to any broadcasting station, the Commission shall not have any authority to waive the requirement of a permit for construction, except that the Commission may by regulation determine that a permit shall not be required for minor changes in the facilities of authorized broadcast stations. With respect to any other station or class of stations, the Commission

shall not waive the requirement for a construction permit unless the Commission determines that the public interest, convenience, and necessity would be served by such a waiver.'

(n) CONDUCT OF INSPECTIONS- Section 362(b) (47 U.S.C. 362(b)) is amended to read as follows:

`(b) Every ship of the United States that is subject to this part shall have the equipment and apparatus prescribed therein inspected at least once each year by the Commission or an entity designated by the Commission. If, after such inspection, the Commission is satisfied that all relevant provisions of this Act and the station license have been complied with, the fact shall be so certified on the station license by the Commission. The Commission shall make such additional inspections at frequent intervals as the Commission determines may be necessary to ensure compliance with the requirements of this Act. The Commission may, upon a finding that the public interest could be served thereby--

`(1) waive the annual inspection required under this section for a period of up to 90 days for the sole purpose of enabling a vessel to complete its voyage and proceed to a port in the United States where an inspection can be held; or

`(2) waive the annual inspection required under this section for a vessel that is in compliance with the radio provisions of the Safety Convention and that is operating solely in waters beyond the jurisdiction of the United States: [Italic->] Provided, [<-Italic] That such inspection shall be performed within 30 days of such vessel's return to the United States.'

(o) INSPECTION BY OTHER ENTITIES- Section 385 (47 U.S.C. 385) is amended--

(1) by inserting `or an entity designated by the Commission' after `The Commission'; and

(2) by adding at the end thereof the following: `In accordance with such other provisions of law as apply to Government contracts, the Commission may enter into contracts with any person for the purpose of carrying out such inspections and certifying compliance with those requirements, and may, as part of any such contract, allow any such person to accept reimbursement from the license holder for travel and expense costs of any employee conducting an inspection or certification.'

TITLE V--OBSCENITY AND VIOLENCE

SUBTITLE A--OBSCENE, HARASSING, AND WRONGFUL UTILIZATION OF TELECOMMUNICATIONS FACILITIES

SEC. 501. SHORT TITLE.

This title may be cited as the `Communications Decency Act of 1996'.

SEC. 502. OBSCENE OR HARASSING USE OF TELECOMMUNICATIONS FACILITIES

UNDER THE COMMUNICATIONS ACT OF 1934.

Section 223 (47 U.S.C. 223) is amended--

(1) by striking subsection (a) and inserting in lieu thereof:

`(a) Whoever--

`(1) in interstate or foreign communications--

`(A) by means of a telecommunications device knowingly--

`(i) makes, creates, or solicits, and

`(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

`(B) by means of a telecommunications device knowingly--

`(i) makes, creates, or solicits, and

`(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;

`(C) makes a telephone call or utilizes a

telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communications;

`(D) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

`(E) makes repeated telephone calls or repeatedly

initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or

`(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity, shall be fined under title 18, United States Code, or imprisoned not more than two years, or both.'; and

(2) by adding at the end the following new subsections:

`(d) Whoever--

`(1) in interstate or foreign communications knowingly--

`(A) uses an interactive computer service to send to a specific person or persons under 18 years of age, or

`(B) uses any interactive computer service to display in a manner available to a person under 18 years of age, any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication; or

`(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity, shall be fined under title 18, United States Code, or imprisoned not more than two years, or both.

`(e) In addition to any other defenses available by law:

`(1) No person shall be held to have violated subsection (a) or (d) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that does not include the creation of the content of the communication.

`(2) The defenses provided by paragraph (1) of this subsection shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate this section, or who knowingly advertises the availability of such communications.

`(3) The defenses provided in paragraph (1) of this subsection shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of this section that is owned or controlled by such person.

`(4) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer (A) having knowledge of such conduct, authorizes or ratifies such conduct, or (B) recklessly disregards such conduct.

`(5) It is a defense to a prosecution under subsection (a)(1)(B) or (d), or under subsection (a)(2) with respect to the use of a facility for an activity under subsection (a)(1)(B) that a person--

`(A) has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to a communication specified in

such subsections, which may involve any appropriate measures to restrict minors from such communications, including any method which is feasible under available technology; or

`(B) has restricted access to such communication by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number.

`(6) The Commission may describe measures which are reasonable, effective, and appropriate to restrict access to prohibited communications under subsection (d). Nothing in this section authorizes the Commission to enforce, or is intended to provide the Commission with the authority to approve, sanction, or permit, the use of such measures. The Commission shall have no enforcement authority over the failure to utilize such measures. The Commission shall not endorse specific products relating to such measures. The use of such measures shall be admitted as evidence of good faith efforts for purposes of paragraph (5) in any action arising under subsection (d). Nothing in this section shall be construed to treat interactive computer services as common carriers or telecommunications carriers.

`(f)(1) No cause of action may be brought in any court or administrative agency against any person on account of any activity that is not in violation of any law punishable by criminal or civil penalty, and that the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

`(2) No State or local government may impose any liability for commercial activities or actions by commercial entities, nonprofit libraries, or institutions of higher education in connection with an activity or action described in subsection (a)(2) or (d) that is inconsistent with the treatment of those activities or actions under this section: [*Italic->*] Provided, however [*<-Italic*] , That nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

`(g) Nothing in subsection (a), (d), (e), or (f) or in the defenses to prosecution under subsection (a) or (d) shall be construed to affect or limit the application or enforcement of any

other Federal law.

`(h) For purposes of this section--

`(1) The use of the term `telecommunications device' in this section--

`(A) shall not impose new obligations on broadcasting station licensees and cable operators covered by obscenity and indecency provisions elsewhere in this Act; and

`(B) does not include an interactive computer service.

`(2) The term `interactive computer service' has the meaning provided in section 230(e)(2).

`(3) The term `access software' means software (including client or server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:

`(A) filter, screen, allow, or disallow content;

`(B) pick, choose, analyze, or digest content; or

`(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

`(4) The term `institution of higher education' has the meaning provided in section 1201 of the Higher Education Act of 1965 (20 U.S.C. 1141).

`(5) The term `library' means a library eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act (20 U.S.C. 355e et seq.).'

SEC. 503. OBSCENE PROGRAMMING ON CABLE TELEVISION.

Section 639 (47 U.S.C. 559) is amended by striking `not more than \$10,000' and inserting `under title 18, United States Code,'.

SEC. 504. SCRAMBLING OF CABLE CHANNELS FOR NONSUBSCRIBERS.

Part IV of title VI (47 U.S.C. 551 et seq.) is amended by adding at the end the following:

`SEC. 640. SCRAMBLING OF CABLE CHANNELS FOR NONSUBSCRIBERS.

`(a) SUBSCRIBER REQUEST- Upon request by a cable service subscriber, a cable operator shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it.

`(b) DEFINITION- As used in this section, the term `scramble' means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.'

SEC. 505. SCRAMBLING OF SEXUALLY EXPLICIT ADULT VIDEO SERVICE PROGRAMMING.

(a) REQUIREMENT- Part IV of title VI (47 U.S.C. 551 et seq.), as amended by this Act, is further amended by adding at the end the

following:

SEC. 641. SCRAMBLING OF SEXUALLY EXPLICIT ADULT VIDEO SERVICE PROGRAMMING.

(a) REQUIREMENT- In providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel or programming does not receive it.

(b) IMPLEMENTATION- Until a multichannel video programming distributor complies with the requirement set forth in subsection (a), the distributor shall limit the access of children to the programming referred to in that subsection by not providing such programming during the hours of the day (as determined by the Commission) when a significant number of children are likely to view it.

(c) DEFINITION- As used in this section, the term 'scramble' means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect 30 days after the date of enactment of this Act.

SEC. 506. CABLE OPERATOR REFUSAL TO CARRY CERTAIN PROGRAMS.

(a) PUBLIC, EDUCATIONAL, AND GOVERNMENTAL CHANNELS- Section 611(e) (47 U.S.C. 531(e)) is amended by inserting before the period the following: ', except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity'.

(b) CABLE CHANNELS FOR COMMERCIAL USE- Section 612(c)(2) (47 U.S.C. 532(c)(2)) is amended by striking 'an operator' and inserting 'a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and'.

SEC. 507. CLARIFICATION OF CURRENT LAWS REGARDING COMMUNICATION OF

OBSCENE MATERIALS THROUGH THE USE OF COMPUTERS.

(a) IMPORTATION OR TRANSPORTATION- Section 1462 of title 18, United States Code, is amended--

(1) in the first undesignated paragraph, by inserting 'or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934)' after 'carrier'; and

(2) in the second undesignated paragraph--

(A) by inserting 'or receives,' after 'takes';

(B) by inserting 'or interactive computer service (as

defined in section 230(e)(2) of the Communications Act of 1934)' after `common carrier'; and

(C) by inserting `or importation' after `carriage'.

(b) TRANSPORTATION FOR PURPOSES OF SALE OR DISTRIBUTION- The first undesignated paragraph of section 1465 of title 18, United States Code, is amended--

(1) by striking `transports in' and inserting `transports or travels in, or uses a facility or means of,';

(2) by inserting `or an interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934) in or affecting such commerce' after `foreign commerce' the first place it appears;

(3) by striking `, or knowingly travels in' and all that follows through `obscene material in interstate or foreign commerce,' and inserting `of'.

(c) INTERPRETATION- The amendments made by this section are clarifying and shall not be interpreted to limit or repeal any prohibition contained in sections 1462 and 1465 of title 18, United States Code, before such amendment, under the rule established in *United States v. Alpers*, 338 U.S. 680 (1950).

SEC. 508. COERCION AND ENTICEMENT OF MINORS.

Section 2422 of title 18, United States Code, is amended--

(1) by inserting `(a)' before `Whoever knowingly'; and

(2) by adding at the end the following:

`(b) Whoever, using any facility or means of interstate or foreign commerce, including the mail, or within the special maritime and territorial jurisdiction of the United States, knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years to engage in prostitution or any sexual act for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.'

SEC. 509. ONLINE FAMILY EMPOWERMENT.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

`SEC. 230. PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.

`(a) FINDINGS- The Congress finds the following:

`(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

`(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology

develops.

`(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

`(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

`(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

`(b) POLICY- It is the policy of the United States--

`(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

`(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

`(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

`(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

`(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

`(c) PROTECTION FOR 'GOOD SAMARITAN' BLOCKING AND SCREENING OF OFFENSIVE MATERIAL-

`(1) TREATMENT OF PUBLISHER OR SPEAKER- No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

`(2) CIVIL LIABILITY- No provider or user of an interactive computer service shall be held liable on account of--

`(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

`(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

`(d) EFFECT ON OTHER LAWS-

`(1) NO EFFECT ON CRIMINAL LAW- Nothing in this section shall be construed to impair the enforcement of section 223 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

`(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW- Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

`(3) STATE LAW- Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

`(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW- Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

`(e) DEFINITIONS- As used in this section:

`(1) INTERNET- The term `Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

`(2) INTERACTIVE COMPUTER SERVICE- The term `interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

`(3) INFORMATION CONTENT PROVIDER- The term `information content provider' means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

`(4) ACCESS SOFTWARE PROVIDER- The term `access software provider' means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

`(A) filter, screen, allow, or disallow content;

`(B) pick, choose, analyze, or digest content; or

`(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.'

SUBTITLE B--VIOLENCE

SEC. 551. PARENTAL CHOICE IN TELEVISION PROGRAMMING.

(a) FINDINGS- The Congress makes the following findings:

(1) Television influences children's perception of the values and behavior that are common and acceptable in society.

(2) Television station operators, cable television system operators, and video programmers should follow practices in connection with video programming that take into consideration that television broadcast and cable programming has established a uniquely pervasive presence in the lives of American children.

(3) The average American child is exposed to 25 hours of television each week and some children are exposed to as much as 11 hours of television a day.

(4) Studies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior.

(5) Children in the United States are, on average, exposed to an estimated 8,000 murders and 100,000 acts of violence on television by the time the child completes elementary school.

(6) Studies indicate that children are affected by the pervasiveness and casual treatment of sexual material on television, eroding the ability of parents to develop responsible attitudes and behavior in their children.

(7) Parents express grave concern over violent and sexual video programming and strongly support technology that would give them greater control to block video programming in the home that they consider harmful to their children.

(8) There is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children.

(9) Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving that compelling governmental interest.

(b) ESTABLISHMENT OF TELEVISION RATING CODE-

(1) AMENDMENT- Section 303 (47 U.S.C. 303) is amended by adding at the end the following:

(w) Prescribe--

(1) on the basis of recommendations from an advisory committee established by the Commission in accordance with section 551(b)(2) of the Telecommunications Act of 1996, guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent,

or other indecent material about which parents should be informed before it is displayed to children: [Italic->] Provided, [<-Italic] That nothing in this paragraph shall be construed to authorize any rating of video programming on the basis of its political or religious content; and

`(2) with respect to any video programming that has been rated, and in consultation with the television industry, rules requiring distributors of such video programming to transmit such rating to permit parents to block the display of video programming that they have determined is inappropriate for their children.'

(2) **ADVISORY COMMITTEE REQUIREMENTS-** In establishing an advisory committee for purposes of the amendment made by paragraph (1) of this subsection, the Commission shall--

(A) ensure that such committee is composed of parents, television broadcasters, television programming producers, cable operators, appropriate public interest groups, and other interested individuals from the private sector and is fairly balanced in terms of political affiliation, the points of view represented, and the functions to be performed by the committee;

(B) provide to the committee such staff and resources as may be necessary to permit it to perform its functions efficiently and promptly; and

(C) require the committee to submit a final report of its recommendations within one year after the date of the appointment of the initial members.

(c) **REQUIREMENT FOR MANUFACTURE OF TELEVISIONS THAT BLOCK PROGRAMS-** Section 303 (47 U.S.C. 303), as amended by subsection (a), is further amended by adding at the end the following:

`(x) Require, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330(c)(4).'

(d) **SHIPPING OF TELEVISIONS THAT BLOCK PROGRAMS-**

(1) **REGULATIONS-** Section 330 (47 U.S.C. 330) is amended--

(A) by redesignating subsection (c) as subsection (d); and

(B) by adding after subsection (b) the following new subsection (c):

`(c)(1) Except as provided in paragraph (2), no person shall ship in interstate commerce or manufacture in the United States any apparatus described in section 303(x) of this Act except in

accordance with rules prescribed by the Commission pursuant to the authority granted by that section.

`(2) This subsection shall not apply to carriers transporting apparatus referred to in paragraph (1) without trading in it.

`(3) The rules prescribed by the Commission under this subsection shall provide for the oversight by the Commission of the adoption of standards by industry for blocking technology. Such rules shall require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and blocking specifications established by industry under the supervision of the Commission.

`(4) As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers. If the Commission determines that an alternative blocking technology exists that--

`(A) enables parents to block programming based on identifying programs without ratings,

`(B) is available to consumers at a cost which is comparable to the cost of technology that allows parents to block programming based on common ratings, and

`(C) will allow parents to block a broad range of programs on a multichannel system as effectively and as easily as technology that allows parents to block programming based on common ratings,

the Commission shall amend the rules prescribed pursuant to section 303(x) to require that the apparatus described in such section be equipped with either the blocking technology described in such section or the alternative blocking technology described in this paragraph.'

(2) CONFORMING AMENDMENT- Section 330(d), as redesignated by subsection (d)(1)(A), is amended by striking `section 303(s), and section 303(u)' and inserting in lieu thereof `and sections 303(s), 303(u), and 303(x)'.

(e) APPLICABILITY AND EFFECTIVE DATES-

(1) APPLICABILITY OF RATING PROVISION- The amendment made by subsection (b) of this section shall take effect 1 year after the date of enactment of this Act, but only if the Commission determines, in consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not, by such date--

(A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed

before it is displayed to children, and such rules are acceptable to the Commission; and

(B) agreed voluntarily to broadcast signals that contain ratings of such programming.

(2) EFFECTIVE DATE OF MANUFACTURING PROVISION- In prescribing regulations to implement the amendment made by subsection (c), the Federal Communications Commission shall, after consultation with the television manufacturing industry, specify the effective date for the applicability of the requirement to the apparatus covered by such amendment, which date shall not be less than two years after the date of enactment of this Act.

SEC. 552. TECHNOLOGY FUND.

It is the policy of the United States to encourage broadcast television, cable, satellite, syndication, other video programming distributors, and relevant related industries (in consultation with appropriate public interest groups and interested individuals from the private sector) to--

(1) establish a technology fund to encourage television and electronics equipment manufacturers to facilitate the development of technology which would empower parents to block programming they deem inappropriate for their children and to encourage the availability thereof to low income parents;

(2) report to the viewing public on the status of the development of affordable, easy to use blocking technology; and

(3) establish and promote effective procedures, standards, systems, advisories, or other mechanisms for ensuring that users have easy and complete access to the information necessary to effectively utilize blocking technology and to encourage the availability thereof to low income parents.

SUBTITLE C--JUDICIAL REVIEW

SEC. 561. EXPEDITED REVIEW.

(a) THREE-JUDGE DISTRICT COURT HEARING- Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title or any amendment made by this title, or any provision thereof, shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

(b) APPELLATE REVIEW- Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

TITLE VI--EFFECT ON OTHER LAWS

SEC. 601. APPLICABILITY OF CONSENT DECREES AND OTHER LAW.

(a) APPLICABILITY OF AMENDMENTS TO FUTURE CONDUCT-

(1) AT&T CONSENT DECREE- Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(2) GTE CONSENT DECREE- Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the GTE Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(3) MCCAW CONSENT DECREE- Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the McCaw Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and subsection (d) of this section and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(b) ANTITRUST LAWS-

(1) SAVINGS CLAUSE- Except as provided in paragraphs (2) and (3), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

(2) REPEAL- Subsection (a) of section 221 (47 U.S.C. 221(a)) is repealed.

(3) CLAYTON ACT- Section 7 of the Clayton Act (15 U.S.C. 18) is amended in the last paragraph by striking 'Federal Communications Commission,'.

(c) FEDERAL, STATE, AND LOCAL LAW-

(1) NO IMPLIED EFFECT- This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

(2) STATE TAX SAVINGS PROVISION- Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation, except as provided in sections 622 and 653(c) of the Communications Act of 1934

and section 602 of this Act.

(d) COMMERCIAL MOBILE SERVICE JOINT MARKETING- Notwithstanding section 22.903 of the Commission's regulations (47 C.F.R. 22.903) or any other Commission regulation, a Bell operating company or any other company may, except as provided in sections 271(e)(1) and 272 of the Communications Act of 1934 as amended by this Act as they relate to wireline service, jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA telecommunications service, interLATA telecommunications service, and information services.

(e) DEFINITIONS- As used in this section:

(1) AT&T CONSENT DECREE- The term `AT&T Consent Decree' means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(2) GTE CONSENT DECREE- The term `GTE Consent Decree' means the order entered December 21, 1984, as restated January 11, 1985, in the action styled United States v. GTE Corp., Civil Action No. 83-1298, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after December 21, 1984.

(3) MCCA W CONSENT DECREE- The term `McCaw Consent Decree' means the proposed consent decree filed on July 15, 1994, in the antitrust action styled United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civil Action No. 94-01555, in the United States District Court for the District of Columbia. Such term includes any stipulation that the parties will abide by the terms of such proposed consent decree until it is entered and any order entering such proposed consent decree.

(4) ANTITRUST LAWS- The term `antitrust laws' has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et seq.), commonly known as the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

SEC. 602. PREEMPTION OF LOCAL TAXATION WITH RESPECT TO DIRECT-TO-HOME SERVICES.

(a) PREEMPTION- A provider of direct-to-home satellite service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.

(b) DEFINITIONS- For the purposes of this section--

(1) DIRECT-TO-HOME SATELLITE SERVICE- The term `direct-to-home satellite service' means only programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground receiving or distribution equipment, except at the subscribers' premises or in the uplink process to the satellite.

(2) PROVIDER OF DIRECT-TO-HOME SATELLITE SERVICE- For purposes of this section, a `provider of direct-to-home satellite service' means a person who transmits, broadcasts, sells, or distributes direct-to-home satellite service.

(3) LOCAL TAXING JURISDICTION- The term `local taxing jurisdiction' means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee, but does not include a State.

(4) STATE- The term `State' means any of the several States, the District of Columbia, or any territory or possession of the United States.

(5) TAX OR FEE- The terms `tax' and `fee' mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

(c) PRESERVATION OF STATE AUTHORITY- This section shall not be construed to prevent taxation of a provider of direct-to-home satellite service by a State or to prevent a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by a State.

TITLE VII--MISCELLANEOUS PROVISIONS

SEC. 701. PREVENTION OF UNFAIR BILLING PRACTICES FOR INFORMATION

OR

SERVICES PROVIDED OVER TOLL-FREE TELEPHONE CALLS.

(a) PREVENTION OF UNFAIR BILLING PRACTICES-

(1) IN GENERAL- Section 228(c) (47 U.S.C. 228(c)) is amended--

(A) by striking out subparagraph (C) of paragraph (7) and inserting in lieu thereof the following:

`(C) the calling party being charged for information conveyed during the call unless--

`(i) the calling party has a written agreement (including an agreement transmitted through electronic medium) that meets the requirements of paragraph (8); or

- (ii) the calling party is charged for the information in accordance with paragraph (9); or;
- (B)(i) by striking `or' at the end of subparagraph (C) of such paragraph;
- (ii) by striking the period at the end of subparagraph (D) of such paragraph and inserting a semicolon and `or'; and
- (iii) by adding at the end thereof the following:
 - (E) the calling party being assessed, by virtue of being asked to connect or otherwise transfer to a pay-per-call service, a charge for the call.'; and
- (C) by adding at the end the following new paragraphs:

`(8) SUBSCRIPTION AGREEMENTS FOR BILLING FOR INFORMATION PROVIDED VIA TOLL-FREE CALLS-

 (A) IN GENERAL- For purposes of paragraph (7)(C)(i), a written subscription does not meet the requirements of this paragraph unless the agreement specifies the material terms and conditions under which the information is offered and includes--

- (i) the rate at which charges are assessed for the information;
- (ii) the information provider's name;
- (iii) the information provider's business address;
- (iv) the information provider's regular business telephone number;
- (v) the information provider's agreement to notify the subscriber at least one billing cycle in advance of all future changes in the rates charged for the information; and
- (vi) the subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill, or credit or calling card.

 (B) BILLING ARRANGEMENTS- If a subscriber elects, pursuant to subparagraph (A)(vi), to pay by means of a phone bill--

- (i) the agreement shall clearly explain that the subscriber will be assessed for calls made to the information service from the subscriber's phone line;
- (ii) the phone bill shall include, in prominent type, the following disclaimer:

 `Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services.'; and

- (iii) the phone bill shall clearly list the 800 number dialed.

 (C) USE OF PINS TO PREVENT UNAUTHORIZED USE- A written

agreement does not meet the requirements of this paragraph unless it--

- `(i) includes a unique personal identification number or other subscriber-specific identifier and requires a subscriber to use this number or identifier to obtain access to the information provided and includes instructions on its use; and

- `(ii) assures that any charges for services accessed by use of the subscriber's personal identification number or subscriber-specific identifier be assessed to subscriber's source of payment elected pursuant to subparagraph (A)(vi).

`(D) EXCEPTIONS- Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required--

- `(i) for calls utilizing telecommunications devices for the deaf;

- `(ii) for directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate; or

- `(iii) for any purchase of goods or of services that are not information services.

`(E) TERMINATION OF SERVICE- On receipt by a common carrier of a complaint by any person that an information provider is in violation of the provisions of this section, a carrier shall--

- `(i) promptly investigate the complaint; and

- `(ii) if the carrier reasonably determines that the complaint is valid, it may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section.

`(F) TREATMENT OF REMEDIES- The remedies provided in this paragraph are in addition to any other remedies that are available under title V of this Act.

`(9) CHARGES BY CREDIT, PREPAID, DEBIT, CHARGE, OR CALLING CARD IN ABSENCE OF AGREEMENT- For purposes of paragraph (7)(C)(ii), a calling party is not charged in accordance with this paragraph unless the calling party is charged by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory disclosure message that--

- `(A) clearly states that there is a charge for the call;

- `(B) clearly states the service's total cost per minute and any other fees for the service or for any service to

which the caller may be transferred;

`(C) explains that the charges must be billed on either a credit, prepaid, debit, charge, or calling card;

`(D) asks the caller for the card number;

`(E) clearly states that charges for the call begin at the end of the introductory message; and

`(F) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

`(10) **BYPASS OF INTRODUCTORY DISCLOSURE MESSAGE**- The requirements of paragraph (9) shall not apply to calls from repeat callers using a bypass mechanism to avoid listening to the introductory message: [*Italic->*] Provided, [*<-Italic*] That information providers shall disable such a bypass mechanism after the institution of any price increase and for a period of time determined to be sufficient by the Federal Trade Commission to give callers adequate and sufficient notice of a price increase.

`(11) **DEFINITION OF CALLING CARD**- As used in this subsection, the term `calling card' means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.'.

(2) **REGULATIONS**- The Federal Communications Commission shall revise its regulations to comply with the amendment made by paragraph (1) not later than 180 days after the date of enactment of this Act.

(3) **EFFECTIVE DATE**- The amendments made by paragraph (1) shall take effect on the date of enactment of this Act.

(b) **CLARIFICATION OF `PAY-PER-CALL SERVICES'**-

(1) **TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT**- Section 204(1) of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5714(1)) is amended to read as follows:

`(1) The term `pay-per-call services' has the meaning provided in section 228(i) of the Communications Act of 1934, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of section 228(i)(1) of such Act, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a).'

(2) **COMMUNICATIONS ACT**- Section 228(i)(2) (47 U.S.C. 228(i)(2)) is amended by striking `or any service the charge

for which is tariffed,'

SEC. 702. PRIVACY OF CUSTOMER INFORMATION.

Title II is amended by inserting after section 221 (47 U.S.C. 221) the following new section:

SEC. 222. PRIVACY OF CUSTOMER INFORMATION.

(a) **IN GENERAL-** Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

(b) **CONFIDENTIALITY OF CARRIER INFORMATION-** A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

(c) **CONFIDENTIALITY OF CUSTOMER PROPRIETARY NETWORK INFORMATION-**

(1) **PRIVACY REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS-**

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

(2) **DISCLOSURE ON REQUEST BY CUSTOMERS-** A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

(3) **AGGREGATE CUSTOMER INFORMATION-** A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.

(d) **EXCEPTIONS-** Nothing in this section prohibits a

telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents--

`(1) to initiate, render, bill, and collect for telecommunications services;

`(2) to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

`(3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service.

`(e) SUBSCRIBER LIST INFORMATION- Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

`(f) DEFINITIONS- As used in this section:

`(1) CUSTOMER PROPRIETARY NETWORK INFORMATION- The term 'customer proprietary network information' means--

`(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

`(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier;

except that such term does not include subscriber list information.

`(2) AGGREGATE INFORMATION- The term 'aggregate customer information' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

`(3) SUBSCRIBER LIST INFORMATION- The term 'subscriber list information' means any information--

`(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the

establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and
` (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.'

SEC. 703. POLE ATTACHMENTS.

Section 224 (47 U.S.C. 224) is amended--

(1) in subsection (a)(1), by striking the first sentence and inserting the following: `The term `utility' means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.';

(2) in subsection (a)(4), by inserting after `system' the following: `or provider of telecommunications service';

(3) by inserting after subsection (a)(4) the following:

`(5) For purposes of this section, the term `telecommunications carrier' (as defined in section 3 of this Act) does not include any incumbent local exchange carrier as defined in section 251(h).';

(4) by inserting after `conditions' in subsection (c)(1) a comma and the following: `or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f).';

(5) in subsection (c)(2)(B), by striking `cable television services' and inserting `the services offered via such attachments';

(6) by inserting after subsection (d)(2) the following:

`(3) This subsection shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service. Until the effective date of the regulations required under subsection (e), this subsection shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.'; and

(7) by adding at the end thereof the following:

`(e)(1) The Commission shall, no later than 2 years after the date of enactment of the Telecommunications Act of 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.

`(2) A utility shall apportion the cost of providing space on a

pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

`(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

`(4) The regulations required under paragraph (1) shall become effective 5 years after the date of enactment of the Telecommunications Act of 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of 5 years beginning on the effective date of such regulations.

`(f)(1) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

`(2) Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

`(g) A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

`(h) Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

`(i) An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other

entity (including the owner of such pole, duct, conduit, or right-of-way).'

SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY- Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

`(7) PRESERVATION OF LOCAL ZONING AUTHORITY-

`(A) GENERAL AUTHORITY- Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

`(B) LIMITATIONS-

`(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

`(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

`(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

`(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

`(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

`(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

`(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such

action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) DEFINITIONS- For purposes of this paragraph--

(i) the term 'personal wireless services' means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term 'personal wireless service facilities' means facilities for the provision of personal wireless services; and

(iii) the term 'unlicensed wireless service' means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v)).'

(b) RADIO FREQUENCY EMISSIONS- Within 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93-62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.

(c) AVAILABILITY OF PROPERTY- Within 180 days of the enactment of this Act, the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.

SEC. 705. MOBILE SERVICES DIRECT ACCESS TO LONG DISTANCE CARRIERS.

Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end

the following new paragraph:

`(8) MOBILE SERVICES ACCESS- A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.'

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.

(a) IN GENERAL- The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) INQUIRY- The Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) DEFINITIONS- For purposes of this subsection:

(1) ADVANCED TELECOMMUNICATIONS CAPABILITY- The term 'advanced telecommunications capability' is defined, without regard to any transmission media or technology, as high-speed,

switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) ELEMENTARY AND SECONDARY SCHOOLS- The term 'elementary and secondary schools' means elementary and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

SEC. 707. TELECOMMUNICATIONS DEVELOPMENT FUND.

(a) DEPOSIT AND USE OF AUCTION ESCROW ACCOUNTS- Section 309(j)(8) (47 U.S.C. 309(j)(8)) is amended by adding at the end the following new subparagraph:

(C) DEPOSIT AND USE OF AUCTION ESCROW ACCOUNTS- Any deposits the Commission may require for the qualification of any person to bid in a system of competitive bidding pursuant to this subsection shall be deposited in an interest bearing account at a financial institution designated for purposes of this subsection by the Commission (after consultation with the Secretary of the Treasury). Within 45 days following the conclusion of the competitive bidding--

(i) the deposits of successful bidders shall be paid to the Treasury;

(ii) the deposits of unsuccessful bidders shall be returned to such bidders; and

(iii) the interest accrued to the account shall be transferred to the Telecommunications Development Fund established pursuant to section 714 of this Act.'

(b) ESTABLISHMENT AND OPERATION OF FUND- Title VII is amended by inserting after section 713 (as added by section 305) the following new section:

SEC. 714. TELECOMMUNICATIONS DEVELOPMENT FUND.

(a) PURPOSE OF SECTION- It is the purpose of this section--

(1) to promote access to capital for small businesses in order to enhance competition in the telecommunications industry;

(2) to stimulate new technology development, and promote employment and training; and

(3) to support universal service and promote delivery of telecommunications services to underserved rural and urban areas.

(b) ESTABLISHMENT OF FUND- There is hereby established a body corporate to be known as the Telecommunications Development Fund, which shall have succession until dissolved. The Fund shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof.

`(c) BOARD OF DIRECTORS-

`(1) COMPOSITION OF BOARD; CHAIRMAN- The Fund shall have a Board of Directors which shall consist of 7 persons appointed by the Chairman of the Commission. Four of such directors shall be representative of the private sector and three of such directors shall be representative of the Commission, the Small Business Administration, and the Department of the Treasury, respectively. The Chairman of the Commission shall appoint one of the representatives of the private sector to serve as chairman of the Fund within 30 days after the date of enactment of this section, in order to facilitate rapid creation and implementation of the Fund. The directors shall include members with experience in a number of the following areas: finance, investment banking, government banking, communications law and administrative practice, and public policy.

`(2) TERMS OF APPOINTED AND ELECTED MEMBERS- The directors shall be eligible to serve for terms of 5 years, except of the initial members, as designated at the time of their appointment--

`(A) 1 shall be eligible to service for a term of 1 year;

`(B) 1 shall be eligible to service for a term of 2 years;

`(C) 1 shall be eligible to service for a term of 3 years;

`(D) 2 shall be eligible to service for a term of 4 years; and

`(E) 2 shall be eligible to service for a term of 5 years

(1 of whom shall be the Chairman).

Directors may continue to serve until their successors have been appointed and have qualified.

`(3) MEETINGS AND FUNCTIONS OF THE BOARD- The Board of Directors shall meet at the call of its Chairman, but at least quarterly. The Board shall determine the general policies which shall govern the operations of the Fund. The Chairman of the Board shall, with the approval of the Board, select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the officers of the Fund and shall discharge all such functions, powers, and duties.

`(d) ACCOUNTS OF THE FUND- The Fund shall maintain its accounts at a financial institution designated for purposes of this section by the Chairman of the Board (after consultation with the Commission and the Secretary of the Treasury). The accounts of the Fund shall consist of--

`(1) interest transferred pursuant to section 309(j)(8)(C) of this Act;

`(2) such sums as may be appropriated to the Commission for

advances to the Fund;

`(3) any contributions or donations to the Fund that are accepted by the Fund; and

`(4) any repayment of, or other payment made with respect to, loans, equity, or other extensions of credit made from the Fund.

`(e) USE OF THE FUND- All moneys deposited into the accounts of the Fund shall be used solely for--

`(1) the making of loans, investments, or other extensions of credits to eligible small businesses in accordance with subsection (f);

`(2) the provision of financial advice to eligible small businesses;

`(3) expenses for the administration and management of the Fund (including salaries, expenses, and the rental or purchase of office space for the fund);

`(4) preparation of research, studies, or financial analyses; and

`(5) other services consistent with the purposes of this section.

`(f) LENDING AND CREDIT OPERATIONS- Loans or other extensions of credit from the Fund shall be made available in accordance with the requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and any other applicable law to an eligible small business on the basis of--

`(1) the analysis of the business plan of the eligible small business;

`(2) the reasonable availability of collateral to secure the loan or credit extension;

`(3) the extent to which the loan or credit extension promotes the purposes of this section; and

`(4) other lending policies as defined by the Board.

`(g) RETURN OF ADVANCES- Any advances appropriated pursuant to subsection (d)(2) shall be disbursed upon such terms and conditions (including conditions relating to the time or times of repayment) as are specified in any appropriations Act providing such advances.

`(h) GENERAL CORPORATE POWERS- The Fund shall have power--

`(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

`(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

`(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

`(4) to conduct its business, carry on its operations, and have officers and exercise the power granted by this section in

any State without regard to any qualification or similar statute in any State;

`(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated, for the purposes of the Fund;

`(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Fund;

`(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

`(8) to appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them, and fix the penalty thereof; and

`(9) to enter into contracts, to execute instruments, to incur liabilities, to make loans and equity investment, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

`(i) ACCOUNTING, AUDITING, AND REPORTING- The accounts of the Fund shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants. A report of each such audit shall be furnished to the Secretary of the Treasury and the Commission. The representatives of the Secretary and the Commission shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and necessary to facilitate the audit.

`(j) REPORT ON AUDITS BY TREASURY- A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Congress not later than 6 months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the Fund, together with such recommendations with respect thereto as the Secretary may deem advisable.

`(k) DEFINITIONS- As used in this section:

`(1) ELIGIBLE SMALL BUSINESS- The term `eligible small business' means business enterprises engaged in the telecommunications industry that have \$50,000,000 or less in annual revenues, on average over the past 3 years prior to

submitting the application under this section.

`(2) FUND- The term `Fund' means the Telecommunications Development Fund established pursuant to this section.

`(3) TELECOMMUNICATIONS INDUSTRY- The term `telecommunications industry' means communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, computer, data transmission, software, programming, advanced messaging, and electronics businesses.'

SEC. 708. NATIONAL EDUCATION TECHNOLOGY FUNDING CORPORATION.

(a) FINDINGS; PURPOSE-

(1) FINDINGS- The Congress finds as follows:

(A) CORPORATION- There has been established in the District of Columbia a private, nonprofit corporation known as the National Education Technology Funding Corporation which is not an agency or independent establishment of the Federal Government.

(B) BOARD OF DIRECTORS- The Corporation is governed by a Board of Directors, as prescribed in the Corporation's articles of incorporation, consisting of 15 members, of which--

- (i) five members are representative of public agencies representative of schools and public libraries;
- (ii) five members are representative of State government, including persons knowledgeable about State finance, technology and education; and
- (iii) five members are representative of the private sector, with expertise in network technology, finance and management.

(C) CORPORATE PURPOSES- The purposes of the Corporation, as set forth in its articles of incorporation, are--

- (i) to leverage resources and stimulate private investment in education technology infrastructure;
- (ii) to designate State education technology agencies to receive loans, grants or other forms of assistance from the Corporation;
- (iii) to establish criteria for encouraging States to--

(I) create, maintain, utilize and upgrade interactive high capacity networks capable of providing audio, visual and data communications for elementary schools, secondary schools and public libraries;

(II) distribute resources to assure equitable aid to all elementary schools and secondary schools in the State and achieve universal access to network technology; and

(III) upgrade the delivery and development of learning through

innovative technology-based instructional tools and applications;

(iv) to provide loans, grants and other forms of assistance to State education technology agencies, with due regard for providing a fair balance among types of school districts and public libraries assisted and the disparate needs of such districts and libraries;

(v) to leverage resources to provide maximum aid to elementary schools, secondary schools and public libraries; and

(vi) to encourage the development of education telecommunications and information technologies through public-private ventures, by serving as a clearinghouse for information on new education technologies, and by providing technical assistance, including assistance to States, if needed, to establish State education technology agencies.

(2) PURPOSE- The purpose of this section is to recognize the Corporation as a nonprofit corporation operating under the laws of the District of Columbia, and to provide authority for Federal departments and agencies to provide assistance to the Corporation.

(b) DEFINITIONS- For the purpose of this section--

(1) the term `Corporation' means the National Education Technology Funding Corporation described in subsection (a)(1)(A);

(2) the terms `elementary school' and `secondary school' have the same meanings given such terms in section 14101 of the Elementary and Secondary Education Act of 1965; and

(3) the term `public library' has the same meaning given such term in section 3 of the Library Services and Construction Act.

(c) ASSISTANCE FOR EDUCATION TECHNOLOGY PURPOSES-

(1) RECEIPT BY CORPORATION- Notwithstanding any other provision of law, in order to carry out the corporate purposes described in subsection (a)(1)(C), the Corporation shall be eligible to receive discretionary grants, contracts, gifts, contributions, or technical assistance from any Federal department or agency, to the extent otherwise permitted by law.

(2) AGREEMENT- In order to receive any assistance described in paragraph (1) the Corporation shall enter into an agreement with the Federal department or agency providing such assistance, under which the Corporation agrees--

(A) to use such assistance to provide funding and technical assistance only for activities which the Board of Directors of the Corporation determines are consistent with the corporate purposes described in subsection (a)(1)(C);

(B) to review the activities of State education

technology agencies and other entities receiving assistance from the Corporation to assure that the corporate purposes described in subsection (a)(1)(C) are carried out;

(C) that no part of the assets of the Corporation shall accrue to the benefit of any member of the Board of Directors of the Corporation, any officer or employee of the Corporation, or any other individual, except as salary or reasonable compensation for services;

(D) that the Board of Directors of the Corporation will adopt policies and procedures to prevent conflicts of interest;

(E) to maintain a Board of Directors of the Corporation consistent with subsection (a)(1)(B);

(F) that the Corporation, and any entity receiving the assistance from the Corporation, are subject to the appropriate oversight procedures of the Congress; and

(G) to comply with--

(i) the audit requirements described in subsection (d); and

(ii) the reporting and testimony requirements described in subsection (e).

(3) CONSTRUCTION- Nothing in this section shall be construed to establish the Corporation as an agency or independent establishment of the Federal Government, or to establish the members of the Board of Directors of the Corporation, or the officers and employees of the Corporation, as officers or employees of the Federal Government.

(d) AUDITS-

(1) AUDITS BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS-

(A) IN GENERAL- The Corporation's financial statements shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit shall be made available to the person or persons conducting the audits, and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(B) REPORTING REQUIREMENTS- The report of each annual

audit described in subparagraph (A) shall be included in the annual report required by subsection (e)(1).

(2) RECORDKEEPING REQUIREMENTS; AUDIT AND EXAMINATION OF BOOKS-

(A) RECORDKEEPING REQUIREMENTS- The Corporation shall ensure that each recipient of assistance from the Corporation keeps--

- (i) separate accounts with respect to such assistance;
- (ii) such records as may be reasonably necessary to fully disclose--

(I) the amount and the disposition by such recipient of the proceeds of such assistance;

(II) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(III) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

- (iii) such other records as will facilitate an effective audit.

(B) AUDIT AND EXAMINATION OF BOOKS- The Corporation shall ensure that the Corporation, or any of the Corporation's duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance from the Corporation that are pertinent to such assistance.

Representatives of the Comptroller General shall also have such access for such purpose.

(e) ANNUAL REPORT; TESTIMONY TO THE CONGRESS-

(1) ANNUAL REPORT- Not later than April 30 of each year, the Corporation shall publish an annual report for the preceding fiscal year and submit that report to the President and the Congress. The report shall include a comprehensive and detailed evaluation of the Corporation's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as the Corporation deems appropriate.

(2) TESTIMONY BEFORE CONGRESS- The members of the Board of Directors, and officers, of the Corporation shall be available to testify before appropriate committees of the Congress with respect to the report described in paragraph (1), the report of any audit made by the Comptroller General pursuant to this section, or any other matter which any such committee may determine appropriate.

SEC. 709. REPORT ON THE USE OF ADVANCED TELECOMMUNICATIONS SERVICES

FOR MEDICAL PURPOSES.

The Secretary of Commerce, in consultation with the Secretary of Health and Human Services and other appropriate departments and agencies, shall submit a report to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate concerning the activities of the Joint Working Group on Telemedicine, together with any findings reached in the studies and demonstrations on telemedicine funded by the Public Health Service or other Federal agencies. The report shall examine questions related to patient safety, the efficacy and quality of the services provided, and other legal, medical, and economic issues related to the utilization of advanced telecommunications services for medical purposes. The report shall be submitted to the respective committees by January 31, 1997.

SEC. 710. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL- In addition to any other sums authorized by law, there are authorized to be appropriated to the Federal Communications Commission such sums as may be necessary to carry out this Act and the amendments made by this Act.

(b) EFFECT ON FEES- For the purposes of section 9(b)(2) (47 U.S.C. 159(b)(2)), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appropriated for the performance of activities described in section 9(a) of the Communications Act of 1934.

(c) FUNDING AVAILABILITY- Section 309(j)(8)(B) (47 U.S.C. 309(j)(8)(B)) is amended by adding at the end the following new sentence: `Such offsetting collections are authorized to remain available until expended.'.

Speaker of the House of Representatives.
Vice President of the United States and
President of the Senate.



Radio Frequency Safety

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RF Safety FAQ's

FDA Website



Visit the FDA consumer information [wireless phone](#) website.

Radio Frequency Safety



Office of Engineering and Technology (OET)

Frequently asked questions about the safety of radiofrequency (RF) and microwave emissions from transmitters and facilities regulated by the FCC

For further information on these (and other) topics please refer to [OET Bulletin 56](#). You may also contact the FCC's RF Safety Program at rfsafety@fcc.gov or 1-888-225-5322

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WHAT ARE "RADIOFREQUENCY" AND MICROWAVE RADIATION?

Electromagnetic radiation consists of waves of electric and magnetic energy moving together (*i.e.*, radiating) through space at the speed of light. Taken together, all forms of electromagnetic energy are referred to as the electromagnetic "spectrum." Radio waves and microwaves emitted by transmitting antennas are one form of electromagnetic energy. They are collectively referred to as "radiofrequency" or "RF" energy or radiation. Note that the term "radiation" does not mean "radioactive." Often, the terms "electromagnetic field" or "radiofrequency field" may be used to indicate the presence of electromagnetic or RF energy.

The RF waves emanating from an antenna are generated by the movement of electrical charges in the antenna. Electromagnetic waves can be characterized by a wavelength and a frequency. The wavelength is the distance covered by one complete cycle of the electromagnetic wave, while the frequency is the number of electromagnetic waves passing a given point in one second. The frequency of an RF signal is usually expressed in terms of a unit called the "hertz" (abbreviated "Hz"). One Hz equals one cycle per second. One megahertz ("MHz") equals one million cycles per second.

Different forms of electromagnetic energy are categorized by their wavelengths and frequencies. The RF part of the electromagnetic spectrum is generally defined as that part of the spectrum where electromagnetic waves have frequencies in the range of about 3 kilohertz (3 kHz) to 300 gigahertz (300 GHz). Microwaves are a specific category of radio waves that can be loosely defined as radiofrequency energy at frequencies ranging from about 1 GHz upward. ([Back to Index](#))

WHAT IS NON-IONIZING RADIATION?

"Ionization" is a process by which electrons are stripped from atoms and molecules. This process can produce molecular changes that can lead to damage in biological tissue, including effects on DNA, the genetic material of living organisms. This process requires interaction with high levels of electromagnetic energy. Those types of electromagnetic radiation with enough energy to ionize biological material include X-radiation and gamma radiation. Therefore, X-rays and gamma rays are examples of ionizing radiation.

The energy levels associated with RF and microwave radiation, on the other hand, are not great enough to cause the ionization of atoms and molecules, and RF energy is, therefore, is a type of non-ionizing radiation. Other types

of non-ionizing radiation include visible and infrared light. Often the term "radiation" is used, colloquially, to imply that ionizing radiation (radioactivity), such as that associated with nuclear power plants, is present. Ionizing radiation should not be confused with the lower-energy, non-ionizing radiation with respect to possible biological effects, since the mechanisms of action are quite different. ([Back to Index](#))

HOW IS RADIOFREQUENCY ENERGY USED?

Probably the most important use for RF energy is in providing telecommunications services. Radio and television broadcasting, cellular telephones, personal communications services (PCS), pagers, cordless telephones, business radio, radio communications for police and fire departments, amateur radio, microwave point-to-point links and satellite communications are just a few of the many telecommunications applications of RF energy. Microwave ovens are an example of a non-communication use of RF energy. Radiofrequency radiation, especially at microwave frequencies, can transfer energy to water molecules. High levels of microwave energy will generate heat in water-rich materials such as most foods. This efficient absorption of microwave energy via water molecules results in rapid heating throughout an object, thus allowing food to be cooked more quickly in a microwave oven than in a conventional oven. Other important non-communication uses of RF energy include radar and industrial heating and sealing. Radar is a valuable tool used in many applications range from traffic speed enforcement to air traffic control and military surveillance. Industrial heaters and sealers generate intense levels of RF radiation that rapidly heats the material being processed in the same way that a microwave oven cooks food. These devices have many uses in industry, including molding plastic materials, gluing wood products, sealing items such as shoes and pocketbooks, and processing food products. There are also a number of medical applications of RF energy, such as diathermy and magnetic resonance imaging (MRI). ([Back to Index](#))

HOW IS RADIOFREQUENCY RADIATION MEASURED?

An RF electromagnetic wave has both an electric and a magnetic component (electric field and magnetic field), and it is often convenient to express the intensity of the RF environment at a given location in terms of units specific to each component. For example, the unit "volts per meter" (V/m) is used to express the strength of the electric field (electric "field strength"), and the unit "amperes per meter" (A/m) is used to express the strength of the magnetic field (magnetic "field strength"). Another commonly used unit for characterizing the total electromagnetic field is "power density." Power density is most appropriately used when the point of measurement is far enough away from an antenna to be located in the "far-field" zone of the antenna.

Power density is defined as power per unit area. For example, power density is commonly expressed in terms of watts per square meter (W/m²), milliwatts per square centimeter (mW/cm²), or microwatts per square centimeter (μW/cm²). One mW/cm² equals 10 W/m², and 100 μW/cm² equal one W/m². With respect to frequencies in the microwave range, power density is usually used to express intensity of exposure.

The quantity used to measure the rate at which RF energy is actually absorbed in a body is called the "Specific Absorption Rate" or "SAR." It is usually expressed in units of watts per kilogram (W/kg) or milliwatts per gram (mW/g). In the case of exposure of the whole body, a standing ungrounded

human adult absorbs RF energy at a maximum rate when the frequency of the RF radiation is in the range of about 70 MHz. This means that the "whole-body" SAR is at a maximum under these conditions. Because of this "resonance" phenomenon and consideration of children and grounded adults, RF safety standards are generally most restrictive in the frequency range of about 30 to 300 MHz. For exposure of parts of the body, such as the exposure from hand-held mobile phones, "partial-body" SAR limits are used in the safety standards to control absorption of RF energy (see later questions on mobile phones). ([Back to Index](#))

WHAT BIOLOGICAL EFFECTS CAN BE CAUSED BY RF ENERGY?

Biological effects can result from exposure to RF energy. Biological effects that result from heating of tissue by RF energy are often referred to as "thermal" effects. It has been known for many years that exposure to very high levels of RF radiation can be harmful due to the ability of RF energy to heat biological tissue rapidly. This is the principle by which microwave ovens cook food. Exposure to very high RF intensities can result in heating of biological tissue and an increase in body temperature. Tissue damage in humans could occur during exposure to high RF levels because of the body's inability to cope with or dissipate the excessive heat that could be generated.

Two areas of the body, the eyes and the testes, are particularly vulnerable to RF heating because of the relative lack of available blood flow to dissipate the excess heat load.

At relatively low levels of exposure to RF radiation, *i.e.*, levels lower than those that would produce significant heating; the evidence for production of harmful biological effects is ambiguous and unproven. Such effects, if they exist, have been referred to as "non-thermal" effects. A number of reports have appeared in the scientific literature describing the observation of a range of biological effects resulting from exposure to low-levels of RF energy.

However, in most cases, further experimental research has been unable to reproduce these effects. Furthermore, since much of the research is not done on whole bodies (*in vivo*), there has been no determination that such effects constitute a human health hazard. It is generally agreed that further research is needed to determine the generality of such effects and their possible relevance, if any, to human health. In the meantime, standards-setting organizations and government agencies continue to monitor the latest experimental findings to confirm their validity and determine whether changes in safety limits are needed to protect human health. ([Back to Index](#))

CAN PEOPLE BE EXPOSED TO LEVELS OF RADIOFREQUENCY RADIATION THAT COULD BE HARMFUL?

Studies have shown that environmental levels of RF energy routinely encountered by the general public are typically far below levels necessary to produce significant heating and increased body temperature. However, there may be situations, particularly in workplace environments near high-powered RF sources, where the recommended limits for safe exposure of human beings to RF energy could be exceeded. In such cases, restrictive measures or mitigation actions may be necessary to ensure the safe use of RF energy. ([Back to Index](#))

CAN RADIOFREQUENCY RADIATION CAUSE CANCER?

Some studies have also examined the possibility of a link between RF exposure and cancer. Results to date have been inconclusive. While some experimental data have suggested a possible link between exposure and tumor formation in animals exposed under certain specific conditions, the

results have not been independently replicated. Many other studies have failed to find evidence for a link to cancer or any related condition. The Food and Drug Administration has further information on this topic with respect to RF exposure from mobile phones at the following Web site: www.fda.gov/cellphones/ . ([Back to Index](#))

WHAT RESEARCH IS BEING DONE ON RF BIOLOGICAL EFFECTS?

For many years, research into the possible biological effects of RF energy has been carried out in laboratories around the world, and such research is continuing. Past research has resulted in a large number of peer-reviewed scientific publications on this topic. For many years the U.S. Government has sponsored research into the biological effects of RF energy. The majority of this work has been funded by the Department of Defense, due in part, to the extensive military interest in using RF equipment such as radar and other relatively high-powered radio transmitters for routine military operations. In addition, some U.S. civilian federal agencies responsible for health and safety, such as the Environmental Protection Agency (EPA) and the U.S. Food and Drug Administration (FDA), have sponsored and conducted research in this area. At the present time, most of the non-military research on biological effects of RF energy in the U.S. is being funded by industry organizations, although relatively more research by government agencies is being carried out overseas, particularly in Europe.

In 1996, the World Health Organization (WHO) established a program called the International EMF Project, which is designed to review the scientific literature concerning biological effects of electromagnetic fields, identify gaps in knowledge about such effects, recommend research needs, and work towards international resolution of health concerns over the use of RF technology. The WHO maintains a Web site that provides extensive information on this project and about RF biological effects and research (www.who.ch/peh-emf).

The FDA, the EPA and other federal agencies responsible for public health and safety have worked together and in connection with the WHO to monitor developments and identify research needs related to RF biological effects. More information about this can be obtained at the FDA Web site: www.fda.gov/cellphones/. ([Back to Index](#))

WHAT LEVELS ARE SAFE FOR EXPOSURE TO RF ENERGY?

Exposure standards for radiofrequency energy have been developed by various organizations and countries. These standards recommend safe levels of exposure for both the general public and for workers. In the United States, the FCC has adopted and used recognized safety guidelines for evaluating RF environmental exposure since 1985. Federal health and safety agencies, such as the EPA, FDA, the National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA) have also been involved in monitoring and investigating issues related to RF exposure.

The FCC guidelines for human exposure to RF electromagnetic fields were derived from the recommendations of two expert organizations, the National Council on Radiation Protection and Measurements (NCRP) and the Institute of Electrical and Electronics Engineers (IEEE). Both the NCRP exposure criteria and the IEEE standard were developed by expert scientists and engineers after extensive reviews of the scientific literature related to RF biological effects. The exposure guidelines are based on thresholds for known adverse effects, and they incorporate prudent margins of safety. In adopting

the most recent RF exposure guidelines, the FCC consulted with the EPA, FDA, OSHA and NIOSH, and obtained their support for the guidelines that the FCC is using.

Many countries in Europe and elsewhere use exposure guidelines developed by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). The ICNIRP safety limits are generally similar to those of the NCRP and IEEE, with a few exceptions. For example, ICNIRP recommends somewhat different exposure levels in the lower and upper frequency ranges and for localized exposure due to such devices as hand-held cellular telephones. One of the goals of the WHO EMF Project (see above) is to provide a framework for international harmonization of RF safety standards.

The NCRP, IEEE and ICNIRP exposure guidelines identify the same threshold level at which harmful biological effects may occur, and the values for Maximum Permissible Exposure (MPE) recommended for electric and magnetic field strength and power density in both documents are based on this level.

The threshold level is a Specific Absorption Rate (SAR) value for the whole body of 4 watts per kilogram (4 W/kg).

In addition, the NCRP, IEEE and ICNIRP guidelines for maximum permissible exposure are different for different transmitting frequencies. This is due to the finding (discussed above) that whole-body human absorption of RF energy varies with the frequency of the RF signal. The most restrictive limits on whole-body exposure are in the frequency range of 30-300 MHz where the human body absorbs RF energy most efficiently when the whole body is exposed. For devices that only expose part of the body, such as mobile phones, different exposure limits are specified (see below).

The exposure limits used by the FCC are expressed in terms of SAR, electric and magnetic field strength and power density for transmitters operating at frequencies from 300 kHz to 100 GHz. The actual values can be found in either of two informational bulletins available at this Web site ([OET Bulletin 56](#) or [OET Bulletin 65](#)), see listing for "OET Safety Bulletins." ([Back to Index](#))

WHY HAS THE FCC ADOPTED GUIDELINES FOR RF EXPOSURE?

The FCC authorizes and licenses devices, transmitters and facilities that generate RF radiation. It has jurisdiction over all transmitting services in the U.S. except those specifically operated by the Federal Government. However, the FCC's primary jurisdiction does not lie in the health and safety area, and it must rely on other agencies and organizations for guidance in these matters.

Under the National Environmental Policy Act of 1969 (NEPA), all Federal agencies are required to implement procedures to make environmental consideration a necessary part of an agency's decision-making process.

Therefore, FCC approval and licensing of transmitters and facilities must be evaluated for significant impact on the environment. Human exposure to RF radiation emitted by FCC-regulated transmitters is one of several factors that must be considered in such environmental evaluations. In 1996, the FCC revised its guidelines for RF exposure as a result of a multi-year proceeding and as required by the Telecommunications Act of 1996.

Facilities under the jurisdiction of the FCC having a high potential for creating significant RF exposure to humans, such as radio and television broadcast stations, satellite-earth stations, experimental radio stations and certain cellular, PCS and paging facilities are required to undergo routine evaluation for compliance with RF exposure guidelines whenever an application is submitted to the FCC for construction or modification of a transmitting facility

or renewal of a license. Failure to show compliance with the FCC's RF exposure guidelines in the application process could lead to the preparation of a formal Environmental Assessment, possible Environmental Impact Statement and eventual rejection of an application. Technical guidelines for evaluating compliance with the FCC RF safety requirements can be found in the FCC's [OET Bulletin 65](#) (see "OET Safety Bulletins" listing elsewhere at this Web site).

Low-powered, intermittent, or inaccessible RF transmitters and facilities are normally "categorically excluded" from the requirement of routine evaluation for RF exposure. These exclusions are based on calculations and measurement data indicating that such transmitting stations or devices are unlikely to cause exposures in excess of the guidelines under normal conditions of use. The FCC's policies on RF exposure and categorical exclusion can be found in Section 1.1307(b) of the FCC's Rules and Regulations [47 CFR 1.1307(b)]. It should be emphasized, however, that these exclusions are not exclusions from compliance, but, rather, only exclusions from routine evaluation. Transmitters or facilities that are otherwise categorically excluded from evaluation may be required, on a case-by-case basis, to demonstrate compliance when evidence of potential non-compliance of the transmitter or facility is brought to the Commission's attention [see 47 CFR 1.1307(c) and (d)]. ([Back to Index](#))

HOW SAFE ARE MOBILE AND PORTABLE PHONES?

In recent years, publicity, speculation, and concern over claims of possible health effects due to RF emissions from hand-held wireless telephones prompted various research programs to investigate whether there is any risk to users of these devices. There is no scientific evidence to date that proves that wireless phone usage can lead to cancer or a variety of other health effects, including headaches, dizziness or memory loss. However, studies are ongoing and key government agencies, such as the Food and Drug Administration (FDA) continue to monitor the results of the latest scientific research on these topics. Also, as noted above, the World Health Organization has established an ongoing program to monitor research in this area and make recommendations related to the safety of mobile phones.

The FDA, which has primary jurisdiction for investigating mobile phone safety, has stated that it cannot rule out the possibility of risk, but if such a risk exists, "it is probably small." Further, it has stated that, while there is no proof that cellular telephones can be harmful, concerned individuals can take various precautionary actions, including limiting conversations on hand-held cellular telephones and making greater use of telephones with hands-free kits where there is a greater separation distance between the user and the radiating antenna. The Web site for the FDA's Center for Devices and Radiological Health provides further information on mobile phone safety: www.fda.gov/cellphones/.

The Government Accounting Office (GAO) prepared a report of its investigation into safety concerns related to mobile phones. The report concluded that further research is needed to confirm whether mobile phones are completely safe for the user, and the report recommended that the FDA take the lead in monitoring the latest research results.

The FCC's exposure guidelines specify limits for human exposure to RF emissions from hand-held mobile phones in terms of Specific Absorption Rate (SAR), a measure of the rate of absorption of RF energy by the body. The safe limit for a mobile phone user is an SAR of 1.6 watts per kg (1.6 W/kg),

averaged over one gram of tissue, and compliance with this limit must be demonstrated before FCC approval is granted for marketing of a phone in the United States. Somewhat less restrictive limits, *e.g.*, 2 W/kg averaged over 10 grams of tissue, are specified by the ICNIRP guidelines used in Europe and most other countries.

Measurements and analysis of SAR in models of the human head have shown that the 1.6 W/kg limit is unlikely to be exceeded under normal conditions of use of cellular and PCS hand-held phones. The same can be said for cordless telephones used in the home. Testing of hand-held phones is normally done under conditions of maximum power usage, thus providing an additional margin of safety, since most phone usage is not at maximum power.

Information on SAR levels for many phones is available electronically through the FCC's Web site and database (see next question). ([Back to Index](#))

HOW CAN I OBTAIN THE SPECIFIC ABSORPTION RATE (SAR) VALUE FOR MY MOBILE PHONE?

As explained above, the Specific Absorption Rate, or SAR, is the unit used to determine compliance of cellular and PCS phones with safety limits adopted by the FCC. The SAR is a value that corresponds to the rate at which RF energy absorbed in the head of a user of a wireless handset. The FCC requires mobile phone manufacturers to demonstrate compliance with an SAR level of 1.6 watts per kilogram (averaged over one gram of tissue).

Information on SAR for a specific cell phone model can be obtained for almost all cellular telephones by using the FCC identification (ID) number for that model. The FCC ID number is usually printed somewhere on the case of the phone or device. In many cases, you will have to remove the battery pack to find the number. Once you have the number proceed as follows. Go to the following website: [Equipment Authorization](#). Click on the link for "FCC ID Search". Once you are there you will see instructions for inserting the FCC ID number. Enter the FCC ID number (in two parts as indicated: "Grantee Code" is comprised of the first three characters, the "Equipment Product Code" is the remainder of the FCC ID). Then click on "Start Search." The grant(s) of equipment authorization for this particular ID number should then be available. Click on a check under "Display Grant" and the grant should appear. Look through the grant for the section on SAR compliance, certification of compliance with FCC rules for RF exposure or similar language. This section should contain the value(s) for typical or maximum SAR for your phone.

For portable phones and devices authorized since June 2, 2000, maximum SAR levels should be noted on the grant of equipment authorization. For phones and devices authorized between about mid-1998 and June 2000, detailed information on SAR levels is typically found in one of the "exhibits" associated with the grant. Therefore, once the grant is accessed in the FCC database, the exhibits can be viewed by clicking on the appropriate entry labeled "View Exhibit." Electronic records for FCC equipment authorization grants were initiated in 1998, so devices manufactured prior to this date may not be included in our electronic database.

Although the FCC database does not list phones by model number, there are certain non-government Web sites such as [www.cnet.com](#) that provide information on SAR from specific models of mobile phones. However, the FCC has not reviewed these sites for accuracy and makes no guarantees with respect to them. In addition to these sites, some mobile phone manufacturers make this information available at their own Web sites. Also, phones certified

by the Cellular Telecommunications and Internet Association (CTIA) are now required to provide this information to consumers in the instructional materials that come with the phones.

If you want additional consumer information on safety of cell phones and other transmitting devices please consult the information available below at this Web site. In particular, you may wish to read or download our [OET Bulletin 56](#) (see "OET RF Safety Bulletins" listing) entitled: "Questions and Answers about Biological Effects and Potential Hazards of Radiofrequency Electromagnetic Fields." If you have any problems or additional questions you may contact us at: rfsafety@fcc.gov or you may call: 1-888-225-5322. You may also wish to consult a consumer update on mobile phone safety published by the U.S. Food and Drug Administration (FDA) that can be found at: www.fda.gov/cellphones/. ([Back to Index](#))

DO "HANDS-FREE" EAR PIECES FOR MOBILE PHONES REDUCE EXPOSURE TO RF EMISSIONS? WHAT ABOUT MOBILE PHONE ACCESSORIES THAT CLAIM TO SHIELD THE HEAD FROM RF RADIATION?

"Hands-free" kits with ear pieces can be used with cell phones for convenience and comfort. In addition, because the phone, which is the source of the RF emissions, will not be placed against the head, absorption of RF energy in the head will be reduced. Therefore, it is true that use of an ear piece connected to a mobile phone will significantly reduce the rate of energy absorption (or "SAR") in the user's head. On the other hand, if the phone is mounted against the waist or other part of the body during use, then that part of the body will absorb RF energy. Even so, mobile phones marketed in the U.S. are required to meet safety limit requirements regardless of whether they are used against the head or against the body. So either configuration should result in compliance with the safety limit. Note that hands-free devices using "Bluetooth" technology also include a wireless transmitter; however, the Bluetooth transmitter operates at a much lower power than the cell phone.

A number of devices have been marketed that claim to "shield" or otherwise reduce RF absorption in the body of the user. Some of these devices incorporate shielded phone cases, while others involve nothing more than a metallic accessory attached to the phone. Studies have shown that these devices generally do not work as advertised. In fact, they may actually increase RF absorption in the head due to their potential to interfere with proper operation of the phone, thus forcing it to increase power to compensate. ([Back to Index](#))

CAN MOBILE PHONES BE USED SAFELY IN HOSPITALS AND NEAR MEDICAL TELEMETRY EQUIPMENT?

The FCC does not normally investigate problems of electromagnetic interference from RF transmitters to medical devices. Some hospitals have policies, which limit the use of cell phones, due to concerns that sensitive medical equipment could be affected. The FDA's Center for Devices and Radiological Health (CDRH) has primary jurisdiction for medical device regulation. FDA staff has monitored this potential problem and more information is available from the CDRH Web site: www.fda.gov/cdrh. ([Back to Index](#))

ARE CELLULAR AND PCS TOWERS AND ANTENNAS SAFE?

Cellular radio services transmit using frequencies between 824 and 894 megahertz (MHz). Transmitters in the Personal Communications Service

(PCS) use frequencies in the range of 1850-1990 MHz. Antennas used for cellular and PCS transmissions are typically located on towers, water tanks or other elevated structures including rooftops and the sides of buildings. The combination of antennas and associated electronic equipment is referred to as a cellular or PCS "base station" or "cell site." Typical heights for free-standing base station towers or structures are 50-200 feet. A cellular base station may utilize several "omni-directional" antennas that look like poles, 10 to 15 feet in length, although these types of antennas are less common in urbanized areas.

In urban and suburban areas, cellular and PCS service providers commonly use "sector" antennas for their base stations. These antennas are rectangular panels, *e.g.*, about 1 by 4 feet in size, typically mounted on a rooftop or other structure, but they are also mounted on towers or poles. Panel antennas are usually arranged in three groups of three each. It is common that not all antennas are used for the transmission of RF energy; some antennas may be receive-only.

At a given cell site, the total RF power that could be radiated by the antennas depends on the number of radio channels (transmitters) installed, the power of each transmitter, and the type of antenna. While it is theoretically possible for cell sites to radiate at very high power levels, the maximum power radiated in any direction usually does not exceed 50 watts.

The RF emissions from cellular or PCS base station antennas are generally directed toward the horizon in a relatively narrow pattern in the vertical plane. In the case of sector (panel) antennas, the pattern is fan-shaped, like a wedge cut from a pie. As with all forms of electromagnetic energy, the power density from the antenna decreases rapidly as one moves away from the antenna. Consequently, ground-level exposures are much less than exposures if one were at the same height and directly in front of the antenna.

Measurements made near typical cellular and PCS installations, especially those with tower-mounted antennas, have shown that ground-level power densities are thousands of times less than the FCC's limits for safe exposure.

This makes it extremely unlikely that a member of the general public could be exposed to RF levels in excess of FCC guidelines due solely to cellular or PCS base station antennas located on towers or monopoles.

When cellular and PCS antennas are mounted at rooftop locations it is possible that a person could encounter RF levels greater than those typically encountered on the ground. However, once again, exposures approaching or exceeding the safety guidelines are only likely to be encountered very close to and directly in front of the antennas. For sector-type antennas, RF levels to rear are usually very low. ([Back to Index](#))

For further information on cellular services go to http://wireless.fcc.gov/services/index.htm?job=service_home&id=cellular

ARE CELLULAR AND OTHER RADIO TOWERS LOCATED NEAR HOMES OR SCHOOLS SAFE FOR RESIDENTS AND STUDENTS?

As discussed above, radiofrequency emissions from antennas used for cellular and PCS transmissions result in exposure levels on the ground that are typically thousands of times below safety limits. These safety limits were adopted by the FCC based on the recommendations of expert organizations and endorsed by agencies of the Federal Government responsible for health and safety. Therefore, there is no reason to believe that such towers could constitute a potential health hazard to nearby residents or students.

Other antennas, such as those used for radio and television broadcast transmissions, use power levels that are generally much higher than those used for cellular and PCS antennas. Therefore, in some cases there could be a potential for higher levels of exposure to persons on the ground. However, all broadcast stations are required to demonstrate compliance with FCC safety guidelines, and ambient exposures to nearby persons from such stations are typically well below FCC safety limits. ([Back to Index](#))

ARE EMISSIONS FROM RADIO AND TELEVISION BROADCAST ANTENNAS SAFE?

Radio and television broadcast stations transmit their signals via RF electromagnetic waves. There are thousands of radio and TV stations on the air in the United States. Broadcast stations transmit at various RF frequencies, depending on the channel, ranging from about 540 kHz for AM radio up to about 800 MHz for UHF television stations. Frequencies for FM radio and VHF television lie in between these two extremes. Broadcast transmitter power levels range from a few watts to more than 100,000 watts. Some of these transmission systems can be a significant source of RF energy in the local environment, so the FCC requires that broadcast stations submit evidence of compliance with FCC RF guidelines.

The amount of RF energy to which the public or workers might be exposed as a result of broadcast antennas depends on several factors, including the type of station, design characteristics of the antenna being used, power transmitted to the antenna, height of the antenna and distance from the antenna. Note that the power normally quoted for FM and TV broadcast transmitters is the "effective radiated power" or ERP not the actual transmitter power mentioned above. ERP is the transmitter power delivered to the antenna multiplied by the directivity or gain of the antenna. Since high gain antennas direct most of the RF energy toward the horizon and not toward the ground, high ERP transmission systems such as used for UHF-TV broadcast tend to have less ground level field intensity near the station than FM radio broadcast systems with lower ERP and gain values. Also, since energy at some frequencies is absorbed by the human body more readily than at other frequencies, both the frequency of the transmitted signal and its intensity is important. Calculations can be performed to predict what field intensity levels would exist at various distances from an antenna.

Public access to broadcasting antennas is normally restricted so that individuals cannot be exposed to high-level fields that might exist near antennas. Measurements made by the FCC, EPA and others have shown that ambient RF radiation levels in inhabited areas near broadcasting facilities are typically well below the exposure levels recommended by current standards and guidelines. There have been a few situations around the country where RF levels in publicly accessible areas have been found to be higher than those recommended in applicable safety standards. As they have been identified, the FCC has required that stations at those facilities promptly bring their combined operations into compliance with our guidelines. Thus, despite the relatively high operating powers of many broadcast stations, such cases are unusual, and members of the general public are unlikely to be exposed to RF levels from broadcast towers that exceed FCC limits

Antenna maintenance workers are occasionally required to climb antenna structures for such purposes as painting, repairs, or lamp replacement. Both the EPA and OSHA have reported that in such cases it is possible for a worker to be exposed to high levels of RF energy if work is performed on an active

tower or in areas immediately surrounding a radiating antenna. Therefore, precautions should be taken to ensure that maintenance personnel are not exposed to unsafe RF fields. ([Back to Index](#))

HOW SAFE ARE RADIO ANTENNAS USED FOR PAGING AND "TWO-WAY" COMMUNICATIONS? WHAT ABOUT "PUSH-TO-TALK" RADIOS SUCH AS "WALKIE-TALKIES?"

"Land-mobile" communications include a variety of communications systems, which require the use of portable and mobile RF transmitting sources. These systems operate in several frequency bands between about 30 and 1000 MHz. Radio systems used by the police and fire departments, radio paging services and business radio are a few examples of these communications systems. They have the advantage of providing communications links between various fixed and mobile locations.

There are essentially three types of RF transmitters associated with land-mobile systems: base-station transmitters, vehicle-mounted transmitters, and hand-held transmitters. The antennas and power levels used for these various transmitters are adapted for their specific purpose. For example, a base-station antenna must radiate its signal to a relatively large area, and therefore, its transmitter generally has to use higher power levels than a vehicle-mounted or hand-held radio transmitter. Although base-station antennas usually operate with higher power levels than other types of land-mobile antennas, they are normally inaccessible to the public since they must be mounted at significant heights above ground to provide for adequate signal coverage. Also, many of these antennas transmit only intermittently. For these reasons, base-station antennas are generally not of concern with regard to possible hazardous exposure of the public to RF radiation. Studies at rooftop locations have indicated that high-powered paging antennas may increase the potential for exposure to workers or others with access to such sites, *e.g.*, maintenance personnel. This could be a concern especially when multiple transmitters are present. In such cases, restriction of access or other mitigation actions may be necessary.

Transmitting power levels for vehicle-mounted land-mobile antennas are generally less than those used by base-station antennas but higher than those used for hand-held units. Some manufacturers recommend that users and other nearby individuals maintain some minimum distance (*e.g.*, 1 to 2 feet) from a vehicle-mounted antenna during transmission or mount the antenna in such a way as to provide maximum shielding for vehicle occupants. Studies have shown that this is probably a conservative precaution, particularly when the percentage of time an antenna is actually radiating is considered. Unlike cellular telephones, which transmit continuously during a call, two-way radios normally transmit only when the "push-to-talk" button is depressed. This significantly reduces exposure, and there is no evidence that there would be a safety hazard associated with exposure from vehicle-mounted, two-way antennas when the manufacturer's recommendations are followed.

Hand-held "two-way" portable radios such as walkie-talkies are low-powered devices used to transmit and receive messages over relatively short distances. Because of the low power levels used, the intermittency of these transmissions ("push-to-talk"), and due to the fact that these radios are held away from the head, they should not expose users to RF energy in excess of safe limits. Although FCC rules do not require routine documentation of compliance with safety limits for push-to-talk two-way radios as it does for cellular and PCS phones (which transmit continuously during use and which

are held against the head), most of these radios are tested and the resulting SAR data are available from the FCC's [Equipment Authorization](#) database. Click on the link for "FCC ID Search <imbed hypertext link>.". ([Back to Index](#))

HOW SAFE ARE MICROWAVE AND SATELLITE ANTENNAS?

Point-to-point microwave antennas transmit and receive microwave signals across relatively short distances (from a few tenths of a mile to 30 miles or more). These antennas are usually circular ("dish") or rectangular in shape and are normally mounted on a supporting tower, rooftop, sides of buildings or on similar structures that provide clear and unobstructed line-of-sight paths between both ends of a transmission path. These antennas have a variety of uses, such as relaying long-distance telephone calls, and serving as links between broadcast studios and transmitting sites.

The RF signals from these antennas travel in a directed beam from a transmitting antenna to the receiving antenna, and dispersion of microwave energy outside of this narrow beam is minimal or insignificant. In addition, these antennas transmit using very low power levels, usually on the order of a few watts or less. **Measurements have shown that ground-level power densities due to microwave directional antennas are normally thousands of times or more below recommended safety limits.** Moreover, microwave tower sites are normally inaccessible to the general public. **Significant exposures from these antennas could only occur in the unlikely event that an individual were to stand directly in front of and very close to an antenna for a period of time.**

Ground-based antennas used for satellite-earth communications typically are parabolic "dish" antennas, some as large as 10 to 30 meters in diameter, that are used to transmit ("uplink") or receive ("downlink") microwave signals to or from satellites in orbit around the earth. These signals allow delivery of a variety of communications services, including television network programming, electronic newsgathering and point-of-sale credit card transactions. Some satellite-earth station antennas are used only to receive RF signals (*i.e.*, like the satellite television antenna used at a residence), and because they do not transmit, RF exposure is not an issue for those antennas.

Since satellite-earth station antennas are directed toward satellites above the earth, transmitted beams point skyward at various angles of inclination, depending on the particular satellite being used. Because of the longer distances involved, power levels used to transmit these signals are relatively large when compared, for example, to those used by the terrestrial microwave point-to-point antennas discussed above. However, as with microwave antennas, the beams used for transmitting earth-to-satellite signals are concentrated and highly directional, similar to the beam from a flashlight. In addition, public access would normally be restricted at uplink sites where exposure levels could approach or exceed safe limits.

Although many satellite-earth stations are "fixed" sites, portable uplink antennas are also used, *e.g.*, for electronic news gathering. These antennas can be deployed in various locations. Therefore, precautions may be necessary, such as temporarily restricting access in the vicinity of the antenna, to avoid exposure to the main transmitted beam. In general, however, it is unlikely that a transmitting earth station antenna would routinely expose members of the public to potentially harmful levels of RF energy. ([Back to Index](#))

ARE RF EMISSIONS FROM AMATEUR RADIO STATIONS HARMFUL?

There are hundreds of thousands of amateur radio operators ("hams") worldwide. Amateur radio operators in the United States are licensed by the FCC. The Amateur Radio Service provides its members with the opportunity to communicate with persons all over the world and to provide valuable public service functions, such as making communications services available during disasters and emergencies. Like all FCC licensees, amateur radio operators are required to comply with the FCC's guidelines for safe human exposure to RF fields. Under the FCC's rules, amateur operators can transmit with power levels of up to 1500 watts. However, most operators use considerably less power than this maximum. Studies by the FCC and others have shown that most amateur radio transmitters would not normally expose persons to RF levels in excess of safety limits. This is primarily due to the relatively low operating powers used by most amateurs, the intermittent transmission characteristics typically used and the relative inaccessibility of most amateur antennas. As long as appropriate distances are maintained from amateur antennas, exposure of nearby persons should be well below safety limits.

To help ensure compliance of amateur radio facilities with RF exposure guidelines, both the FCC and American Radio Relay League (ARRL) have issued publications to assist operators in evaluating compliance for their stations. The FCC's publication (Supplement B to [OET Bulletin 65](#)) can be viewed and downloaded elsewhere at this Web site (see "OET RF Safety Bulletins"). ([Back to Index](#))

WHAT IS THE FCC'S POLICY ON RADIOFREQUENCY WARNING SIGNS? FOR EXAMPLE, WHEN SHOULD SIGNS BE POSTED, WHERE SHOULD THEY BE LOCATED AND WHAT SHOULD THEY SAY?

Radiofrequency warning or "alerting" signs should be used to provide information on the presence of RF radiation or to control exposure to RF radiation within a given area. Standard radiofrequency hazard warning signs are commercially available from several vendors. Appropriate signs should incorporate the format recommended by the Institute for Electrical and Electronics Engineers (IEEE) and as specified in the IEEE standard: IEEE C95.2-1999 (Web address: www.ieee.org). Guidance concerning the placement of signs can be found in IEEE Standard C95.7-2005. When signs are used, meaningful information should be placed on the sign advising affected persons of: (1) the nature of the potential hazard (*i.e.*, high RF fields), (2) how to avoid the potential hazard, and (3) whom to contact for additional information. In some cases, it may be appropriate to also provide instructions to direct individuals as to how to work safely in the RF environment of concern. Signs should be located prominently in areas that will be readily seen by those persons who may have access to an area where high RF fields are present. ([Back to Index](#))

CAN IMPLANTED ELECTRONIC CARDIAC PACEMAKERS BE AFFECTED BY NEARBY RF DEVICES SUCH AS MICROWAVE OVENS OR CELLULAR TELEPHONES?

Over the past several years there has been concern that signals from some RF devices could interfere with the operation of implanted electronic pacemakers and other medical devices. Because pacemakers are electronic devices, they could be susceptible to electromagnetic signals that could cause them to malfunction. Some anecdotal claims of such effects in the past involved emissions from microwave ovens. However, it has never been shown that the RF energy from a properly operating microwave oven is strong enough to cause such interference.

Some studies have shown that mobile phones can interfere with implanted cardiac pacemakers if a phone is used in close proximity (within about 8 inches) of a pacemaker. It appears that such interference is limited to older pacemakers, which may no longer be in use. Nonetheless, to avoid this potential problem, pacemaker patients can avoid placing a phone in a pocket close to the location of their pacemaker or otherwise place the phone near the pacemaker location during phone use. Patients with pacemakers should consult with their physician or the FDA if they believe that they may have a problem related to RF interference. Further information on this is available from the FDA: www.fda.gov/cdrh . ([Back to Index](#))

DOES THE FCC REGULATE EXPOSURE TO THE ELECTROMAGNETIC RADIATION FROM MICROWAVE OVENS, TELEVISION SETS AND COMPUTER MONITORS?

The Commission does not regulate exposure to emissions from these devices. Protecting the public from harmful radiation emissions from these consumer products is the responsibility of the U.S. Food and Drug Administration (FDA). Inquiries should be directed to the FDA's Center for Devices and Radiological Health (CDRH), and, specifically, to the CDRH Office of Compliance at (301) 594-4654. ([Back to Index](#))

DOES THE FCC ROUTINELY MONITOR RADIOFREQUENCY RADIATION FROM ANTENNAS?

The FCC does not have the resources or the personnel to routinely monitor the emissions for all of the thousands of transmitters that are subject to FCC jurisdiction. However, the FCC does have measurement instrumentation for evaluating RF levels in areas that may be accessible to the public or to workers. **If there is evidence of potential non-compliance with FCC exposure guidelines for an FCC-regulated facility, staff from the FCC's Office of Engineering and Technology or the Enforcement Bureau can conduct an investigation, and, if appropriate, perform actual measurements.** It should be emphasized that the FCC does not perform RF exposure investigations unless there is a reasonable expectation that the FCC exposure limits may be exceeded. Potential exposure problems should be brought to the FCC's attention by contacting the FCC at: 1-888-225-5322 or by e-mailing: rfsafety@fcc.gov. ([Back to Index](#))

DOES THE FCC MAINTAIN A DATABASE THAT INCLUDES INFORMATION ON THE LOCATION AND TECHNICAL PARAMETERS OF ALL OF THE TRANSMITTER SITES IT REGULATES?

The Commission does not have a comprehensive, transmitter-specific database for all of the services it regulates. The Commission has information for some services such as radio and television broadcast stations, and many larger antenna towers are required to register with the FCC if they meet certain criteria. In those cases, location information is generally specified in terms of degrees, minutes, and seconds of latitude and longitude. In some services, licenses are allowed to utilize additional transmitters or to increase power without notifying the Commission. Other services are licensed by geographic area, such that the Commission has no knowledge concerning the actual number or location of transmitters within that geographic area.

The [FCC General Menu Reports \(GenMen\)](#) search engine unites most of the Commission's licensing databases under a single umbrella. Databases included are the Wireless Telecommunications Bureau's ULS, the Media Bureau's CDBS, COALS (cable data) and BLS, and the International Bureau's

IBFS. Entry points or search options in the various databases include frequency, state/county, latitude/longitude, call sign and licensee name.

The FCC also publishes, generally on a weekly basis, bulk extracts of the various Commission licensing databases. Each licensing database has its own unique file structure. These extracts consist of multiple, very large files. [OET maintains an index](#) to these databases.

OET has developed a [Spectrum Utilization Study Software](#) tool-set that can be used to create a Microsoft Access version of the individual exported licensing databases and then create MapInfo "mid" and "mif" files so that radio assignments can be plotted. This experimental software is used to conduct internal spectrum utilization studies needed in the rulemaking process. While the FCC makes this software available to the public, no technical support is provided.

For further information on the Commission's existing databases, please contact Donald Campbell at donald.campbell@fcc.gov or 202-418-2405. ([Back to Index](#))

WHICH OTHER FEDERAL AGENCIES HAVE RESPONSIBILITIES RELATED TO POTENTIAL RF HEALTH EFFECTS?

Certain agencies in the Federal Government have been involved in monitoring, researching or regulating issues related to human exposure to RF radiation. These agencies include the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the National Institute for Occupational Safety and Health (NIOSH), the National Telecommunications and Information Administration (NTIA) and the Department of Defense (DOD).

By authority of the Radiation Control for Health and Safety Act of 1968, the Center for Devices and Radiological Health (CDRH) of the FDA develops performance standards for the emission of radiation from electronic products including X-ray equipment, other medical devices, television sets, microwave ovens, laser products and sunlamps. The CDRH established a product performance standard for microwave ovens in 1971 limiting the amount of RF leakage from ovens. However, the CDRH has not adopted performance standards for other RF-emitting products. The FDA is, however, the lead federal health agency in monitoring the latest research developments and advising other agencies with respect to the safety of RF-emitting products used by the public, such as cellular and PCS phones.

The FDA's microwave oven standard is an emission standard (as opposed to an exposure standard) that allows specific levels of microwave energy leakage (measured at five centimeters from the oven surface). The standard also requires ovens to have two independent interlock systems that prevent the oven from generating microwaves if the latch is released or if the door of the oven is opened. The FDA has stated that ovens that meet its standards and are used according to the manufacturer's recommendations are safe for consumer and industrial use. More information is available from: www.fda.gov/cdrh.

The EPA has, in the past, considered developing federal guidelines for public exposure to RF radiation. However, EPA activities related to RF safety and health are presently limited to advisory functions. For example, the EPA chairs an Inter-agency Radiofrequency Working Group, which coordinates RF health-related activities among the various federal agencies with health or regulatory responsibilities in this area.

OSHA is part of the U.S. Department of Labor, and is responsible for protecting workers from exposure to hazardous chemical and physical agents.

In 1971, OSHA issued a protection guide for exposure of workers to RF radiation [29 CFR 1910.97]. However, this guide was later ruled to be only advisory and not mandatory. Moreover, it was based on an earlier RF exposure standard that has now been revised. At the present time, OSHA uses the IEEE and/or FCC exposure guidelines for enforcement purposes under OSHA's "general duty clause" (for more information see: www.osha.gov/SLTC/radiofrequencyradiation/).

NIOSH is part of the U.S. Department of Health and Human Services. It conducts research and investigations into issues related to occupational exposure to chemical and physical agents. NIOSH has, in the past, undertaken to develop RF exposure guidelines for workers, but final guidelines were never adopted by the agency. NIOSH conducts safety-related RF studies through its Physical Agents Effects Branch in Cincinnati, Ohio.

The NTIA is part of the U.S. Department of Commerce and is responsible for authorizing Federal Government use of the RF electromagnetic spectrum.

Like the FCC, the NTIA also has NEPA responsibilities and has considered adopting guidelines for evaluating RF exposure from U.S. Government transmitters such as radar and military facilities. ([Back to Index](#))

CAN LOCAL AND STATE GOVERNMENTAL BODIES ESTABLISH LIMITS FOR RF EXPOSURE?

In the United States, some local and state jurisdictions have also enacted rules and regulations pertaining to human exposure to RF energy. However, the Telecommunications Act of 1996 contained provisions relating to federal jurisdiction to regulate human exposure to RF emissions from certain transmitting devices. In particular, Section 704 of the Act states that, "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." Further information on FCC policy with respect to facilities siting is available from the FCC's Wireless Telecommunications Bureau (see <http://wireless.fcc.gov/siting/>). ([Back to Index](#))

WHERE CAN I OBTAIN MORE INFORMATION ON POTENTIAL HEALTH EFFECTS OF RADIOFREQUENCY ENERGY?

Although relatively few offices or agencies within the Federal Government routinely deal with the issue of human exposure to RF fields, it is possible to obtain information and assistance on certain topics from the following federal agencies, all of which also have Internet Web sites.

FDA: For information about radiation from microwave ovens and other consumer and industrial products contact: Center for Devices and Radiological Health (CDRH), Food and Drug Administration. [<http://www.fda.gov/cdrh/radhealth/>]

EPA: The Environmental Protection Agency's Office of Radiation Programs is responsible for monitoring potential health effects due to public exposure to RF fields. Contact: Environmental Protection Agency, Office of Radiation and Indoor Air, Washington, D.C. 20460, (202) 564-9235. [Click on EPA's website: [Frequent Questions on EMF, RF, & Other Nonionizing Radiation](#)]

OSHA: The Occupational Safety and Health Administration's (OSHA) Health Response Team has been involved in studies related to occupational exposure to RF radiation. [http://www.osha.gov/SLTC/radiation_nonionizing/index.html]

NIOSH: The National Institute for Occupational Safety and Health (NIOSH) conducts research on RF-related safety issues in workplaces and recommends measures to protect worker health. Contact: NIOSH, Engineering and Physical Hazards Branch, Mail Stop R-5, 4676 Columbia Parkway, Cincinnati, Ohio 45226, or phone 1-513-841-4221. Toll-free public inquiries: 1-800-CDC-INFO (1-800-232-4636), or by email: cdcinfo@cdc.gov. Internet information on workplace RF safety: <http://www.cdc.gov/niosh/topics/emf/#rffield>.

NCI: The National Cancer Institute, part of the U.S. National Institutes of Health, conducts and supports research, training, health information dissemination, and other programs with respect to the cause, diagnosis, prevention, and treatment of cancer. Contact: NCI Public Inquiries Office, 6116 Executive Boulevard, Room 3036A, Bethesda, MD 20892-8322. [<http://www.cancer.gov/cancertopics/factsheet/Risk/cellphones>]

Toll-free number: 1-800-4-CANCER (1-800-422-6237).

FCC: Questions regarding potential RF hazards from FCC-regulated transmitters can be directed to the Federal Communications Commission, Consumer & Governmental Affairs Bureau, 445 12th Street, S.W., Washington, D.C. 20554; Phone: 1-888-225-5322; E-mail: rfsafety@fcc.gov; or go to: www.fcc.gov/oet/rfsafety.

In addition to federal government agencies, there are other sources of information regarding RF energy and health effects. Some states and localities maintain non-ionizing radiation programs or, at least, some expertise in this field, usually in a department of public health or environmental control. The following table lists some representative Internet Web sites that provide information on this topic. However, the FCC neither endorses nor verifies the accuracy of any information provided at these sites. They are being provided for information only. ([Back to Index](#))

- **Bioelectromagnetics Society:** <http://www.bioelectromagnetics.org/>
- **EPA's RadTown USA:** <http://www.epa.gov/radtown/basic.html>
- **International Commission on Non-Ionizing Radiation Protection (ICNIRP Europe):** <http://www.icnirp.de/>
- **IEEE Committee on Man & Radiation:** <http://ewh.ieee.org/soc/embs/comar/>
- **Microwave News:** <http://www.microwavenews.com/>
- **National Council on Radiation Protection & Measurements:** <http://www.ncrponline.org/>
- **NJ Dept Radiation Protection:** <http://www.nj.gov/dep/rpp/nrs/index.htm>
- **RFcom (Canada):** <http://www.rfcom.ca/welcome/index.shtml>
- **Wireless Industry (CTIA):** <http://www.ctia.org/>
- **World Health Organization (WHO):** <http://www.who.ch/peh-emf>
- **Germany's EMF Portal:** <http://www.emf-portal.de/>

For more information on this topic please note:

[OET Bulletin 56](#): *Questions and Answers About the Biological Effects and Potential Hazards of Radiofrequency Radiation.*

Any questions regarding this subject matter should be addressed to: [The RF Safety Program](#)

last reviewed/updated 12/11/08

[FCC Home](#) | [Search](#) | [Updates](#) | [E-Filing](#) | [Initiatives](#) | [For Consumers](#) | [Find People](#)

If you have questions about this web page, or would like more information pertaining to OET, please send e-mail to oetinfo@fcc.gov

Federal Communications Commission
445 12th Street SW
Washington, DC 20554
[More FCC Contact Information...](#)

Phone: 1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
E-mail: fccinfo@fcc.gov

- [Privacy Policy](#)
- [Website Policies & Notices](#)
- [Required Browser Plug-ins](#)
- [Freedom of Information Act](#)



Midwest Rockies Area

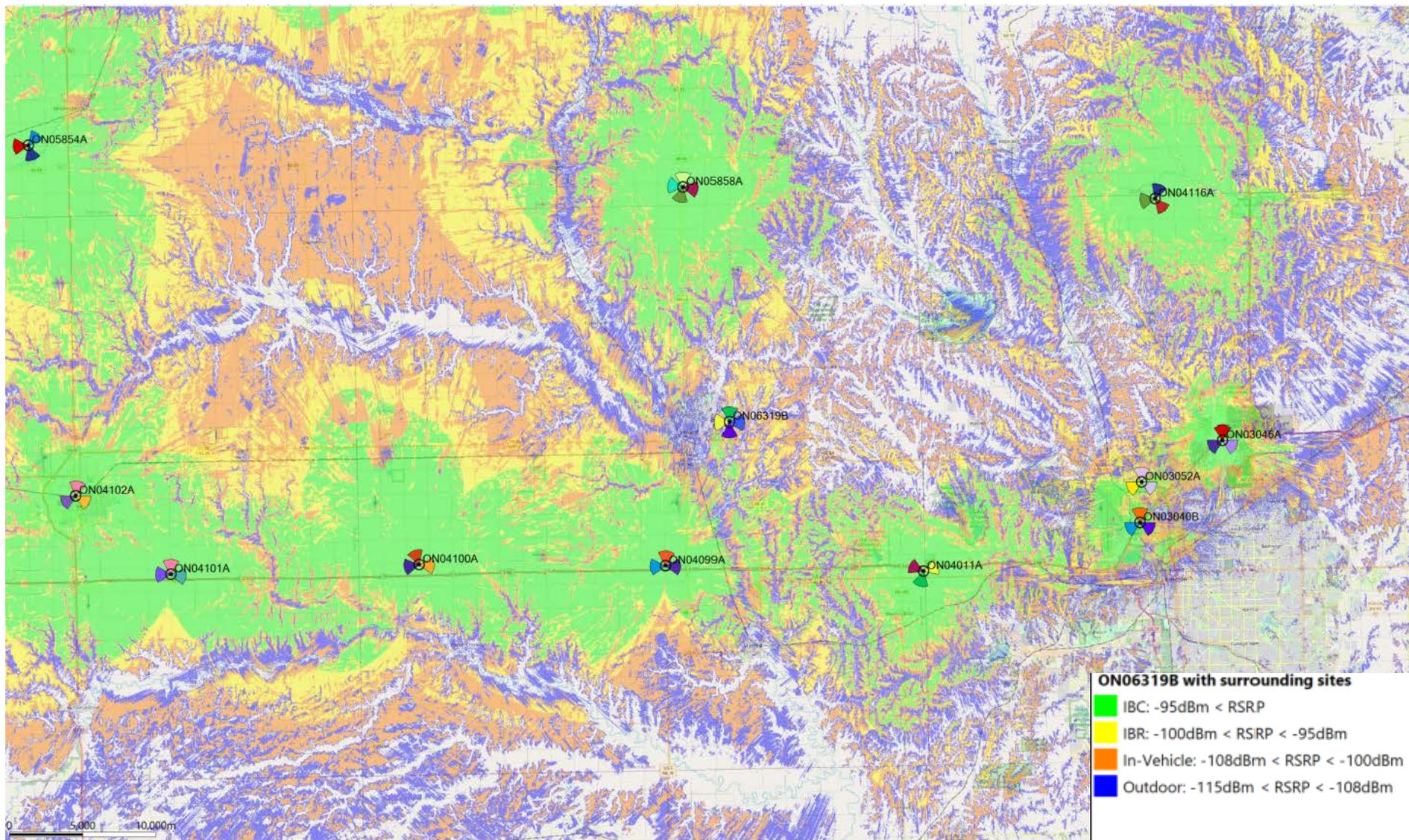
Area Design



02/21/2025

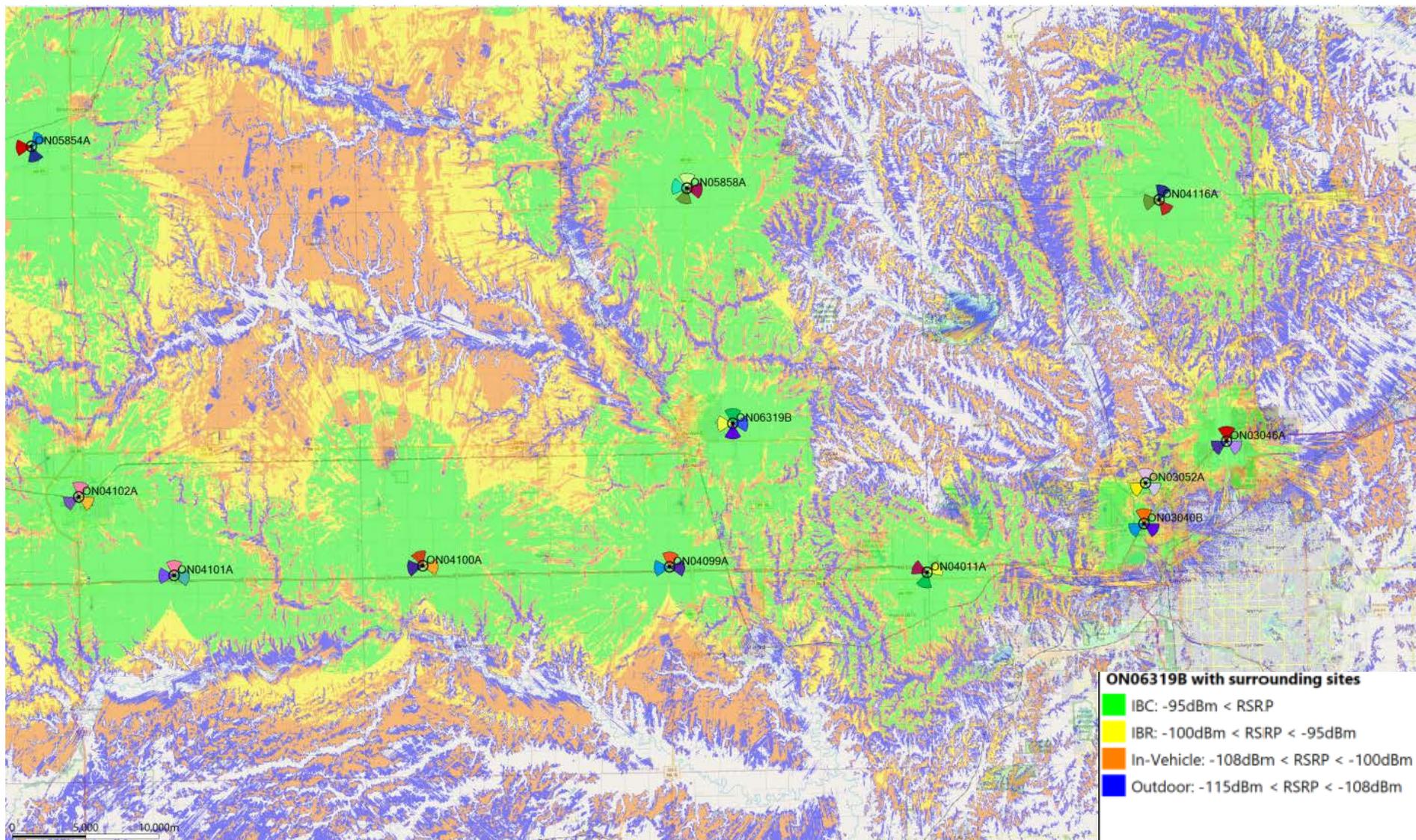


Seward, NE without new site



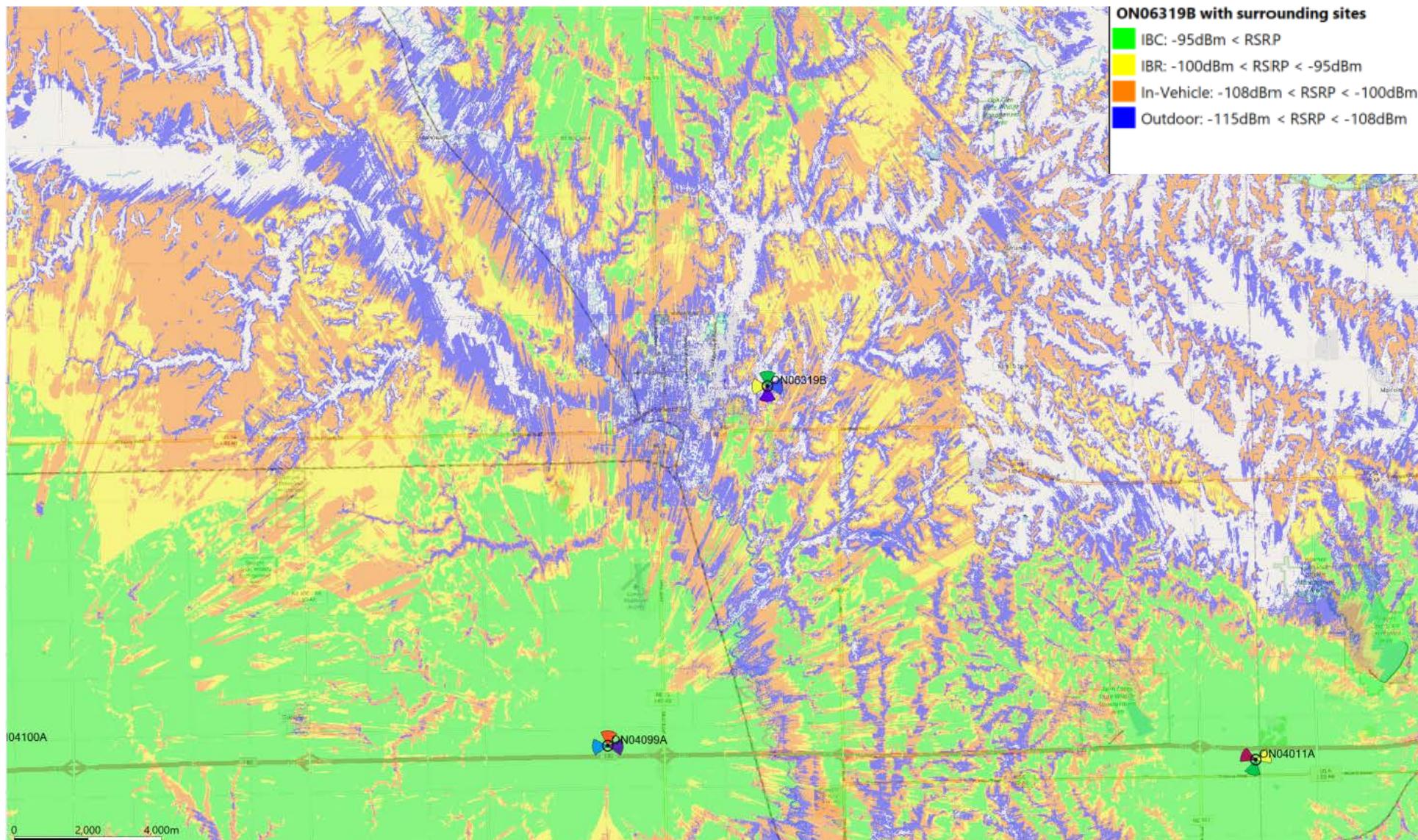


Seward, NE with new ON06319B



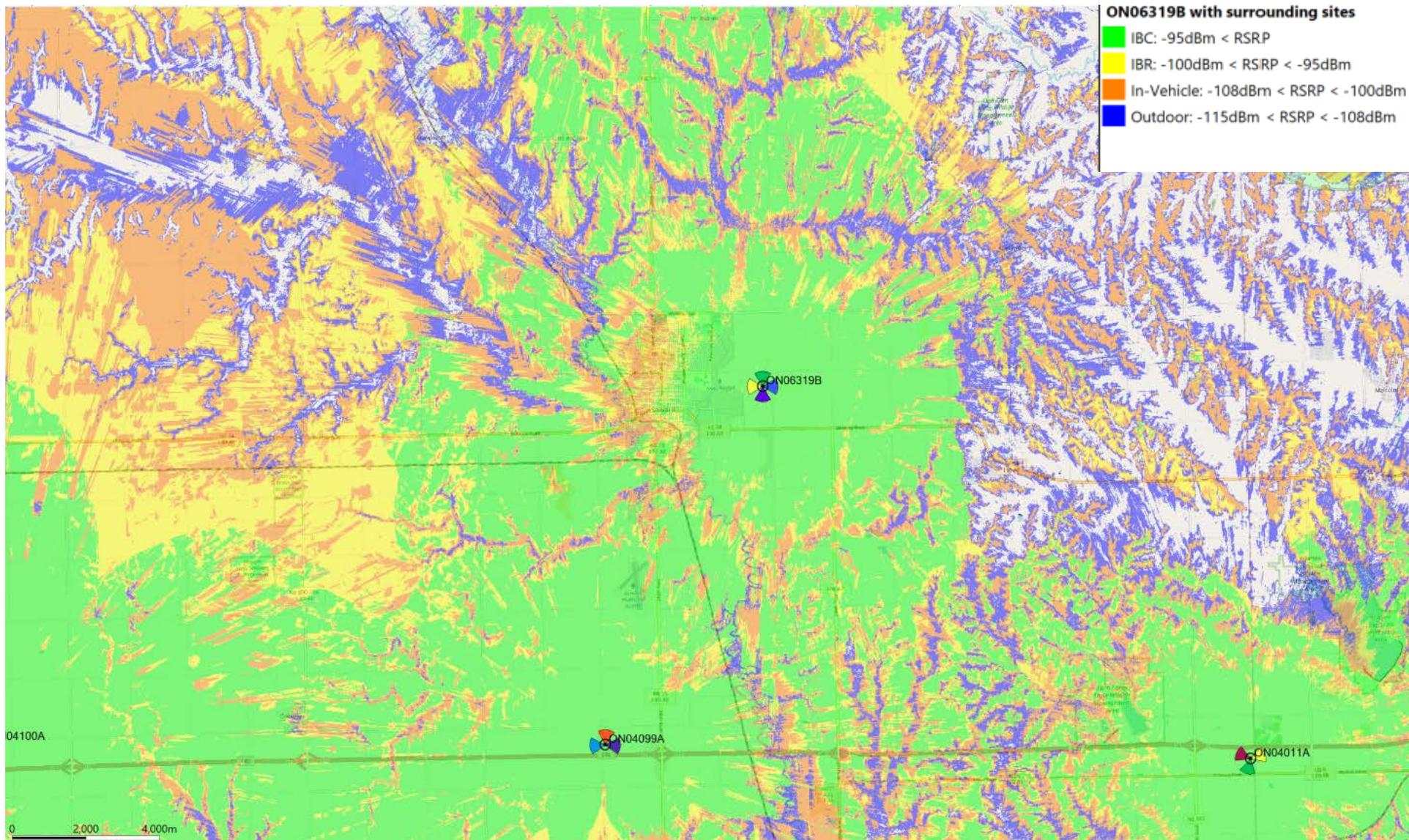


Seward, NE without new site (Zoom)





Seward, NE without new site (Zoom)



T-Mobile®

NOT FOR
 CONSTRUCTION

DESIGN 1
 9973 VALLEY VIEW RD.
 EDEN PRAIRIE, MN 55344
 (952) 903-9299
 WWW.DESIGN1EP.COM

PROJECT
 US-NE-5160
 TMO #: TBD

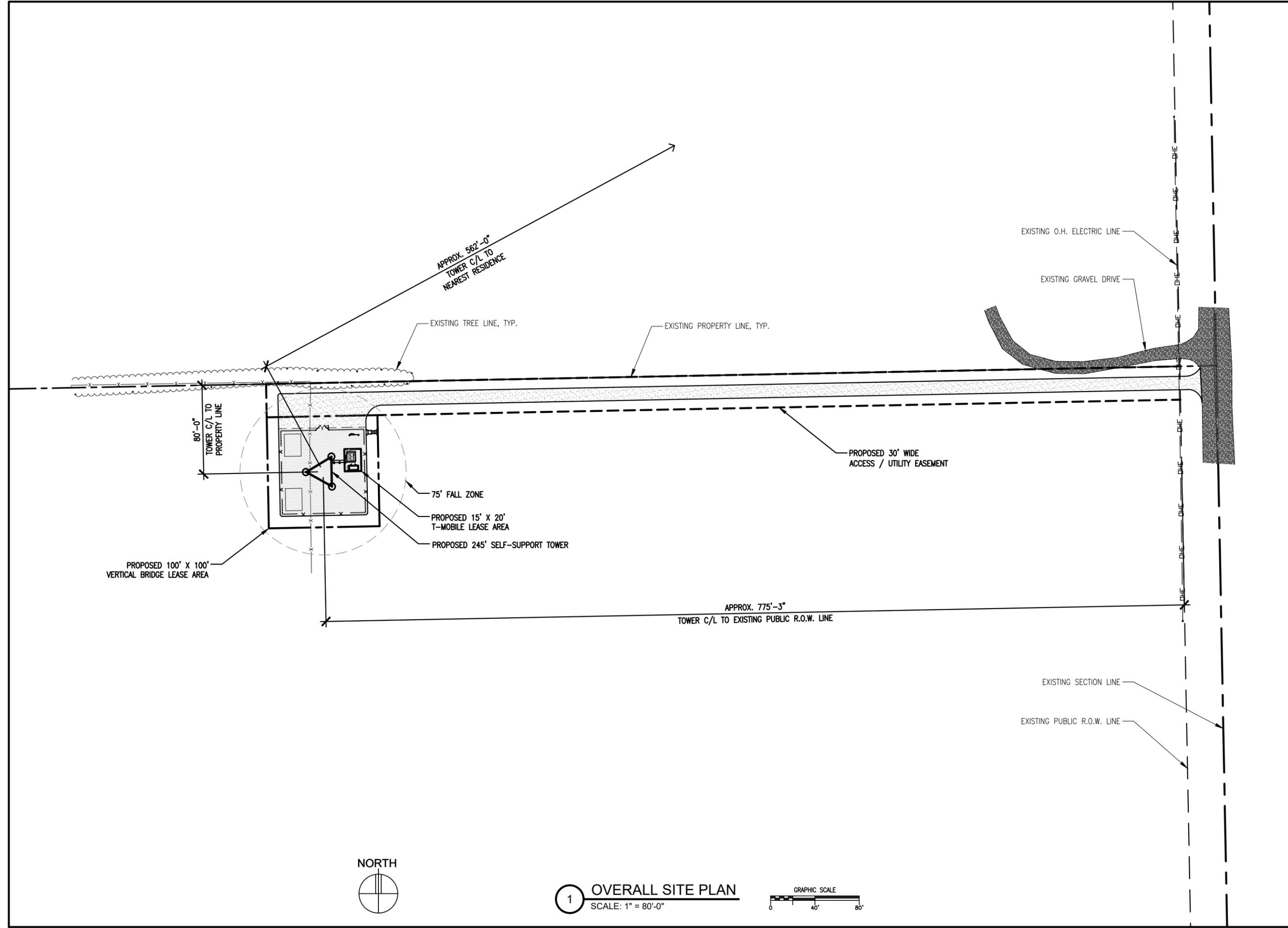
US-NE-5160
JUNTO

252ND ROAD
 SEWARD, NE 68434

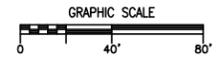
SHEET CONTENTS:
 OVERALL SITE PLAN

DRAWN BY: SJD
 CHECKED BY: TAB
 REV. A 02-11-25
 REV. B 05-08-25

A-1



1 OVERALL SITE PLAN
 SCALE: 1" = 80'-0"



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 CONSTRUCTION

DESIGN 1
 9973 VALLEY VIEW RD.
 EDEN PRAIRIE, MN 55344
 (952) 903-9299
 WWW.DESIGN1EP.COM

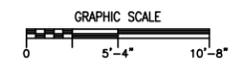
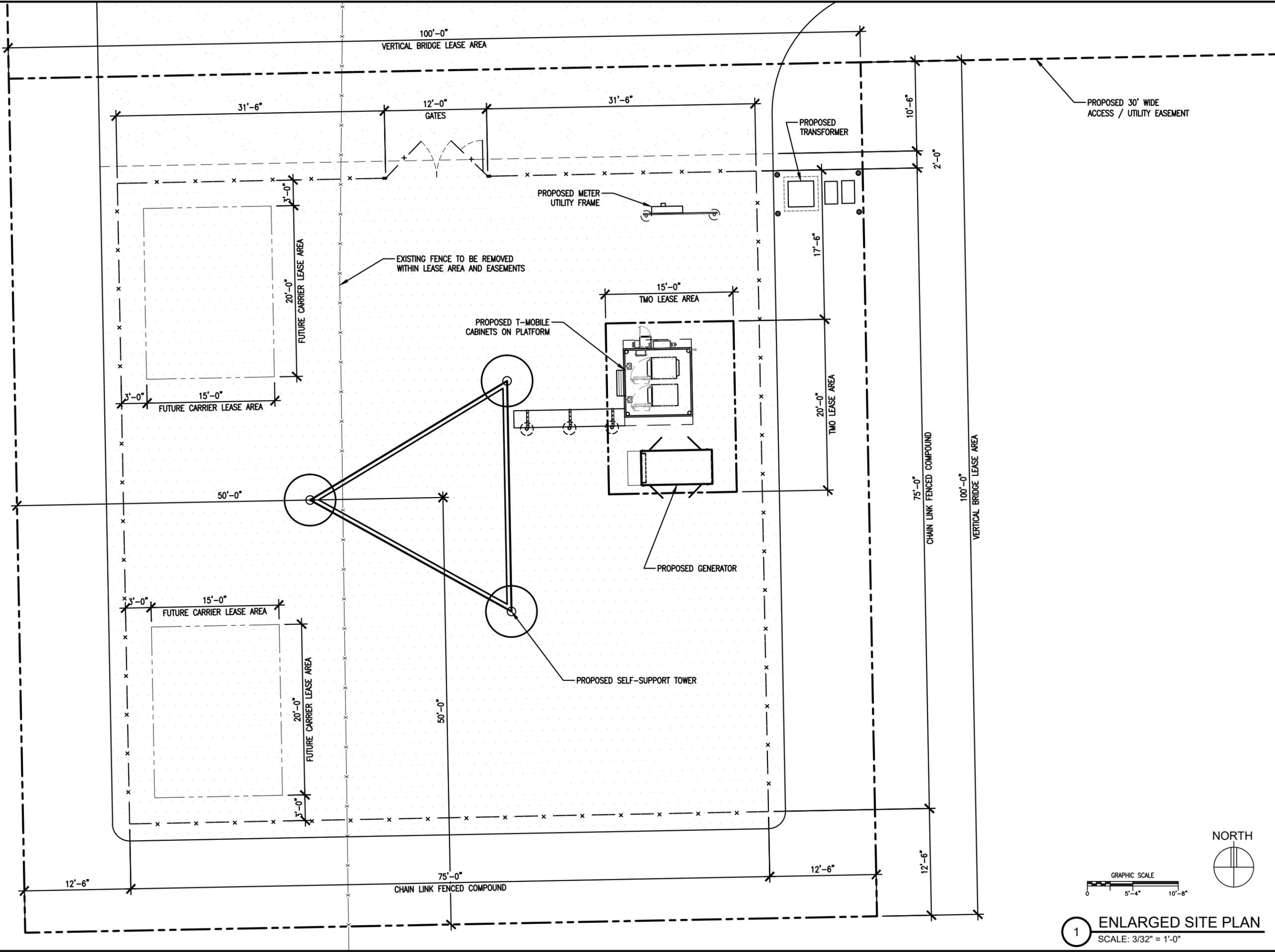
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**US-NE-5160
 JUNTO**

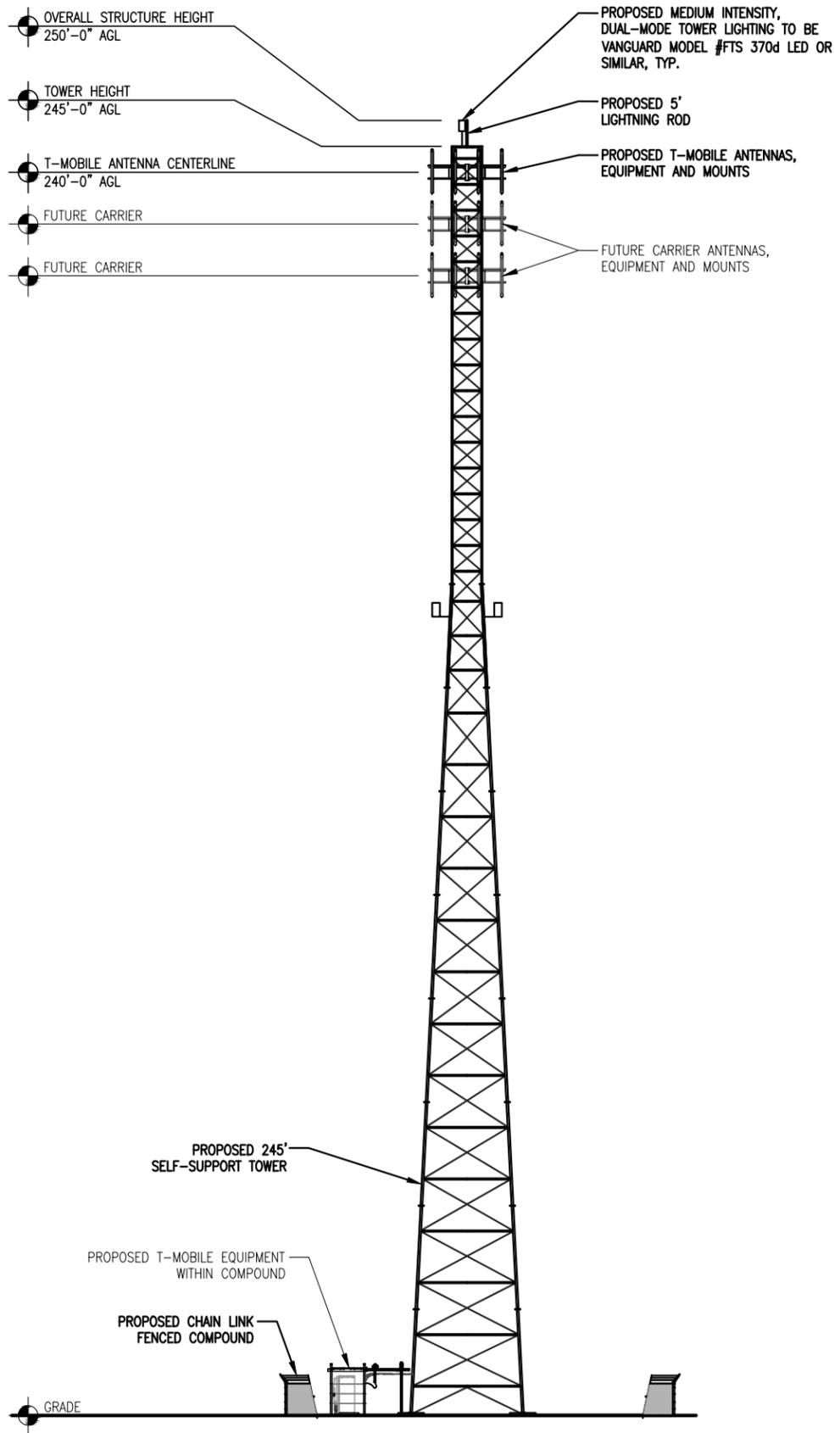
252ND ROAD
 SEWARD, NE 68434

SHEET CONTENTS:
 ENLARGED SITE PLAN

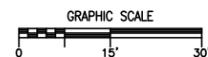
DRAWN BY:	SJD
CHECKED BY:	TAB
REV. A	02-11-25
REV. B	05-08-25



1 ENLARGED SITE PLAN
 SCALE: 3/32" = 1'-0"



1 TOWER ELEVATION
SCALE: 1" = 30'-0"



PREPARED FOR:

vertical bridge

THE TOWERS, LLC

750 PARK OF COMMERCE DR.
SUITE 200
BOCA RATON, FL 33487

NOT FOR
CONSTRUCTION

DESIGN 1

9973 VALLEY VIEW RD.
EDEN PRAIRIE, MN 55344
(952) 903-9299
WWW.DESIGN1EP.COM

PROJECT
US-NE-5160
TMO #: TBD

US-NE-5160
JUNTO

252ND ROAD
SEWARD, NE 68434

SHEET CONTENTS:
TOWER ELEVATION

DRAWN BY:	SJD
CHECKED BY:	TAB
REV. A	02-11-25
REV. B	05-08-25

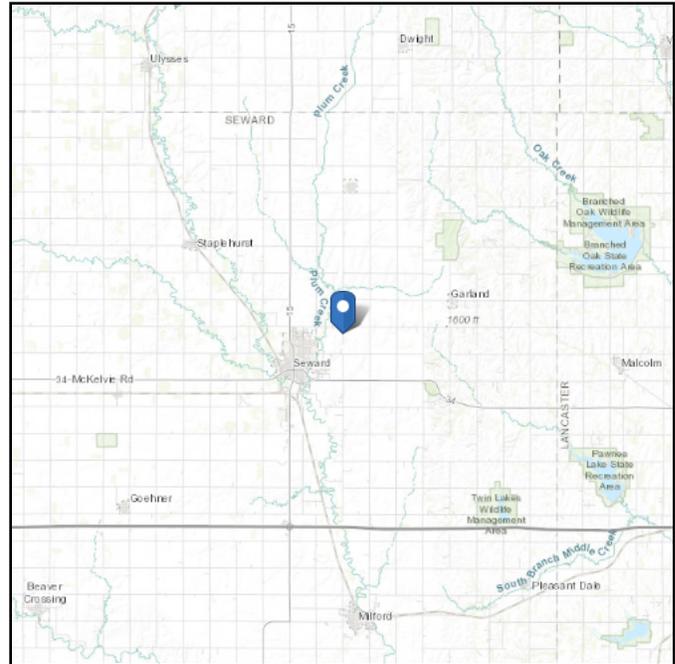
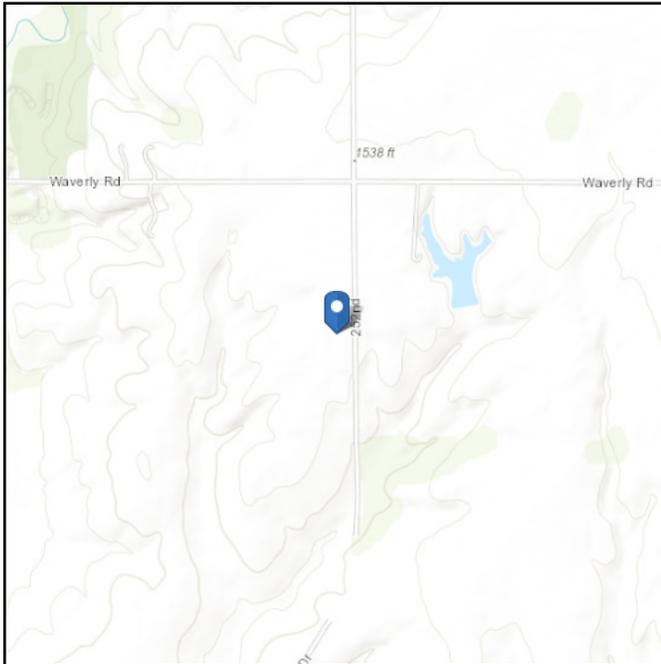
A-3

ASCE Hazards Report

Address:
No Address at This Location

Standard: ASCE/SEI 7-22
Risk Category: II
Soil Class: Default

Latitude: 40.926302
Longitude: -97.063953
Elevation: 1528.05123 ft (NAVD 88)



Wind

Results:

Wind Speed	111 Vmph
10-year MRI	78 Vmph
25-year MRI	85 Vmph
50-year MRI	90 Vmph
100-year MRI	96 Vmph
300-year MRI	105 Vmph
700-year MRI	111 Vmph
1,700-year MRI	120 Vmph
3,000-year MRI	125 Vmph
10,000-year MRI	135 Vmph
100,000-year MRI	155 Vmph
1,000,000-year MRI	174 Vmph

Data Source: ASCE/SEI 7-22, Fig. 26.5-1B and Figs. CC.2-1–CC.2-4, and Section 26.5.2
Date Accessed: Thu May 08 2025



Value provided is 3-second gust wind speeds at 33 ft above ground for Exposure C Category, based on linear interpolation between contours. Wind speeds are interpolated in accordance with the 7-22 Standard. Wind speeds correspond to approximately a 7% probability of exceedance in 50 years (annual exceedance probability = 0.00143, MRI = 700 years). Values for 10-year MRI, 25-year MRI, 50-year MRI and 100-year MRI are Service Level wind speeds, all other wind speeds are Ultimate wind speeds.

Site is not in a hurricane-prone region as defined in ASCE/SEI 7-22 Section 26.2.

The ASCE Hazard Tool is provided for your convenience, for informational purposes only, and is provided “as is” and without warranties of any kind. The location data included herein has been obtained from information developed, produced, and maintained by third party providers; or has been extrapolated from maps incorporated in the ASCE standard. While ASCE has made every effort to use data obtained from reliable sources or methodologies, ASCE does not make any representations or warranties as to the accuracy, completeness, reliability, currency, or quality of any data provided herein. Any third-party links provided by this Tool should not be construed as an endorsement, affiliation, relationship, or sponsorship of such third-party content by or from ASCE.

ASCE does not intend, nor should anyone interpret, the results provided by this Tool to replace the sound judgment of a competent professional, having knowledge and experience in the appropriate field(s) of practice, nor to substitute for the standard of care required of such professionals in interpreting and applying the contents of this Tool or the ASCE standard.

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Mail Processing Center
 Federal Aviation Administration
 Southwest Regional Office
 Obstruction Evaluation Group
 10101 Hillwood Parkway
 Fort Worth, TX 76177

Aeronautical Study No.
 2025-ACE-2403-OE

Issued Date: 05/19/2025

VB BTS III, LLC
 MATTHEW BONFANTE
 750 Park of Commerce Drive
 Suite 200
 Boca Raton, FL 33487

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Antenna Tower US-NE-5160 Junto
 County, State: Seward, Nebraska

Collected Point(s):

Label	Latitude	Longitude	SE	DET	AGL	AMSL
US-NE-5160 Junto	40-54-43.53N	97-3-58.33W	1492 Ft	250 Ft	1742 Ft	

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure should continue to be marked/lighted utilizing a med-dual system.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as

indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This aeronautical study included evaluation of a structure that exists at this time. Action will be taken to ensure aeronautical charts are updated to reflect the most current coordinates, elevation and height as indicated in the case description.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at 1-817-222-5323, or Marla.Duchatellier@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2025-ACE-2403-OE.

Signature Control No: 659374694-659949741

(DNE)

marla.duchatellier@faa.gov

Technician

Attachment(s)

Frequency Data

Map(s)

cc: FCC

Frequency Data for ASN 2025-ACE-2403-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
6	7	GHz	42	dBW
6	7	GHz	55	dBW
10	11.7	GHz	42	dBW
10	11.7	GHz	55	dBW
17.7	19.7	GHz	42	dBW
17.7	19.7	GHz	55	dBW
21.2	23.6	GHz	42	dBW
21.2	23.6	GHz	55	dBW
614	698	MHz	1000	W
614	698	MHz	2000	W
698	806	MHz	1000	W
806	824	MHz	500	W
806	901	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
929	932	MHz	3500	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1670	1675	MHz	500	W
1710	1755	MHz	500	W
1850	1910	MHz	1640	W
1850	1990	MHz	1640	W
1930	1990	MHz	1640	W
1990	2025	MHz	500	W
2110	2200	MHz	500	W
2305	2310	MHz	2000	W
2305	2360	MHz	2000	W
2345	2360	MHz	2000	W
2496	2690	MHz	500	W

Verified Map for ASN 2025-ACE-2403-OE





§ 410-31.8. Telecommunications towers. [Amended 4-3-2018 by Ord. No. 2018-10]

In any district where radio, television, microwave, cellular, or other communications towers are allowed as a permitted or conditional permit use, such towers are subject to the following additional requirements:

A. Tower siting.

- (1) It is the policy of the City of Seward to encourage co-location of new communications towers with existing towers or as part of suitable existing structures. All applications for approval of a communications tower location shall include evidence that all potential alternatives for location on existing towers have been explored and exhausted. Applicants may not be denied space on an existing tower within the City of Seward and its jurisdiction unless mechanical, structural, regulatory factors, or legitimate business expansion plans prohibit co-location.
- (2) The applicant for a communications tower location is required to demonstrate as part of its application that the tower must be located on the proposed site in order to satisfy its function in the company's system. The applicant must also demonstrate that the proposed height is the minimum height necessary for the successful functioning of the tower.

B. Tower setbacks, design, and height.

- (1) Freestanding towers shall be located so that the distance from the base of the tower to any adjoining property line or the supporting structure of a separate neighboring tower is a minimum of 100% of the tower height. The Planning Commission may recommend and the City Council approve a reduction to the setback with a conditional use permit if they determine that such reduction does not constitute a hazard to safety or property on adjacent properties or rights-of-way.
- (2) The tower installation shall be designed to be aesthetically and architecturally compatible with the built environment of the City of Seward. The City encourages efforts to hide towers or restrict their visibility from public rights-of-way or neighboring properties. Associated support buildings shall be designed with materials that are consistent with those in the surrounding neighborhood. Metal exteriors shall generally not be permitted for accessory support buildings.
- (3) All tower installations shall maintain landscaped peripheral yards with a minimum depth of 35 feet from surrounding property lines. One tree consistent with the provisions of Article 33 shall be planted for every 500 square feet of required peripheral yard area.
- (4) As part of the conditional use permit approval process, the City Council may permit the tower to exceed the height restrictions otherwise allowable in the district.
- (5) Towers shall have a color generally matching the surroundings or background that minimizes their visibility, unless a different color is required by the FCC or FAA.
- (6) Lights, signals and signs. No signals, lights or signs shall be permitted on towers unless required by the FCC or the FAA. Should lighting be required, at the time of construction

of the tower in cases where there are residential users located within a distance which is 300% of the height of the tower from the tower, then dual-mode lighting shall be requested from the FAA. Lighting on towers shall not exceed the minimum requirements of the FAA or other regulatory agencies.

- (7) Adequate security measures are required at the base of the tower to prevent vandalism or hazards resulting from casual access to the facility.

C. City site selection criteria in evaluating applications for communications towers.

- (1) Consistent with the policy of this chapter, the telecommunications company proposing to construct an antenna support structure, or mount an antenna on an existing structure, shall demonstrate, using technological evidence, that the antenna must go where it is proposed in order to satisfy its function in the company's grid system. Further, the company must demonstrate by technological evidence that the height requested is the minimum height necessary.
- (2) Applications for necessary permits will only be processed when the applicant demonstrates that it is either an FCC-licensed telecommunications provider or has in place necessary agreements with an FCC-licensed telecommunications provider for use or lease of the support structure.
- (3) Personal wireless service facilities should be located and designed to minimize any impacts on residential property values. Sites should be placed in locations where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening.
- (4) Location and design of sites in all districts should consider the impact of the site on the surrounding neighborhood and the visual impact within the zone district. In residential districts and residential land use areas, the minimum lot size for towers shall be three acres.

D. Priorities for siting.

- (1) The following establishes the order of priorities for locating new communications facilities:
 - (a) Public property (excluding prairie, conservation or wildlife areas, or historic structures).
 - (b) Appropriate existing structures, such as buildings, towers, water towers, and smokestacks in other zoned districts.
 - (c) AG, I-1 or I-2 Districts that do not adjoin or adversely impact residential neighborhoods.
 - (d) Private nonresidential property in C-2 or C-3 Districts.
 - (e) Private, nonresidential properties in C-1 or UC Districts.
 - (f) Placement of antennas and towers on multifamily residential structures exceeding

30 feet in height in districts zoned R-3 and R-4.

- (g) Residential districts only if locations for which a need has been demonstrated are not available on existing structures or in nonresidential districts; and only on or in existing churches, parks, schools, utility facilities or other appropriate public facilities.
- (2) An applicant for a new antenna support structure to be located in a residential zoning district shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government structure, a private institutional structure, or other appropriate existing structures within a nonresidential zoning district, and that due to valid considerations, including physical constraints, or technological feasibility, no appropriate location is available. The telecommunications company is required to demonstrate that it contacted the owners of structures in excess of 30 feet within a one-quarter-mile radius of the site proposed, asked for permission to install the antenna on those structures, and was denied for reasons other than economic ones. The information submitted by the applicant shall include a map of the area to be served by the tower, its relationship to other antenna sites in the applicant's network, and an evaluation of existing buildings taller than 30 feet, towers and water tanks within one-quarter mile of the proposed tower.

ZONING AND SUBDIVISION

410 Attachment 1

City of Seward

Use Matrix

[Amended 11-20-2018 by Ord. No. 2018-19; 2-8-2019 by Ord. No. 2019-05; 2-19-2019 by Ord. No. 2019-04; 7-16-2019 by Ord. No. 2019-21; 6-16-2020 by Ord. No. 2020-13; 11-17-2020 by Ord. No. 2020-31; 7-6-2021 by Ord. No. 2021-15; 8-17-2021 by Ord. No. 2021-18; 10-4-2022 by Ord. No. 2022-17]]

KEY:

- P Permitted by right or by right subject to supplemental regulations
- S Permitted by conditional use permit (§ 410-44.3)
- S(x) Expansion of an existing use is permitted subject to approval of a conditional use permit
- E Permitted by right if lawfully existing on the effective date of this chapter
- Blank Use not permitted in zoning district
- * Use subject to site plan review (§ 410-44.2)

Use Types	Impact Rating	AG	RR	R-1	R-2	R-3	R-4	RM	UC	C-1	C-2	CBD	BP	I-1	I-2	Supplemental Regulations
Agricultural Uses																
Horticulture	L	P	P													§ 410-31.2
Crop production	L	P	P													§ 410-31.2
Animal production	M	P	P													§ 410-31.2
Confined animal feeding operations	I	S(x)														§§ 410-31.2, 410-31.3
Livestock sales	H	S														
Residential Uses																
Single-family detached	L	P	P	P	P	P	P	P	P	P	S/E	S/E	E	E	E	
Single-family attached	L			P	P	P	P	P	P	P	S/E	S/E	E	E	E	
Duplex	L			P	P	P	P	P	P	P	S	S	E	E	E	
Two-family*	L			S	S	P	P	S	P	S	S	S				
Townhouse*	L				P	P	P	S	P	P	S	P	E	E	E	
Multiple-family*	M					S	P		P	P	S	P	E	E	E	
Downtown residential*	L								P			P				§ 410-31.3

SEWARD CODE

Use Types	Impact Rating	AG	RR	R-1	R-2	R-3	R-4	RM	UC	C-1	C-2	CBD	BP	I-1	I-2	Supplemental Regulations
Group residential*	M	S			S	S	P	S	S	S/E	E	E	E	E	E	§ 410-31.3
Boardinghouse*	M						S		S	E	E	E	E	E	E	
Manufactured housing residential	L	P	P	P	P	P	P	P	P	P	S/E	S	E	E	E	
Mobile home park*	M							P								§ 410-31.3
Mobile home subdivision	L							P								§ 410-31.3
Retirement residential*	M	S	S	S	P	P	P	S	P	S	S	P				
Civic Uses																
Administration	L	P	S		S	S	P	S	P	P	P	P	P	P	P	
Cemetery*	L	S	S	S	S	S	S	S								
Clubs (recreational)*	L	S	S	S	S	S	P	S	P	P	P	P	P	P	P	§ 410-31.4
Clubs (social)*	M	S	S	S	S	S	P	S	P	P	P	P	P	P	P	§ 410-31.4
College/University*	H	S	S	S	S	S	S	S	S	P	P	P	P	P		
Convalescent services*	L	S	S	S	S	S	P	S	P	P	P	S	S			
Cultural services*	M	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Day care (limited)	L	P	P	P	P	P	P	P	P	P	P	P	P	P	P	§ 410-31.4
Day care (general)*	M	S	S	S	S	S	P	P	P	P	P	P	P	P	P	§ 410-31.4
Detention facilities*	I	S									S	S		S	S	
Emergency residential	L	P	P	P	P	P	P	P	P	P	P	P				
Group-care facility*	M			S	S	P	P	S	P	P	P	P				§ 410-31.4
Group home	L	P	P	P	P	P	P	P	P	P	P	P				§ 410-31.4
Guidance services	L					S	P	S	P	P	P	P	P	P	P	
Health care*	M	S			S	S	P	S	P	P	P	P	P	P	P	
Hospitals*	I	S			S	S	S		S	S	P	P	P	S	S	
Maintenance facility*	H	S	S				S			S	P	S	P	P	P	
Park and recreation	L	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Postal facilities*	M					S	S		P	P	P	P	P	P	P	
Primary education*	H	P	P	P	P	P	P	P	P	P	S	S				

ZONING AND SUBDIVISION

Use Types	Impact Rating	AG	RR	R-1	R-2	R-3	R-4	RM	UC	C-1	C-2	CBD	BP	I-1	I-2	Supplemental Regulations
Public assembly*	H								S	S	P	P	S	P	P	
Religious assembly*	M	P	S	S	S	S	S	S	P	P	P	P	P	P	C	
Safety services*	M	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Secondary education*	I	S	S	S	S	S	P	S	P	S	P	S	S	S		
Utilities*	M	P	S	S	S	S	S	S	S	S	P	S	P	P	P	
Office Uses																
Corporate offices*	M					S	S		P	P	P	P	P	P	P	
General offices	M					S	S		P	P	P	P	P	P	P	
Financial services A	L						S		P	P	P	P	P	P	P	
Financial services B*	M								S	P	P	P	P	P	P	
Medical offices A	L						S		P	P	P	P	P	P	P	
Medical offices B*	M						S		P	P	P	P	P	P	P	
Commercial Uses																
Agricultural sales/service*	H	S									P		S	P	P	
Auto auction lots*	H										S			P	P	§ 410-31.5
Auto rental/sales*	H									S	P	P	S	P	P	§ 410-31.5
Auto services*	H								S	S	P	P	P	P	P	§ 410-31.5
Body repair*	I										P	S	S	P	P	§ 410-31.5
Dog day care	M	S	S						S	S	S	S		S		§ 410-31.5
Equipment rental/sales*	H									S	P	S	S	P	P	§ 410-31.5
Equipment repair*	H										P	S		P	P	§ 410-31.5
Bed-and-breakfast*	L	S	S	S	P	P	P	S	P	P	P	P	S	S	S	§ 410-31.5
Business support services*	M						S		P	P	P	P	P	P	P	
Business/Trade school*	H						S		P	S	P	P	P	P	P	
Campground*	M	S	S								S					§ 410-31.5
Cocktail lounge*	H									S	P	P	P	P	P	
Commercial recreation (controlled-impact)*	H									S	P	P	P	P	P	

SEWARD CODE

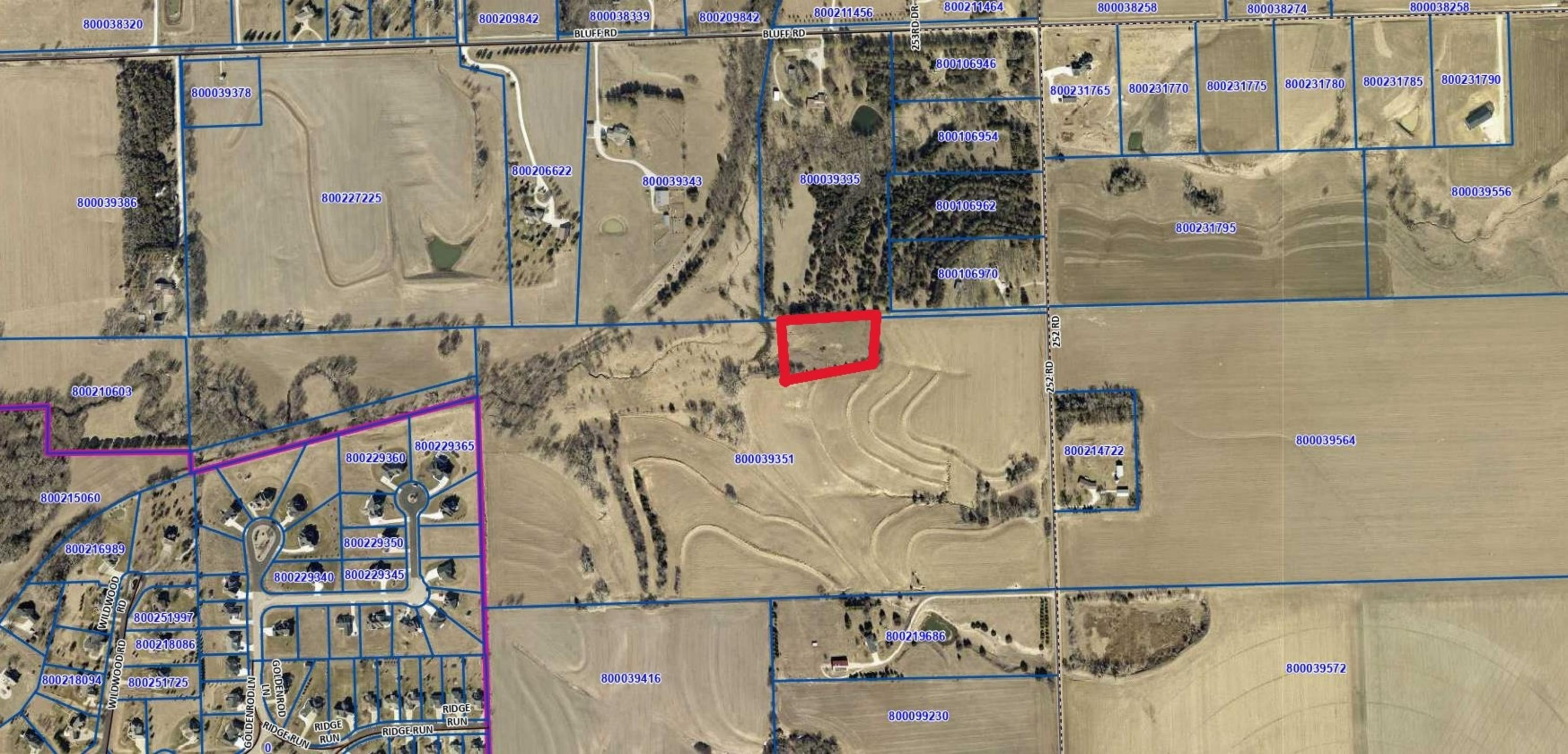
Use Types	Impact Rating	AG	RR	R-1	R-2	R-3	R-4	RM	UC	C-1	C-2	CBD	BP	I-1	I-2	Supplemental Regulations
Commercial recreation (high-impact)*	H	S									P		S	P	P	
Communication service*	M					S			P	S	P	P	P	P	P	
Construction sales/service*	H										P	S	P	P	P	§ 410-31.5
Consumer service*	M								P	P	P	P	P	P	P	
Convenience storage*	H						S					P	P	P	P	§ 410-31.5
Food sales (convenience)*	H								S	P	P	P	S	P	S	
Food sales (limited)*	L								P	P	P	P	S			
Food sales (general)*	M								S	P	P	P	S	P		
Food sales (supermarkets)*	I									S	P	S				
Funeral service*	M				S	S	P		P	P	P	P	P	P	P	
Gaming facilities*	H									S	P	P		P	P	
Kennels*	M	S	S								S			P	P	§ 410-31.5
Laundry services*	H										P	P	P	P	P	
Liquor sales*	H									S	P	P		P		
Lodging*	H								S	S	P	P	P			
Personal improvement	M						S		P	P	P	P	P	P	P	
Personal services*	M						S		P	P	P	P	P	P	P	
Pet services*	M								P	P	P	P	P	P		
Research services*	M								S	S	P	P	P	P	P	
Restaurants (drive-through or fast-food)*	H								S	S	S	S	S	S	S	
Restaurants (general)*	H								P	P	P	P	P	P	P	
Restricted business*	I										S			P	P	§ 410-31.5
Retail services (limited)	M								P	P	P	P	P			
Retail services (medium)	M								P	P	P	P	P			
Retail services (large)*	H								S	S	S	S				
Retail services (mass)*	I									S	S					
Stables*	M	P	S													

ZONING AND SUBDIVISION

Use Types	Impact Rating	AG	RR	R-1	R-2	R-3	R-4	RM	UC	C-1	C-2	CBD	BP	I-1	I-2	Supplemental Regulations
Surplus sales*	I										P		P	P	P	
Trade services*	M								S	S	P	S	P	P	P	
Travel centers	H									S	P		S	P	P	§ 410-31.5
Truck stops	I										S		S	S	P	§ 410-31.5
Veterinary services (general)*	M	S	S						P	P	P	P	P	P	P	
Veterinary services (large animal)	H	S												P	P	
Parking Uses																
Off-street parking*	H								S		P	S		P	P	
Parking structure*	H									S	P	P	P	P	P	
Transportation Uses																
Aviation (general)*	I	S											S	S	P	
Aviation (private)*	M	S	S											S	S	
Railroad facilities*	I											S	S	P	P	
Truck terminal*	H													S	P	
Transportation terminal*	H									S	P	P	P	P	P	
Industrial Uses																
Agricultural industry*	I	S												S	P	
Construction yards*	H													P	P	
Custom manufacturing	M								S	S	P	P	P	P	P	
Light industry*	M												S	P	P	
General industry*	H													P	P	
Heavy industry*	I														S	
Recycling collection*	M									S	P	S	S	P	P	
Recycling processing*	H										S			P	P	
Resource extraction*	I	S													S	§ 410-31.6
Salvage services*	I	S													S	§ 410-31.6
Vehicle storage*	H													S	S	§ 410-31.6

SEWARD CODE

Use Types	Impact Rating	AG	RR	R-1	R-2	R-3	R-4	RM	UC	C-1	C-2	CBD	BP	I-1	I-2	Supplemental Regulations
Warehousing (enclosed)*	M	S									S	S	P	P	P	
Warehousing (open)*	H													S	P	
Miscellaneous Uses																
Amateur radio tower	L	P	P	P	P	P	P	P	P	P	P	S	P	P	P	
Communications tower	M	S	S						S		S	S	P	P	P	
Construction batch plant*	H													S	P	
Landfill (nonputrescible)*	H	S													S	§ 410-31.9
Landfill (putrescible)*	I															§ 410-31.9
WECS	L	P	S	S	S	S	S	S	S	S	S	S	P	P	P	§ 410-31.9
Shipping containers	H	P									S		S	P	P	§ 410-31.13



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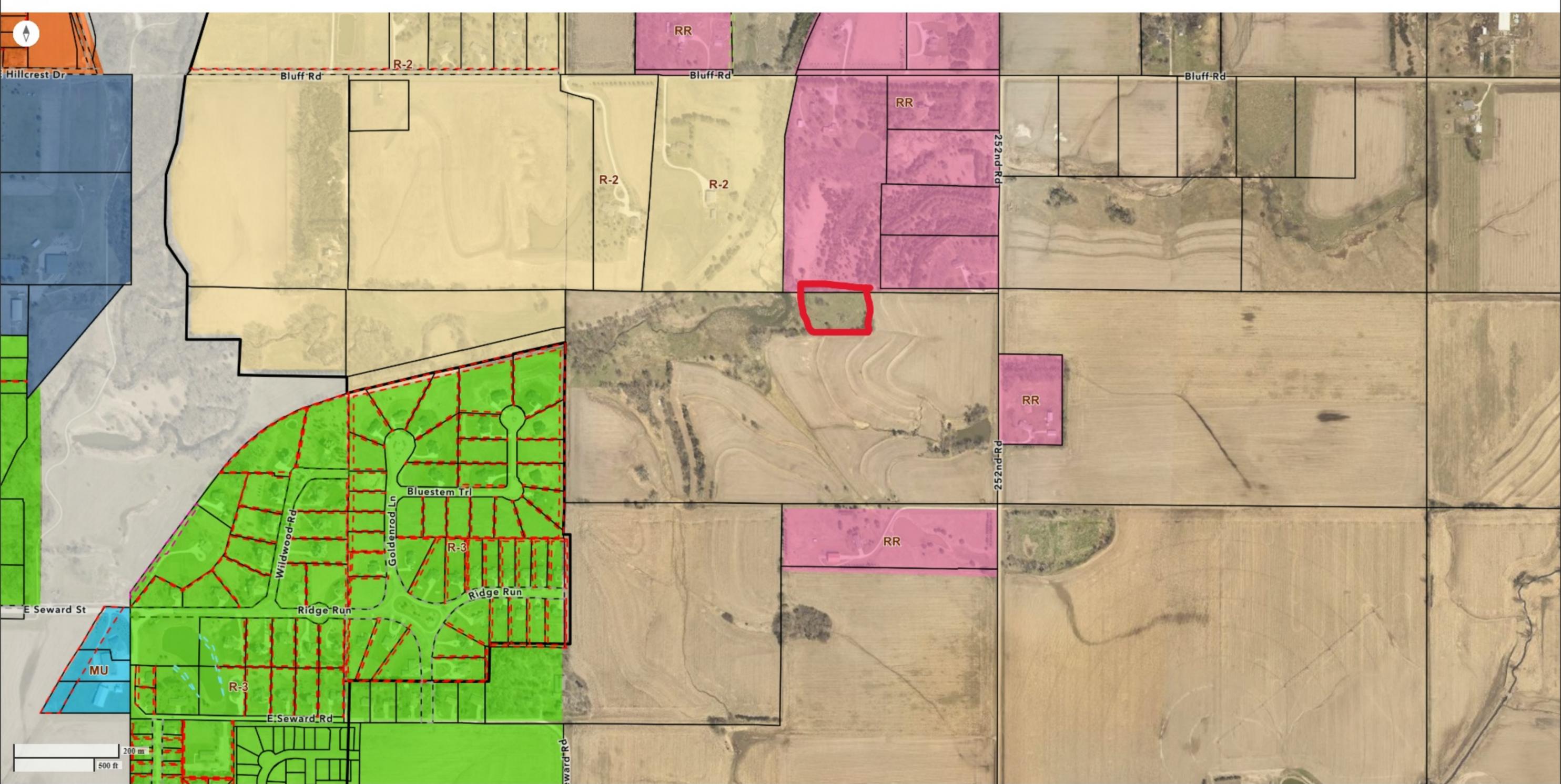
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Measure Tools

Line Measurement

Area Measurement

Easements

ACCESS	ACCESS & UTILITY ROW	AT&T CABLE UTILITY	DRAINAGE E	DRAINAGE & UTILITY	FLOOD CONTROL EASEMENT	INGRESS/EGRESS	LINCOLN TELEPHONE EASEMENT	MAINTENANCE DRAINAGE UTILITY EASEMENT	PIPELINE EASEMENT	PONDING	PUBLIC ACCESS ROW & UTILITY
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Parcels **City** **Zoning**

AG	BP	C-1	C-2	C/OS	CBD	I-1	I-2	MU	R-1	R-2	R-3	R-4	R-4 PUD	R-M	RR	UMC	UC	Two Mile Limits
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Return To:
City of Seward
PO Box 38
Seward, NE 68434

Notice of Special Use Permit

This Notice shall hereby certify that City of Seward approved Conditional Use Permit CU25-02 on June 17, 2025, granting VB BTS III LLC a Special Use Permit for telecommunications tower in AG – Agricultural District at the property legally described as:

That Part of the South-Half of the Northeast Quarter of Section 22, Township 11 North, Range 3 East of the 6TH P.M., Seward County, Nebraska, More Particularly Described as follows:

Commencing at the Northeast corner of said South-Half of the Northeast Quarter; Thence S88°53'47"W, along the North line of said South-Half of the Northeast Quarter, a distance of 858.27 feet; Thence S01 °06'13"E, feet; Thence S01 °06'13"E, a distance of 100.00 feet; Thence S88°53'47"W, a distance of 100.00 feet; Thence N01 °06'13"W, a distance of 100.00 feet to the point of beginning. Containing an area of 10,000 square feet or 0.23 acres, more or less. (PID 800039351)

with the following conditions:

Said special use permit shall run with the land.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this ____ day of _____, 2025

Joshua Eickmeier, Mayor City of Seward

STATE OF NEBRASKA

SS

COUNTY OF SEWARD

The foregoing instrument was acknowledged before me on the ____ day of _____, 2025, by Joshua Eickmeier, Mayor of the City of Seward.

Notary Seal:

Notary Public

7. Public Hearing 7:30pm: review the 2026 One (1) and Six (6) Year Public Roads Plan for the City of Seward, NE.

City of Seward Planning Commission

142 N 7th St., Seward, NE 68434

Staff Report

Tim Dworak, Building/Zoning &
Code Enforcement Director

Tim Dworak 402-643-4000

APPLICATION TYPE

FINAL ACTION?

DEVELOPER/OWNER

2026 1 and 6 Year Public Roads
Plan review

City of Seward

PC HEARING DATE

RELATED APPLICATIONS

PROPERTY ADDRESS, ZONING DISTRICT/USE

June 9, 2025

BRIEF SUMMARY OF REQUEST

Review of the Annual One (1) and Six (6) Year Public Roads Plan for highway, road and street improvements for the City of Seward, NE, in fulfillment of the requirements of Title 428 of the Nebraska Administrative Code.

The notice of this Public Hearing was published in the Seward County Independent.

APPLICATION CONTACT

Michael Oneby – City Engineer

Bob Miers – Superintendent of Streets

Prepared by

Tim Dworak

City of Seward Building - Zoning – Code Enforcement Director

Priority	Project #	Project Type	Status	Completed Project Description (FY 2025)	Surfacing	Projected Engineering Cost	Actual Construction Cost	Estimated Const Year (FY)	Funding	Comment
N/A	M-539 (210)	Reconstruction Storm Sewer	Complete	Park Avenue from 6th to 8th Streets 36-inch SS	Concrete paving Pipe		\$1,654,000	2023/ 2024		Construction straddles two fiscal years
N/A	M-539 (219)	Reconstruction Storm Sewer	Complete	Bradford St, 6th to 10th 18-inch SS	Concrete paving Pipe		\$628,000	2023/ 2024		Construction straddles two fiscal years
N/A	M-539 (213)	Reconstruction Storm Sewer	Complete	Highway 15 (6th St) Ash St to City Limits	Concrete with Curb	\$0	\$9,900,000	2024/ 2025	Federal & State funding City contribution est. \$80,000	NDOT Project, City contribution for parallel parking stalls along Courthouse square
Priority	Project #	Project Type	Status	One Year Plan Description (FY 2026)	Surfacing	Projected Engineering Cost	Projected Construction Cost	Estimated Const Year (FY)	Funding	Comment
1	M-539 (222)	New Paving	Construction	Worthman Blvd from Pine St to west limit of Rail Campus Development	Concrete with Curb	\$148,000	\$1,800,000	2026	CDBG grant and EOP grant	Engineering in 2025 Bid Fall 2024, Construct 2025
2	M-539 (235)	Storm Sewer Reconstruction	Construction	Pine Street and Worthman Blvd Intersection	Storm Sewer Concrete pavement	Combined with above	Combined with above	2026		Combined with Priority 1, Project M-539 (222) Widen intersection radii to match truck traffic
3	M-539 (236)	Storm Sewer Detention	Construction	Rail Campus Detention Basin	Detention Basin	Combined with above	Combined with above	2026		Combined with Priority 1, Project M-539 (222) Detention for Lots 7, 13, 14, 15
4	M-539 (151)	Reconstruction Storm Sewer	Construction	East Hillcrest Drive from Eastridge Drive to Plum Creek bridge (includes Bike Trail spur)	Concrete with Curb	\$148,000	\$1,152,000	2025		Engineering in 2022-2023-2024-2025 Bid Fall 2025
5	M-539 (217)	Bridge Reconstruction	Construction	Plum Creek Bridge at East Hillcrest Drive/Bluff Road	Concrete	\$0	\$4,000,000	2026	100% Federal Funding	Managed by NDOT; bid letting Dec 2025 Preliminary Enengineering complete 2022
6	M-539 (228)	Storm Sewer Reconstruction	Construction	Bradford St, 5th to 6th Roberts Street, 5th to 6th	Storm Sewer Concrete patch	\$253,000	\$800,000	2025		Engineering 2023 2024, Bid Fall 2024 Completes Hwy 15 drainage
7	M-539 (184a)	Street Reconstruction	Engineering & Construction	East Hillcrest Drive from Columbia to Eastridge Drive	Concrete with Curb		\$1,500,000	2026		Engineering in 2025 Bid Spring 2026
8	M-539 (170b)	Bike Trail/ Shared Use Path	Construction	Bike Trail from Columbia to Karol Kay	Concrete		\$95,000	2026		Constructed by city staff; split off from federally funded Project M-539(170a)
Priority	Project #	Project Type	Status	Six Year Plan Description (FY 2027-2032)	Surfacing	Projected Engineering Cost	Projected Construction Cost	Estimated Const Year (FY)	Funding	Comment
1	M-539 (212)	Reconstruction/ New paving	Engineering	Lindell Avenue from Jackson Avenue to East Seward Street & Jackson Avenue from Lindell Avenue to 127' east of Lindell	Concrete with Curb	\$148,000	\$850,000	2027		Engineering in 2025 & 2026 Bid Fall 2026
2	M-539 (196a)	Reconstruction Storm Sewer	Engineering	Pinewood Avenue - Meadow Lane to Hwy 15	Concrete/Asphalt	\$148,000	\$1,821,000	2027		Engineering in FY2026 Different treatments in different sections
3	M-539 (193)	Storm Sewer Detention	Engineering	Pinewood and Hwy 15 Drainage	Detention Basin	\$120,000	\$400,000	2027		Combined with Priority 2, Project M-539 (195a) Probable site west of Hwy 15 in Golf Course
4	M-539 (238)	Storm Sewer Reconstruction	Engineering	River Street 14th Street to 13th Street	Storm Sewer Concrete pavement	\$160,000	\$500,000	2027		In conjunction with 48-unit apartment building at 1313 W Highway 34
5	M-539 (227)	Reconstruction Storm Sewer	Engineering	Seward Street - 4th to 5th St	Storm Sewer Brick reconstruction	\$300,000	\$650,000	2027	Downtown Revitalization	Redesign 5th & Seward Intersection crosswalks
6	M-539 (170a)	Bike Trail/ Shared Use Path	Engineering	Bike Trail from South Columbia to Independence Landing, 4th Street to Karol Kaye (ENH-30(83))	Concrete	\$400,000	\$4,000,000	2027	80/10/10 cost share with State & Federal	City contribution estimated \$400,000 Engineering 2026 (Revised path)
7	M-539 (226)	Bike Trail/ Shared Use Path	Planning	Plum Creek Trail re-route	Concrete	\$0	\$30,000	2027		Constructed by city staff
8	M-539 (184b)	Street Reconstruction	Planning	Hillcrest Drive from Columbia Avenue to 3rd Street	Concrete with Curb		\$2,500,000	2028		
9	M-539 (218a)	Overlay	Planning	Roberts Street, 3rd Street to 6th Street Bradford Street, 5th to 6th	Asphalt with Concrete Curb		\$600,000	2028		
10	M-539 (234)	New Paving	Planning	Columbia Avenue from City Limit to Depot Street	Concrete with Curb		\$800,000	2028		
11	M-539 (229)	New Paving	Planning	Bluff Road, Plum Creek Bridge to 252nd St	Concrete with Curb		\$2,925,000	2029		
12	M-539 (223a)	Overlay	Planning	Third Street - Ash Street to Main Street	Asphalt with Concrete Curb	\$148,000	\$700,000	2029		
13	M-539 (194)	Storm Sewer	Planning	42" storm sewer between 12th & 13th north of Main Street	Pipe		\$100,000	2029		Research existing pipe diameters; identify bottleneck
14	M-539 (204)	Stormwater	Planning	Open channel from Elementary School to Rainbow Avenue near Star Street	Concrete Channel		\$60,000	2029		Engineering in-house
15	M-539 (184c)	Street Reconstruction	Planning	Hillcrest Drive from 3rd Street to Highway 15 (6th Street)	Concrete with Curb		\$1,500,000	2030		
15	M-539 (205)	Storm Sewer Reconstruction	Planning	8th St. from Park Av to Hillcrest W. Hillcrest, 7th St to Ironwood	Brick/concrete Pipe, curb inlets		\$509,000	2030		Engineering in 2024 Different treatments in different sections
16	M-539 (223b)	Overlay	Planning	Third Street - Main Street to Bradford	Asphalt with Concrete Curb		\$700,000	2030		Pavement constructed by city staff Acquire ROW, Requires USACE approval
17	M-539 (201)	Signal	Planning	Traffic Signal on Hwy 15 at Worthman Blvd (Rail Campus)	N/A		\$400,000	2030		Required when traffic warrants
18	M-539 (230)	New Paving	Planning	252nd Street, Hwy 34 to Bluff Rd	Concrete with Curb		\$2,274,000	2031		Currently a county road Cost share with county

Priority	Project #	Project Type	Status	Six Year Plan (continued) Description (FY 2027-2032)	Surfacing	Projected Engineering Cost	Projected Construction Cost	Estimated Const Year (FY)	Funding	Comment
19	M-539 (198)	Overlay	Planning	Ash Street - Columbia Avenue to Highway 15	Asphalt with Concrete Curb		\$400,000	2031		
20	M-539 (221)	Storm Sewer	Planning	Plum Creek Park	Detention		\$300,000	2031		Probable site south of tennis courts Coordinate with NRD
21	M-539 (237)	Storm Sewer Reconstruction	Planning	Seventh Street from Ash Street to Main Street	Concrete with Curb		\$500,000	2031		Replace corrugated metal storm pipe under east curb, partial pavement replacement
22	M-539 (215)	New Paving	Planning	Second Street - Oak St to Big Blue Bridge	Concrete with Curb		\$30,000	2031		Constructed by city staff
23	M-539 (199)	Reconstruction	Planning	East Seward Street - Lindell Avenue to Columbia Avenue	Brick/concrete		\$500,000	2031		In sequence after Jackson/Lindell (Project 212)
24	M-539 (196b)	Reconstruction Storm Sewer	Planning	Pinewood Avenue - Columbia to Meadow Lane	Concrete/Asphalt	\$148,000	\$1,800,000	2027		Different treatments in different sections
25	M-539 (218b)	Overlay	Planning	Roberts Street, Columbia Avenue to 3rd Street	Asphalt with Concrete Curb		\$600,000	2032		
26	M-539 (131)	New Paving	Planning	Park Avenue from N. 11th St. to N. 12th Street	Concrete with Curb Box culvert		\$385,000	2032		Pavement constructed by city staff Acquire ROW, Requires USACE approval
27	M-539 (238)	Reconstruction	Planning	Fairgrounds Road	Concrete no curb		\$300,000	2032		Currently a county road Annexation
28	M-539 (231)	New Paving	Planning	Cemetery Reynolds Addition Detention	Detention		\$300,000	2032		
29	M-539 (165)	New Paving	Planning	Spruce Street from 1/2 block west of Progressive Road to Pine Street	Concrete with Curb		\$30,000	2032		Constructed by city staff
30	M-539 (202)	Reconstruction	Planning	Highway 15 Bridge across Worthman Creek widening and turn lanes	Asphalt		\$1,500,000	2032		Required when traffic warrants
31	M-539 (224)	Storm Sewer	Planning	Elm Street - 2nd to 3rd Streets	Pipe		\$200,000	2032		
32	M-539 (220)	Storm Sewer Detention	Planning	Cedar Street Detention Basin	Improvements		\$85,000	2032		
33	M-539 (200)	Storm Sewer	Planning	Drainage Basin (Northeast) Improvements			\$400,000	2032		
34	M-539 (232)	New Paving and Subgrade	Planning	Prairie Flower Rd, E. Seward to Bluff Rd	Concrete		\$5,062,000	2032		Improve detention upstream of Cedar St. Detention Basin, property acquisition
35	M-539 (216)	Reconstruction	Planning	Highway 15 Bridge across Big Blue River widening	Concrete		\$6,000,000	2032		4,000 ft.
36	M-539 (161)	New Paving	Planning	Pine Street from Birch Street thru Spruce Street	Concrete with Curb		\$85,000	2032		
37	M-539 (162)	New Paving	Planning	Pine Street from Spruce Street thru Walnut Street	Concrete with Curb		\$85,000	2032		
38	M-539 (163)	New Paving	Planning	Pine Street from Walnut Street to Cottonwood Street	Concrete with Curb		\$85,000	2032		
39	M-539 (186)	Reconstruction	Planning	Walnut Street from Progressive Road to Pine Street	Concrete		\$70,000	2032		
40	M-539 (195)	Storm Sewer	Planning	Drainage Basin (Southwest) Improvements			\$200,000	2032		
Long Range Plan										
	Project #	Project Type	Status	Description (FY 2033+)	Surfacing	Projected Engineering Cost	Projected Construction Cost	Estimated Const Year (FY)	Funding	Comment
	M-539 (x)	New Paving and Subgrade	Planning	252nd St, Bluff Rd to Waverly Rd	Concrete		\$3,054,000	TBD		5,300 ft.
	M-539 (x)	Reconstruction	Planning	Walker Rd. from Pine St to CTH 294	Concrete		TBD	TBD		4,600 ft.
	M-539 (x)	Reconstruction	Planning	Lincoln Avenue from Columbia Av to Highway 15 (6th Street)	Concrete with Curb		TBD	TBD		Include Bike Trail spur
	M-539 (x)	Reconstruction	Planning	Lincoln Avenue from Highway 15 (6th Street) to 10th St	Concrete with Curb		TBD	TBD		Include Bike Trail spur
	M-539 (x)	Storm Sewer	Planning	Langworthy from Columbia to Meadow Lane	Pipe		TBD	TBD		
	M-539 (x)	New Paving	Planning	Birch Street from 285th St to CTH 294	Concrete		TBD	TBD		3,500 ft.
	M-539 (x)	Reconstruction	Planning	Moffitt St from Columbia Av to Highway 15 (6th Street)	Brick/concrete		TBD	TBD		
	M-539 (x)	Reconstruction	Planning	Moffitt St from Highway 15 (6th Street) to 10th St	Brick/concrete		TBD	TBD		

**ADMINISTRATIVE ITEMS
REPORTS**

1. Report on Meetings Attended

**FUTURE REQUESTS FOR COMMISSION AGENDA ITEMS OR
ADMINISTRATIVE ACTION
ANNOUNCEMENT OF UPCOMING EVENTS
MOTION TO ADJOURN**

I, Derek Bargmann, the duly appointed qualified and acting City Clerk of the City of Seward, Nebraska, hereby certify that the foregoing Notice of Meeting and Agenda for such meeting has been posted in the following places: Seward City Hall, Seward Memorial Library, and CityofSewardNE.gov

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City.

Derek Bargmann, City Clerk

Date