



TENTATIVE AGENDA
OTTUMWA CITY COUNCIL

REGULAR MEETING NO. 36
Council Chambers, City Hall

December 21, 2021
5:30 O'Clock P.M.

PLEDGE OF ALLEGIANCE

Judge Daily – Cara Galloway, Doug McAntire, Russ Hull, Rick Johnson – all taking office after January 1, 2022.

A. ROLL CALL: Council Member Meyers, Pope, Berg, Dalbey, Roe and Mayor Lazio.

B. CONSENT AGENDA:

1. Minutes from Special Meeting No. 34 on November 30, 2021 and Regular Meeting No. 35 on December 7, 2021 as presented.
2. Acknowledgement of November financial reports and payment of bills as submitted by the Finance Department.
3. Approve the appointment of David Bossou to the Planning & Zoning Commission, term to expire 4/1/2026 and the re-appointments of Mary Stewart and Robert Swanson to the Historic Preservation Commission, terms to expire 1/1/2025.
4. Approve the appointment of Michael Mier to the Airport Line Technician at the Ottumwa Regional Airport on or about December 26, 2021.
5. Beer and/or liquor applications for: Red's Pub, 618 Church St.; Tequila Grill, 112 N. Market St.; all applications pending final inspections.

C. APPROVAL OF AGENDA

D. ADMINISTRATORS REPORT TO COUNCIL AND CITIZENS:

1. ARPA Funds – Update of staff recommendations with input from exiting City Council.
2. Strategic Plan Update

All items on this agenda are subject to discussion and/or action.

E. IDENTIFICATION OF CITIZENS DESIRING TO COMMENT ON AGENDA ITEMS:

(When called upon by the Mayor, step to the microphone; state their name, address and agenda item to be addressed. The Mayor will invite you to address the Council when that topic is being discussed. Remarks will be limited to **three minutes or less**. The City Clerk shall keep the time and notify the Mayor when the allotted time limit has been reached. Comments are to be directly germane to the agenda item being discussed; if not directly germane as determined by the Mayor will be ruled out of order.)

F. DEPARTMENTAL RECOMMENDATIONS/REPORTS:

1. Consideration of Approving Order Form with Zencity Technologies US, Inc. to increase Civic Engagement.

RECOMMENDATION: Approve the order form and contract with Zencity.

2. Consideration of market salary adjustment for City Clerk based upon city comparables.

RECOMMENDATION: Approve market adjustment increase of \$2,500 to the City Clerk's salary

effective January 1, 2022.

G. PUBLIC HEARING:

1. This is the time, place and date set for a public hearing on the matter of the adoption of the Amended and Restated Ottumwa Urban Revitalization Plan for the Ottumwa Revitalization Area.
 - A. Open the public hearing.
 - B. Close the public hearing.
 - C. Resolution No. 218-2021, adopting the proposed Amended and Restated Ottumwa Urban Revitalization Plan for the Ottumwa Revitalization Area.

RECOMMENDATION: Pass and adopt Resolution No. 218-2021.

2. This is the time, place and date set for a public hearing on an application to the Iowa Economic Development Authority for a Community Development Block Grant (CDBG) from the COVID-19 Program for the Ottumwa North Market Street Façade Improvement Project.
 - A. Open the public hearing.
 - B. Close the public hearing.
 - C. Resolution No. 224-2021, authorizing the mayor to sign and submit the Iowa Economic Development Authority for a Community Development Block Grant (CDBG) application for the Ottumwa North Market Street Façade Improvement Project and if funded, to sign all contract related documents.

RECOMMENDATION: Pass and adopt Resolution No. 224-2021.

H. RESOLUTIONS:

1. Resolution No. 200-2021, authorizing the Mayor to execute a Pipeline License Agreements identified as BNSF Agreement #21W-10277 (Sewer Lines) and BNSF Agreement #21W-11375 (Water Line) between BNSF Railway Company and the City of Ottumwa for the Green Street Storm Sewer Improvement Project.

RECOMMENDATION: Pass and adopt Resolution No. 200-2021.

2. Resolution No. 209-2021, assessing 2021 weed mowing charges against certain lots in the City of Ottumwa, Iowa for a total, including administrative fees, of \$37,590.00.

RECOMMENDATION: Pass and adopt Resolution No. 209-2021.

3. Resolution No. 219-2021, authorizing participation in the national opioid settlement.

RECOMMENDATION: Pass and adopt Resolution No. 219-2021.

4. Resolution No. 220-2021, approving a Workplace Violence and Threats Prevention Policy.

RECOMMENDATION: Pass and adopt Resolution No. 220-2021

5. Resolution No. 221-2021, approving the updated Personnel Policies for the City of Ottumwa.

RECOMMENDATION: Pass and adopt Resolution No. 221-2021.

6. Resolution No. 222-2021, approving Supplemental Agreement No. 3 between the City of Ottumwa and Garden & Associates, LTD for additional Professional Engineering Services for construction surveying for the Woodland Avenue Reconstruction Project.

RECOMMENDATION: Pass and adopt Resolution No. 222-2021.

7. Resolution No. 223-2021, a resolution of necessity to establish the boundaries of the Ottumwa North Market Street Façade Improvements Project Area by Identifying the district bound by Lots 10 and 11 of the H.P. Graves Subdivision and Lot 196 of Original Plat Block 15 as a blighted area in the City of Ottumwa, Iowa.

RECOMMENDATION: Pass and adopt Resolution No. 223-2021.

I. ORDINANCES:

1. Ordinance No. 3188-2021, an ordinance affirming the City of Ottumwa’s Precinct Boundaries after the 2020 Census.

- RECOMMENDATION:
- A. Pass the first consideration of Ordinance No. 3188-2021.
 - B. Waive the second and third considerations, pass and adopt Ordinance No. 3188-2021.
 - C. Resolution No. 225-2021, authorize the City Clerk to certify the election precinct boundary Ordinance, precinct population totals and precinct maps to the Secretary of State.

J. PUBLIC FORUM:

The Mayor will request comments from the public on topics of city business or operations other than those listed on this agenda. Comments shall not be personalized and limited to three minutes or less. Comments not directly applicable to operations, inappropriate, or an improper utilization of meeting time, as determined by the Mayor, will be ruled out of order. When called upon by the Mayor, step to the microphone; give your name, address and topic on which to address the Council. The Council is not likely to take any action on your comments due to requirements of the Open Meetings Law. Pertinent questions, comments or suggestions may be referred to the appropriate department, city administrator or legal counsel for response, if relevant.

K. PETITIONS AND COMMUNICATIONS

Recess – Council will reconvene in Room 108 for closed session proceedings

REGULAR MEETING NO. 36
Room 108, City Hall

December 21, 2021
6:30 O’Clock P.M.

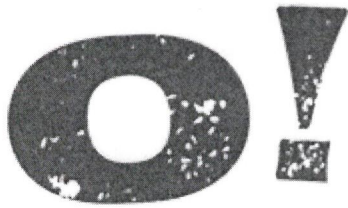
ROLL CALL: Council Member Pope, Berg, Dalbey, Roe, Meyers and Mayor Lazio

1. Motion to enter closed session in accordance with the Iowa Code Section 21.5(1) (i). (“To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual’s reputation and that individual requests a closed session.”) for the purpose of conducting the City Administrator’s performance evaluation.

2. Return to open session for any related action and/or to adjourn.

ADJOURN

***** It is the goal of the City of Ottumwa that all City Council public meetings are accessible to people with disabilities. If you need assistance in participating in City Council meetings due to a disability as defined under the ADA, please call the City Clerk's Office at (641) 683-0621 at least one (1) business day prior to the scheduled meeting to request an accommodation. *****



[CITY OF]

O T T U M W A

FAX COVER SHEET

City of Ottumwa

DATE: 12/17/21 TIME: 1:30 PM NO. OF PAGES 5
(Including Cover Sheet)

TO: News Media CO: _____

FAX NO: _____

FROM: Christina Reinhard

FAX NO: 641-683-0613 PHONE NO: 641-683-0620

MEMO: Tentative Agenda for the Regular City Council Meeting #36 to be held on
12/21/2021 at 5:30 P.M.

*** FAX MULTI TX REPORT ***

JOB NO.	0126	
DEPT. ID	4717	
PGS.	5	
TX INCOMPLETE	-----	
TRANSACTION OK	96847834	Ottumwa Courier
	916606271885	KTVO
	96823269	Ottumwa Waterworks
ERROR	96828482	Tom FM



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JOB NO.	0126	
DEPT. ID	4717	
ST. TIME	12/17 13:31	
SHEETS	5	
FILE NAME		
TX INCOMPLETE	-----	
TRANSACTION OK	96847834	Ottumwa Courier
	916606271885	KTVO
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[CITY OF]

OTTUMWA

OATH OF OFFICE

State of Iowa)
) SS
Wapello County)

I, Richard W. Johnson, do solemnly swear that I will support the
Constitution of the United States and the Constitution of the State of Iowa,
and that I will faithfully and impartially, to the best of my ability, discharge
all the duties of Council Member of the Ottumwa, Iowa, as now and
hereafter required by law.


Richard W. Johnson

Subscribed and sworn to before me, the undersigned Kirk Daily, District
Associate Judge, by Richard W. Johnson this 21st day of December, 2021.

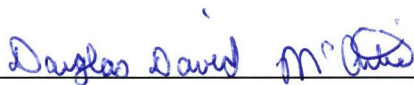

District Associate Judge Kirk Daily



OATH OF OFFICE


State of Iowa)
) SS
Wapello County)

I, Douglas David McAntire, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of Council Member of the Ottumwa, Iowa, as now and hereafter required by law.



Douglas David McAntire

Subscribed and sworn to before me, the undersigned Kirk Daily, District Associate Judge, by Douglas David McAntire this 21st day of December, 2021.



District Associate Judge Kirk Daily



OATH OF OFFICE

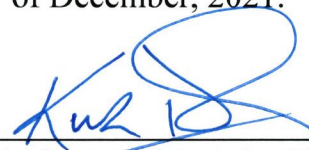
State of Iowa)
) SS
Wapello County)

I, Russ Hull, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of Council Member of the Ottumwa, Iowa, as now and hereafter required by law.



Russ Hull

Subscribed and sworn to before me, the undersigned Kirk Daily, District Associate Judge, by Russ Hull this 21st day of December, 2021.



District Associate Judge Kirk Daily



[CITY OF]

OTTUMWA

OATH OF OFFICE

State of Iowa)
) SS
Wapello County)

I, Cara Galloway, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of Council Member of the Ottumwa, Iowa, as now and hereafter required by law.



Cara Galloway

Subscribed and sworn to before me, the undersigned Kirk Daily, District Associate Judge, by Cara Galloway this 21st day of December, 2021.



District Associate Judge Kirk Daily

Item No. B.-1.

OTTUMWA CITY COUNCIL MINUTES

SPECIAL MEETING NO. 34
Council Chambers, City Hall

November 30, 2021
5:30 O'Clock P.M.

The meeting convened at 5:30 P.M.

Present were Council Member Dalbey, Roe, Meyers, Pope, and Mayor Lazio.
Council Member Berg was absent.

Roe moved, seconded by Meyers to approve the agenda as presented. Motion carried 4-0 vote. Council Member Berg was absent.

Mayor Lazio inquired if there was anyone from the audience who wished to address an item on the agenda. Josh Chance, 313 Lynwood, would like to speak during Item No. 8, Public Safety & Emergency Services.

Meyers moved, seconded by Roe to ack. Wapello County's Abstract of Votes for City General Election on 11/2/2021. Motion carried 4-0 vote. Council Member Berg was absent.

Roe moved, seconded by Dalbey to ack. Oct. financial rpt. and pymt. of bills as submitted by Finance Dept. Motion carried 4-0 vote. Council Member Berg was absent.

Dalbey moved, seconded by Pope to approve appointment of Jacob Rusch to Zoning & Housing Coordinator in Planning Dept. effective on or about Dec. 5, 2021. Motion carried 4-0 vote. Council Member Berg was absent.

Meyers moved, seconded by Roe to approve the Annual Urban Renewal Rpt. for Westgate Urban Renewal Area, Airport Urban Renewal Area, Wildwood Drive/Hwy. 34 Urban Renewal Area and the Hospital District/Pennsylvania Ave. Corridor Urban Renewal Area for the fiscal yr. July 2020 through June 2021 for City of Ottumwa, IA. Finance Dir. Mulder reported total captured TIF for FY20/21 \$557,701 with \$194,403 from Westgate; \$244,553 from Airport and \$118,745 from Wildwood Drive/Hwy 34. Motion carried 4-0 vote. Council Member Berg was absent.

Meyers moved, seconded by Dalbey to accept proposal from Willett, Hofmann & Associates, Inc. for Professional Services in the amount of \$30,000 to prepare plans and specs for new campground shower house and auth. the mayor to sign. Parks & Rec. Dir. Rathje reported he sent out RFQ to nine architectural and engineering firms regarding their qualifications for preparing plans and specs. for the new shower house project. Two responses were received. The other rfq received was unable to provide engineering services. Willett Hofmann has extensive experience with campground shower house and park restroom projects. Hope to begin project in 2022. Recently received \$30,000 bright ideas grant from the Legacy Foundation and will continue seeking other grant opportunities for this project. Motion carried 4-0 vote. Council Member Berg was absent.

PW Dir. Seals provided general overview of sewer capacity for development on Bonita Ave. The Engineering Dept. reviews capacity of a sanitary sewer for any significant user prior to approving connection to an existing sewer system. For the Bonita Housing Development, we were able to use previous field work that was completed for Helgerson Flats Certified Site project adjusted for any further development in the area. Calculated capacity for this section (Bonita) is est. at 1.055 million gallons per day. Current use is 0.298 MGD with a remaining capacity of 0.756 (MGD) or 756,000 thousand gallons a

day. The estimated flow from the Bonita Complex when fully developed is 48,600 gallons a day leaving an excess capacity of over 707,000 gallons a day.

Roe moved, seconded by Meyers to pass the second consideration of Ord. No. 3187-2021, an ord. providing that general property taxes levied and collected each yr. on all property located within the Bonita Urban Renewal Area, in the City of Ottumwa, County of Wapello, State of IA, by and for the benefit of the State of IA, City of Ottumwa, County of Wapello, Ottumwa Community School District, and other taxing districts, be paid to a special fund for pymt. of principal and interest on loans, monies, advanced to and indebtedness, including bonds issued or to be issued, incurred by the City in connection with the Bonita Urban Renewal Area (The Bonita Urban Renewal Plan). Regardless of the project, we will be able to capture acquired costs. Motion carried 4-0 vote. Council Member Berg was absent.

Public Safety and Emergency Services Ambulance Services Work Session

City Admin. Rath began; this special mtg. was scheduled to provide update on fire dept. staffing and safety issues. Earlier this yr. fire helped with staffing shortages with ORMICS but the hospital was not looking to subsidize ambulance services. This opens up discussion for other revenue options, but I would like to give representatives from the fire dept. an opportunity to speak before discussing these.

Josh Chance, 313 Lynwood Ave. – firefighter with the City for 15 years; it would be easy to make a case for addtl. personnel based on the amt. of OT the fire dept. has. From July 2021-Oct., OT has reached \$117,852 and on pace to be over \$350,000 (equates to 5,736 total OT hours). Personally, since Jan. 1, 2021, I ave. 70 hours/week; 14 hours of OT per week. On the job injuries has increase 311%; on pace to double this figure this year. More employees are getting sick or injured because we are exhausted. On ave, we are running a call every 2 hours.

Deputy Chief Bengé presented; fire dept. is made up of 3 crews of 8 firefighters that work alternating 24-hour shifts. Each crew is made up of an Asst. Chief, 2 Captains and 5 firefighters. Total OT through Oct. 5,736.46 hours with monthly ave. per firefighter 24.51 hours. When not responding to emergency calls, each firefighter does over 200 hours of training, in order to meet ISO requirements. In 2020, OFD responded to 4,017 calls for service.

Mulder stated when I started almost 2 yrs. ago, I walked into a large deficit (\$1.2 Million) with conversations on how to balance it. Council made some hard decisions and cut 6 positions within the fire dept. FY20 ended with \$877,000 deficit. Other changes were made during last FY, that we ended up having \$1 Million surplus. When 6 positions were eliminated, we est. savings of over \$200,000, when in reality, we only saved about \$75,000. If continuing on trend, we will be over \$120,000 spent. Currently, we show \$117,000 in OT costs for FY21, that could easily reach \$350,000 if not addressed. Approximate salary for additional 3 firefighters \$150,000, which would be less than projected OT costs.

Rath added, I don't want council or the public to be disillusioned into thinking we won't have to pay out any OT costs, if we hire 3 addtl. firefighters. OT is one line item in the budget. I think what we need to look at is how do we increase our revenue to the general fund to offset salaries. I do support bringing on the addtl. 3 firefighters; however, looking into franchise fees is something the city needs to consider as a way to help bring in revenue to help offset this expense. Earlier this year we had staffing questions about ambulance services, which opened up a door to looking at the bigger role of ambulance services as a revenue source. We reached out to ORHC to discuss and they were not interested at the time. If it makes sense for both entities, and both entities are in agreement, then we should reassess.

Roe stated when we made the decision to cut fire, it was strictly a financial decision; we made a decision based on best knowledge at the time and none of us felt good about it. Every person that made this

decision, agreed if we were in a better financial position, we would look to hire those firefighters back. Prior to that, we had to address issues at the police dept. Overworked, officers leaving in mass; OT is healthy to a certain level, but there comes a point when it becomes catastrophic. We run the risk of people leaving. We do need to bring 3 firefighters back. Speaking to the ambulance services, I'm concerned and disappointed that ORHC didn't show this evening to speak about this. An entire sector of their business is being discussed and they didn't show.

Dalbey reported we had a lot of things going wrong at the same time; we had to act in the best interest of the city and the tax payers and it cost us jobs and experience that you can't replace. We projected what our numbers would be at and knew a lot of these things could happen. With decreasing property values, we see less money in the general fund. I think as a council we should hire back no less than 3 positions at the fire dept. effective immediately. As a city, we are reactive and not proactive. Discussing ambulance services is an opportunity for us to prepare a plan should the day come that ORHC isn't providing the service any longer and we need to take it over.

Meyers stated we need to be darn careful with future plans and spending money. This is the third time in 3 years that ambulance services has been brought up. ORHC is a for profit business that is not asking us to take over.

Pope stated I didn't hear them ask for ambulance service, that could be a possibility later. If we hire three firefighters, that's a good middle point to start.

Mayor responded that it would be beneficial to hear from ORHC directly on this topic. They are a community partner that also needs to be held accountable. I want to see a plan; operational cost, personnel to be prepared in case something does change and we can be ready to pick up. We should not be interfering with it now.

Lester Den Hartog again stated he was not in favor of the TIF for the Bonita project.

There being no further business, Roe moved, seconded by Dalbey that the meeting adjourn. Motion carried 4-0 vote. Council Member Berg was absent.

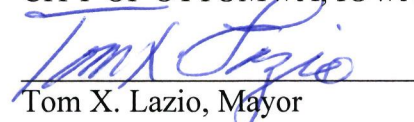
Adjournment was at 7:06 P.M.

ATTEST:



Christina Reinhard
Christina Reinhard, CMC City Clerk

CITY OF OTTUMWA, IOWA



Tom X. Lazio, Mayor

OTTUMWA CITY COUNCIL MINUTES

REGULAR MEETING NO. 35
Council Chambers, City Hall

December 7, 2021
5:30 O'Clock P.M.

The meeting convened at 5:30 P.M.

Present were Council Member Roe, Meyers, Pope, Berg, Dalbey and Mayor Lazio.

Roe moved, seconded by Meyers to appoint the number four vote receiver from the last certified election on Nov. 2, 2021, who is Russ Hull with 1,188 votes, to fill the vacancy left by Council Member Meyers on Dec. 31, 2021. The remaining balance of the term of office for the vacant position will expire in Jan. 2024. The person so appointed to fill the vacancy shall hold office until a successor is elected and qualified in accordance with law. All ayes.

Meyers moved, seconded by Berg to approve the following consent agenda items: Mins. from Regular Mtg. No. 33 on Nov. 16, 2021 as presented; Civil Service Commission Eligibility List for Nov. 24, 2021: Firefighter Entrance; Approve appointment of Frank Stanton to Operator at WPCF on or about Dec. 19, 2021; Approve appointment of James Tray to Airport Maint. Worker at Ottumwa Reg. Airport on or about Dec. 19, 2021; Approve two-yr. extension lease agt. with Brad Yeager, for 510 acres of farmland more or less, located at the Ottumwa Reg. Airport, and auth. the Mayor to sign; Approve conflict of interest waiver for Ahlers & Cooney, P.C. between City of Ottumwa and Ottumwa Community School Dist. in order to draft Agt. between the two partners; Res. No. 212-2021, auth. reimbursement of expenses in the amt. of \$30,000 incurred as qualified urban renewal expenditures eligible for reimbursement from the West Gate TIF as per IA Code Section 403.19, in support for the Main St. Program; Beer and/or liquor applications for: Noe's Bar and Grill, 101 S. Madison Ave.; Cerro Grande Meats and Market, 311 E. Main; Uncle Buck's Bar and Grill, 518 Church St.; all applications pending final inspections. All ayes.

Dalbey moved, seconded by Roe to approve the agenda as presented. All ayes.

Dennis Hunger, CEO, ORHC, address some questions/concerns brought up from the last mtg. on 11/30/2021 about ambulance service. Concerns on 911 service, but as an organization, we have to look at a series of indicators to see if we are providing a quality service or not. ORHC (ORMICS) has been providing ambulance services in Ottumwa and Wapello County since 1981, with a partnership with Ottumwa Fire since 2002. Our quality of service is regulated by IDPH, under the Bureau of Emergency & Trauma Services. During our most recent check (March 2020), zero deficiencies were found. We are mandated to operate with two crews (which has been 100% compliant) and have implemented a third crew that has been 90% compliant based on the last data set. Call volumes 2019 (4,829); 2020 (5,003); 2021 (4,268). Numerous internal transfers from ORHC to other hospitals and facilities. We are trying to develop into a critical care paramedic service; one of very few in the state that can provide these services. We have done this without any tax supplements since 1991.

Where does the liability fall when our fire dept. assists? This can be addressed in an agt. between the entities and make sure all protections are in place.

Staffing question: people that work for us often times have multiple jobs; all industries are short staffed.

Fred Zesiger provided an update on Main Street Ottumwa. Presentation of check for \$2,983 for Historic Preservation Commission from the sale of items out of First National Bank bldg. Despite the pandemic, a net increase of seven businesses to the Main Street area this year. The taxable valuation comparison from 2015 to 2020 has produced an increase of \$2,359,360 for 64 parcels on E. Main (100 block, 200 block and

300 block). 100-300 E. Main's increased valuation added \$18,292 to the General Fund this year. The Main Street Ottumwa program fosters a vibrant, dynamic, and healthy downtown through community engagement and collaborative partnerships.

City Admin. Rath briefly discussed ARPA Funds – will bring recommendations to Council on 12/21 and would like input from exiting City Council as well.

Dalbey moved, seconded by Berg to approve the purchase of stainless steel sleeves and epoxy from Hilti in the amount of \$14,202.70 for the River Wall Flood Panel installation. All ayes.

Roe moved, seconded by Berg to increase the staffing level of the Fire Dept. by three positions and proceed with the hire of these newly est. positions. Fire Chief Miller stated it would be more cost effective to hire 3 addtl personnel instead of the amt. we are paying in OT. We cannot sustain this amt. of OT much longer and we need to take it seriously. The Safer Grant will open up in Jan/Feb 2022, \$345 Million up for grabs, that we will submit a grant for to try and secure some of these funds, but will not have a response until late fall 2022. We just certified a list of 12 applicants that we can hire from. Dalbey asked if these three positions will be sustainable (from a tax payer perspective). Fin. Dir. Mulder responded that we need to look for revenues to bring into the General Fund (franchise fees) and have to start pursuing these quickly. It does make sense financially to hire addtl 3 firefighters now with OT costs trending towards \$350,000. All ayes.

This was the time, place and date set for a public hearing on the proposal to enter into a Development Agt. with HCI52501 Investment, LLC. Rath began, TIF is an economic development tool; provides revenue for investment and growth; as a city, we can utilize this tool to help assist when there's gaps in financing. When we talk about TIF, some things in the levies are exempt from this (debt service). Community Development Dir. Simonson reported council rejected the first proposal for this project on Nov. 2, 2021 that provided a 100% TIF rebate, not to exceed \$175 thousand annual or \$3.5 Million cumulatively. Following, staff renegotiated with Huegerich Construction/HCI52501 Investment, LLC, to reach a compromise. The proposal before you includes a 50% TIF rebate for 20 years, not to exceed \$87,500 per year or \$1.75 Million cumulatively. This is a 50% reduction from the first proposal. The development is for workforce housing; affordable housing not to exceed 60% LMI (in this area, this correlates to \$979 for a two-bedroom and \$1,131 for a three-bedroom unit). The financing structure alleviates many of the concerns expressed about the rebate under the previous proposal. This development agt. will ensure new revenue for all taxing entities beginning in year one. This is on top of debt service, school ISL and PPEL levies which will be exempt from capture. The Bonita URP and *Our Ottumwa* 2021 Comp. Plan both identified housing as a barrier to retaining industry and promoting job growth. JBS took the initiative to recruit the developer for this project because housing is a barrier to their business in Ottumwa. The developer is committed to completing at least one of the 36 unit bldgs. on the site. Rental housing is not the end goal of our efforts in housing, but it is a critical piece. Rental housing provides a place for new families to land and build credit as they prepare for home ownership. It helps to address the urgent needs while we improve our existing owner occupied stock and build new. In Nov., Ottumwa had 900 vacant positions listed on *Indeed*. JBS alone has 200 positions to fill and we have projected over 200 new jobs from Superior Machine, MAAX Spas, Atlantic Bottling and Harbor Freight. This is with a 3.4% local unemployment rate, which is lower than the state and national ave. and in line with our pre-COVID unemployment. We need to grow the labor pool and housing is a key part of that.

Dennis Willhoit, 334 E. 5th Street, urges you to vote in favor of the revised development agt. Our people are the most important factor and people need housing; we need people to grow.

Julia Blunt, 319 Bonita, I do agree that this agt. is better than the first, but not the best choice for the City. Inflation is a problem; real value will steadily decrease over time; what if there isn't increased value of the property at the end of the TIF, traffic continues to be an issue; continue to be concerned over the sewer situation in this area.

Kathy Courtney, 2621 Kenwood, there's already issues with sewer in houses along the frontage road, this development could cause water levels to raise with flooding in other areas; why would someone develop an apartment complex over the top of a coal mine; the developer is the only one benefiting in this agt.; we don't owe the developer to come here.

Jerry Parker, 919 E. Fourth, individuals can only get 5 year tax abatements, why not offer a 5 year agt. with the developer; we represent the people as elected officials; those that show up and vote; don't start off where you can end up. This is the best opportunity for the citizens to tell you what they want.

Marty Anderson, 2644 North Court, why would be consider a partial TIF; put thought into your decision; why are we in such a hurry; look at resolving sewer issues before adding more; what's best for Ottumwa. We need to generate tax dollars, not give them away.

Joey Courtney, 117 W. Alta Vista, can we look at some of the issues this may create before we build anything new (traffic, sewer); what if JBS leaves, we need more guarantees that everything is going to stay in place.

David Bossou, 1620 Greenwood Dr., my family moved to Ottumwa in 2009 from Africa, to work at JBS; we are those people; Ottumwa has helped us; at the last mtg. the sewer issues were discussed and we were informed that this development would not have an effect on the sewer system; is it really about the sewer, or the taxes; what is it really about.

Lester DenHartog, question on the tax abatement, if I only complete one bldg. and not the full project, would I still be able to abate the taxes?

Simonson – the development agt. begins at the completion of the minimum improvements; if the full project is not completed, the developer could not abate those taxes.

Meyers moved, seconded by Dalbey to close the public hearing. All ayes.

Simonson further addressed some of the questions brought up during the PH; there are issues with private sewers in this area; however, the issues are not because of the capacity of the sewer main, but of their sewer laterals and the depth of the sewer when installed. This development does not impact their sewers. The developer will be responsible for his sewer lateral from the bldg. to the main. Traffic is identified in the comp plan with IDOT having jurisdiction in this area. There are over 200 families that are hoping to move into this community that did not have the option to sign a petition in favor of this project because they don't live here yet. This development is north of the area that the coal mine sat so it is not relevant to this project. We are seeing that JBS has taken the initiative to help add housing to support their need; they are thinking more long term; we need people to live here because we want to grow.

Roe stated the last resolution was voted down because the City didn't have a voice in the conversation; this agt. tonight shows compromise and it looks as though both parties will benefit.

Dalbey agrees, we need housing in Ottumwa but there's no reason a \$16 Billion company cannot pay for this; it isn't an issue with TIF; I want something better for the people living here and to invest in our employees.

Meyers moved, seconded by Pope that Res. No. 211-2021, approving and authorizing execution of a Development Agt. by and between the City of Ottumwa and HCI52501 Investment, LLC, be passed and adopted. Vote taken: Ayes: Roe, Meyers, Pope. Nays: Dalbey. Abstain: Berg working on several projects that are affected by funding from other sources. Motion passed.

Roe moved, seconded by Berg that Res. No. 207-2021, approving employee Leave of Absence Policy for the City of Ottumwa, be passed and adopted. HR Dir. Codjoe reported this revision of our current light duty policy will provide consistent and trackable process to integrate with our new UKG system. All ayes.

Meyers moved, seconded by Roe that Res. No. 208-2021, approving updates to the City of Ottumwa Personnel Policy, be passed and adopted. Codjoe explained the list of seven changes to the policy. All ayes.

Roe moved, seconded by Berg that Res. No. 210-2021, fixing an amount for abating a nuisance against certain lots in the City of Ottumwa, IA, totaling \$14,409.17, be passed and adopted. Simonson reported 24 properties make up this listing. All ayes.

Meyers moved, seconded by Dalbey that Res. No. 213-2021, support and financial commitment for the Main Street Ottumwa Program for 2022-2023 and auth. the Mayor to sign the Agt, be passed and adopted. Rath reported the City originally entered into a program agt. with IEDA in 2006, which has continued. This agt. provides ongoing public and financial support from the City to Main Street Ottumwa. All ayes.

Dalbey moved, seconded by Berg that Res. No. 214-2021, approving the annual budget of the Ottumwa Water Works Board of Trustees for calendar year 2022, be passed and adopted. Mulder introduced Mike Heffernan to discuss the budget. He reported water sales revenue projected with a 3% rate increase; offset by the loss of revenue from the Wapello Rural Water contract expiring June 1, 2021. Expenses are projected to increase 1.3% with one of the largest increases from insurance costs. Discussed capital projects included within their budget. All ayes.

Dalbey moved, seconded by Berg that Res. No. 215-2021, determining the necessity and fixing date for a public hearing on the matter of the adoption of a proposed Amended and Restated Ottumwa Urban Revitalization Plan for the Ottumwa Revitalization Area, be passed and adopted. Simonson reported due to state legislature, the taxation category for multi-family residential property was removed and lumped into residential property classification for taxation. As a result, Iowa communities with an URP had to revisit and amend their plans to adjust for this change. The plan will be discussed during the public hearing on Dec. 21, 2021. All ayes.

Meyers moved, seconded by Roe that Res. No. 216-2021, fixing date for a public hearing on an application to the IA Economic Development Auth. for a Community Development Block Grant (CDBG) from the COVID-19 Program and auth. the mayor to sign the contract for grant application assistance with Area 15 Regional Planning Commission, be passed and adopted. Simonson reported 105-107 and 114-118 N. Market have been identified as suitable property for this grant that will be discussed further during the public hearing on Dec. 21, 2021. Area 15 RPC will provide application assistance services for \$2,500 plus admin. costs if the grant is awarded to us. Vote taken: Ayes: Roe, Meyers, Pope, Dalbey. Abstain: Berg, currently employed by Area 15 RPC. Motion passed.

Roe moved, seconded by Berg that Res. No. 217-2021, approving the purchase, signing of contracts, signing of an Agt. and cost of annual maint./subscription fees for the Public Safety Suite Pro from Central Square for the Ottumwa Police Dept., be passed and adopted. Chief Farrington reported this computer aided dispatch and records mgmt. program will allow the sharing of information and a unified program for police, fire, medical and emergency mgmt. in Wapello County. Quote for the software is \$600,035.93, with the city's portion of this initial cost being \$170,857.46. Annual maint. and subscription fees will be part of the on-going cost that the city will be responsible for one third of the overall cost each year. All ayes.

Meyers moved, seconded by Pope to pass the third consideration and adopt Ordinance No. 3187-2021, an ordinance providing that general property taxes levied and collected each yr. on all property located within the Bonita Urban Renewal Area, in the City of Ottumwa, County of Wapello, State of IA, by and for the benefit of the State of IA, City of Ottumwa, County of Wapello, Ottumwa Community School District, and other taxing districts, be paid to a special fund for payment of principal and interest on loans, monies, advanced to and indebtedness, including bonds issued or to be issued, incurred by the City in connection with the Bonita Urban Renewal Area (The Bonita URP). Vote taken: Ayes: Roe, Meyers, Pope, Berg. Nays: Dalbey. Motion passed 4-1.

Petition No. 5087-2021 was rec'd by the City Clerk and discussed during Item G-1, PH on the proposal to enter into Development Agt. with HCI52501 Investment, LLC: 572 total signatures (489 signatures in Ottumwa) petition for the City Council to vote "No" on the proposed 50% 20 yr. or 100% 10 yr Tax Increment Financing (TIF) rebate agt. to the developer, Huegerich Construction for the 108 unit apartment complex on Bonita Ave until the residents sewer and flooding concerns are addressed as well as concerns with traffic flow in the neighborhood and onto the highway.

Mayor Lazio inquired if anyone from the audience wished to address an item not on the agenda. Roe requested to have a special mtg. to discuss housing (comp. plan, housing study and the amount of infill that the city controls) to try and spark some new housing or business development.

There being no further business, Dalbey moved, seconded by Pope that the meeting adjourn. All ayes.

Adjournment was at 7:38 P.M.



ATTEST:

Christina Reinhard

Christina Reinhard, CMC City Clerk

CITY OF OTTUMWA, IOWA

Tom X. Lazio
Tom X. Lazio, Mayor

Item No. B.-2.

**CITY OF OTTUMWA
VENDOR PAYMENT REPORT
NOVEMBER, 2021**

Vendor #	Vendor Name	Check #	Check Date	Amount	Reason
00198	ABC PEST CONTROL INC.	212916	11/12/2021	42.95	BLDG MAINT & REPAIR
00320	ACCO	212985	11/19/2021	1,088.70	OPERATING SUPPLIES
00626	SCOTT ADAMS	212986	11/19/2021	21.31	TRAVEL & CONFERENCE
00690	AFLAC	212841	11/5/2021	2,454.66	AFLAC DEDUCTION PAYABLE
00800	AHLERS & COONEY P.C.	213057	11/24/2021	17,189.35	LEGAL FEES
00855	AIRGAS USA LLC	212917	11/12/2021	423.77	OPERATING SUPPLIES
01197	MONROE COUNTY NEWS	212918	11/12/2021	49	LIBRARY MAT.-JAMES ESTATE
01700	ALLIANT ENERGY/IPL	212919	11/12/2021	86,325.70	ELECTRIC
01719	ALLIED SYSTEMS, INC.	212843	11/5/2021	8,390.00	OTHER CAPITAL EQUIP
02080	ALTORFER INC.	213059	11/24/2021	2,421.21	VHCL MTCE SUPPLIES
03641	AMERICAN TRAFFIC SAFETY	212988	11/19/2021	225.3	STREET MAINT SUPPLIES
03643	AMERICAN TEST CENTER	213060	11/24/2021	1,500.00	OPERATING SUPPLIES
05681	ATLANTIC BOTTLING COMPANY	212989	11/19/2021	103.75	MERCHANDISE - RESALE
05687	AT&T MOBILITY	212846	11/5/2021	1,163.32	TELEPHONE/IT
05694	AUTOMATIC SYSTEMS CO.	212990	11/19/2021	3,765.00	OTHER MAINT & REPAIR
05700	ATOMIC TERMITE & PEST	212921	11/12/2021	130	RAMP MAINT & REPAIR
05860	AUTOZONE INC	212991	11/19/2021	258.58	VHCL MTCE SUPPLIES
05862	AVFUEL CORP	212922	11/12/2021	80,175.32	AVIATION FUEL
05874	AVENU	212993	11/19/2021	2,100.00	CONTRACTUAL SERVICES
06481	BAILEY OFFICE OUTFITTERS	213061	11/24/2021	730.95	OFFICE SUPPLIES
06740	JANICE BAIN	213062	11/24/2021	46.59	TRAVEL & CONFERENCE
07648	MARK J BECKER & ASSOC LLC	212848	11/5/2021	3,248.96	OTHER PROF SERV
08894A	BILL & RAY'S AUTO INC.	212849	11/5/2021	513.13	VHCL MTCE SUPPLIES
09352	BLACKSTONE PUBLISHING	212923	11/12/2021	89.99	LIBRARY MAT.-JAMES ESTATE
09360	BLACK'S TIRE COMPANY LLC	212924	11/12/2021	142	VHCL MTCE SUPPLIES
09515	BLOOMFIELD COMMUNICATIONS	212925	11/12/2021	54.51	TELEPHONE/IT
09523	BLUEGLOBES LLC	213065	11/24/2021	482.23	GROUNDS MAINT & REPAIR
11496	BRIDGE CITY SANITATION LL	212994	11/19/2021	151,605.10	REFUSE HAULING
11506	BRIDGE VIEW CENTER	212995	11/19/2021	179,378.55	MANAGEMENT SERVICES
12053	BROWN, DONALD	212851	11/5/2021	1,000.00	CONTRACTUAL SERVICES
12500	BUB'S TREE CARE	212996	11/19/2021	7,500.00	OTHER PROF SERV
14315	CAPITAL CITY BOILER &	212853	11/5/2021	296.5	BUILDING MAINTENANCE REPA
14317	CAPITAL ONE	212854	11/5/2021	42.18	PROGRAM SUPPLIES
15760	CARROLL CONSTRUCTION SUPP	212927	11/12/2021	653.85	STREET MAINT SUPPLIES
15788	CATERPILLAR GOLBAL SERVIC	212855	11/5/2021	3,597.48	VHCL MTCE SUPPLIES
16265	CENTER POINT LARGE PRINT	212928	11/12/2021	87.48	LIBRARY MAT.-JAMES ESTATE
16300	CENTRAL IOWA FASTENERS	213068	11/24/2021	512.06	VHCL MTCE SUPPLIES
16402	CENTURYLINK	212857	11/5/2021	4,407.31	TELEPHONE/IT
16403	CENTURYLINK	212931	11/12/2021	210.06	TELEPHONE/IT
17620	CINTAS CORPORATION	212932	11/12/2021	63.15	SUSTENANCE SUPPLIES
17621	CINTAS	212858	11/5/2021	78.55	BLDG MAINT & REPAIR
17825	CITY OF OTTUMWA, CEMETERY	212859	11/5/2021	550	CASH INVESTED PASSBK SVNG
18379	CLEMONS INC OF OTTUMWA	213069	11/24/2021	1,090.91	VHCL MTCE SUPPLIES
18502	CLUB SENTRY SOFTWARE	213070	11/24/2021	65.9	TECHNOLOGY SERVICES
18980	COLLECTION SERVICES	213110	11/24/2021	2,690.20	CHILD SUPPORT PAYABLE
21825	CREDIT UNION	212979	11/16/2021	38,791.66	CREDIT UNION PAYABLE
21830	LORI CREECH	212999	11/19/2021	29.99	SUSTENANCE SUPPLIES
21835	CREMER CONCRETE	213071	11/24/2021	6,239.37	ENGINEERING EXPENSE
22277	CURTIS ARCHITECTURE	212933	11/12/2021	8,000.00	FACADE GRANTS
22608	DANI'S AUTO SUPPLY LLC	212861	11/5/2021	2,985.92	VHCL MTCE SUPPLIES
24320	DNR	212862	11/5/2021	20,288.10	SOLID WASTE FEES PAYABLE
24325	DEMCO, INC	213072	11/24/2021	372.93	OPERATING SUPPLIES
24341	KYLE DERONDE	213073	11/24/2021	9.08	TRAVEL & CONFERENCE
25390	ADVANTAGE ADMINISTRATORS	213112	11/24/2021	3,823.46	R.D. DRENKOW/FLEX PAY
25394	DRISH CONSTRUCTION, INC.	212863	11/5/2021	202,500.14	ENGINEERING
26640	ECOSYSTEMS INC	213074	11/24/2021	4,500.00	CONTRACTUAL SERVICES

**CITY OF OTTUMWA
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Vendor #	Vendor Name	Check #	Check Date	Amount	Reason
27010	CONSOLIDATED ELECTRICAL	213075	11/24/2021	724.45	STREET MAINT SUPPLIES
27272	ELLIOTT BULK SERVICES LLC	212934	11/12/2021	4,530.84	VHCL-FUEL
27280	ELLIOTT OIL COMPANY	213001	11/19/2021	10,490.79	VHCL-FUEL
27552	EMPOWER RETIREMENT	213113	11/24/2021	700	HARTFORD DEF COMP PAYABLE
27823	ERHARDT, CLAYTON	212864	11/5/2021	2,050.00	RENTS & LEASES
28449	EVORA CONSULTING, LTD	213002	11/19/2021	6,430.70	CONTRACTUAL SERVICES
29090	FAMILY ANIMAL CARE	213076	11/24/2021	235	OTHER PROF SERV
29300	FASTENAL COMPANY	213077	11/24/2021	833.77	OPERATING SUPPLIES
29829	FIDELITY SECURITY LIFE	213078	11/24/2021	2,372.09	AVESIS PAYABLE
30568	ROBIN FITZSIMMONS	213004	11/19/2021	180	SUSTENANCE SUPPLIES
30810	FORD HALL COMPANY	212866	11/5/2021	628.28	OPERATING SUPPLIES
30819	FORDS OUTDOOR POWER EQUIP	212867	11/5/2021	154.97	VHCL MTCE SUPPLIES
31302A	FRASE COMPANY LUMBER	212868	11/5/2021	1,182.50	OPERATING SUPPLIES
31422	FUN EXPRESS, LLC	213079	11/24/2021	543.6	PROGRAM SUPPLIES
31459	GRP & ASSOCIATES	213080	11/24/2021	374	HAZARDOUS WASTE DISPOSAL
31682A	GALLS, LLC	213007	11/19/2021	2,707.47	OTHER SMALL CAPITAL
31797	GARDEN & ASSOCIATES LTD	212870	11/5/2021	1,908.15	ENGINEERING
33385	GRAINGER	213008	11/19/2021	16.81	OPERATING SUPPLIES
33635	GREAT WESTERN SUPPLY CO	213009	11/19/2021	634.34	JANITORIAL
33648	GREATER OTTUMWA PARTNERS	213010	11/19/2021	10,300.00	OTHER PROF SERV
34900	HAMILTON PRODUCE COMPANY	212938	11/12/2021	358	NATURAL/PROPANE GAS
34966	HARDY DIAGNOSTICS	213011	11/19/2021	175.63	LAB SUPPLIES
36074	HAWKEYE ENVIRONMENTAL	213081	11/24/2021	1,250.00	CONTRACTUAL SERVICES
36302	HEARTLAND HUMANE SOCIETY	213012	11/19/2021	435	OTHER PROF SERV
36850	HELMUTH REPAIR, INC.	213013	11/19/2021	125.84	OPERATING SUPPLIES
37026	HENDERSON PRODUCTS, INC.	213014	11/19/2021	736.56	VHCL MTCE SUPPLIES
37350	HERRMANN'S LAWN CARE	212871	11/5/2021	736.25	OPERATING SUPPLIES
37415	HICKENBOTTOM INC	212872	11/5/2021	743.41	SEWER/DRAINAGE SUPPLIES
37476	HILL PRODUCTIONS & MEDIA	212939	11/12/2021	111.4	ADVERT/LEGAL PUBL
37560	HINDMAN PERSON HEATING	213015	11/19/2021	795	BLDG MAINT & REPAIR
38000	HOODZ OF CENTRAL IOWA	212941	11/12/2021	1,330.00	EQUIP REPAIR
38281	WALTER HORNBACK	212873	11/5/2021	180	SUSTENANCE SUPPLIES
39184	HUNTER BROS TREE FARM	213083	11/24/2021	95	OPERATING SUPPLIES
39185	HUMANA INSURANCE CO	213084	11/24/2021	23,971.00	MEDICARE PREMIUMS
39438	HY-VEE ACCOUNTS RECEIVABL	213085	11/24/2021	92.18	MISCELLANEOUS
40155	IDEXX DISTRIBUTION INC	212942	11/12/2021	542.59	LAB SUPPLIES
40320	IOWA DEPT/TRANSPORTATION	213016	11/19/2021	237.5	GROUND MAINT & REPAIR
41505	IMWCA	212874	11/5/2021	13,369.00	WORKMENS COMPENSATION
41505A	IMWCA	213017	11/19/2021	7,739.23	FIRE W/C 411 CLAIMS
41600	IDEAL READY MIX	212875	11/5/2021	7,213.13	CAPITAL IMPROVEMENTS
41920A	INDUSTRIAL CHEMICAL	213087	11/24/2021	181	MISC CONTRACT WORK
41925	INDUSTRIAL MEDICINE	213018	11/19/2021	536	EMPLOYEE PHYSICALS/TESTS
42090	INFOMAX OFF SYSTEMS INC	212944	11/12/2021	1,380.98	PHOTOCOPIES
42160	INGRAM LIBRARY SERVICES	212877	11/5/2021	3,954.74	LIBRARY MAT.-JAMES ESTATE
43265	INTERSTATE BATTERY	213020	11/19/2021	133.95	VHCL MTCE SUPPLIES
43465	IOWA COMMUNITIES ASSURANC	212946	11/12/2021	1,529.70	INSURANCE CLAIMS
43497	IOWA DEPT AGRICULTURE	213021	11/19/2021	168	PERMITS
43999	IOWA ONE CALL	212879	11/5/2021	301.5	TELEPHONE/IT
44030	IOWA POETRY ASSOCIATION	212947	11/12/2021	9	LIBRARY MAT.-JAMES ESTATE
45057	J & J MOWING	212948	11/12/2021	15,319.00	WEED MOWING
45616	JERRY'S TREE SERVICE	212949	11/12/2021	7,810.00	TREE TRIMMING
45974	JOHN DEERE FINANCIAL	213089	11/24/2021	742.46	STREET MAINT SUPPLIES
46182	JOHNSON, KEELIE	212881	11/5/2021	100.13	TRAVEL & CONFERENCE
49042	KIRKHAM MICHAEL	212882	11/5/2021	3,150.00	CAPITAL IMPROVEMENTS
49500	KNIGHTS OF COLUMBUS	213022	11/19/2021	100	PROGRAM SUPPLIES
50620	LANGMAN CONSTRUCTION, INC	212950	11/12/2021	295,555.22	UTILITY SYSTEM

**CITY OF OTTUMWA
VENDOR PAYMENT REPORT
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Vendor #	Vendor Name	Check #	Check Date	Amount	Reason
51968	LIBERTY TIRE	212951	11/12/2021	1,608.94	TIRE DISPOSAL
51969	LIBERTY TIRE SERVICES LLC	212883	11/5/2021	2,296.33	TIRE DISPOSAL
52254	LISCO	213023	11/19/2021	270	TECHNOLOGY SERVICES
54390	MANATT'S INC	212952	11/12/2021	172,075.19	INFRASTRUCTURE
54531	MARCO TECHNOLOGIES, LLC	212885	11/5/2021	213.6	CAPITAL IMPROVEMENTS
57195	MCMASTER-CARR	213025	11/19/2021	1,388.97	OPERATING SUPPLIES
57367	MEDIACOM	212887	11/5/2021	397.5	OPERATING SUPPLIES
57385	MENARDS	212954	11/12/2021	1,214.48	TOOLS & SMALL EQUIP
57518	SYMETRA LIFE INSURANCE CO	212888	11/5/2021	8,893.34	GROUP LIFE PREMIUMS
58500	MIDAMERICAN ENERGY CO	212890	11/5/2021	1,363.46	NATURAL GAS
58555	MID-IOWA SOLID WASTE	212891	11/5/2021	1,807.37	VHCL MTCE SUPPLIES
59382	MIDWEST TAPE	213091	11/24/2021	216.39	LIBRARY MAT.-JAMES ESTATE
60278	MSA SAFETY SALES LLC	213028	11/19/2021	631.77	OPERATING SUPPLIES
60299	MISSION SQUARE RETIREMENT	213114	11/24/2021	2,200.00	ICMA DEF COMP PAYABLE
60610	ZACH MIKITA	213029	11/19/2021	200	SUSTENANCE SUPPLIES
60780	MOBILE LOCKSMITH & ALARM,	212893	11/5/2021	123	OPERATING SUPPLIES
60788	MOBOTREX	212894	11/5/2021	21,327.00	OTHER SMALL CAPITAL
61603	DOYLE MOORE	212895	11/5/2021	30	TRAINING
62575	MUNICIPAL FIRE & POLICE	212896	11/5/2021	188,457.93	FIRE RETIREMENT
62600	MUNICIPAL SUPPLY INC	212957	11/12/2021	1,867.82	OTHER MAINT & REPAIR
63032	NCL OF WISCONSIN INC	212897	11/5/2021	87.88	LAB SUPPLIES
64400	NATIONWIDE RETIREMENT SOL	213115	11/24/2021	3,250.00	NRS-NATION RETIRE SOL
66001	NORRIS ASPHALT PAVING INC	212898	11/5/2021	2,610.20	STREET MAINT SUPPLIES
66077	NORTHERN SAFETY COMPANY	212958	11/12/2021	417.02	OPERATING SUPPLIES
66078	NORTHERN TOOL & EQUIPMENT	212959	11/12/2021	24.99	OPERATING SUPPLIES
66088	NORTHERN ESCROW, INC	212960	11/12/2021	37,089.01	CONTRACTUAL SERVICES
66558	OCCUPATIONAL SAFETY SOLUT	212899	11/5/2021	1,200.00	GRANT
66561	OFFICIAL PEST CONTROL	212961	11/12/2021	55	SUSTENANCE SUPPLIES
66730	OHARA HARDWARE	213031	11/19/2021	571.85	OPERATING SUPPLIES
67098	O'REILLY AUTOMOTIVE	212914	11/8/2021	120.47	VHCL MTCE SUPPLIES
67525	OSKALOOSA QUALITY RENTAL	212900	11/5/2021	600	BLDG MAINT & REPAIR
68000	OTTUMWA COURIER	212962	11/12/2021	313.63	OFFICE SUPPLIES
68000A	OTTUMWA COURIER	213033	11/19/2021	195.12	OPERATING SUPPLIES
68560	OTTUMWA PRINTING, INC.	213034	11/19/2021	831	PRINTING
69040	OTTUMWA WATER AND HYDRO	212901	11/5/2021	11,262.55	WATER
69676	PARAGON PRODUCTS	213035	11/19/2021	124.8	MISCELLANEOUS
69688	DIXIE L PARKER	213036	11/19/2021	1,600.00	JANITORIAL
70009	PARKER TREE SERVICE	213037	11/19/2021	28,900.00	CONTRACTUAL SERVICES
70752	PELLA ENGRAVING COMPANY	213038	11/19/2021	360.66	OPERATING SUPPLIES
71950	PIERCE CONST & FENCE CO L	213039	11/19/2021	1,787.00	OPERATING SUPPLIES
72238	PURCHASE POWER	213093	11/24/2021	1,500.00	POSTAGE & SHIPPING
72253	PPG ARCHITECTURAL FINISHE	212963	11/12/2021	3,424.00	STREET MAINT SUPPLIES
72986	PORTZEN CONSTRUCTION INC	213094	11/24/2021	129,363.94	CONTRACTUAL SERVICES
73926	PRODUCTIVITY PLUS ACCOUNT	212902	11/5/2021	284.74	VHCL MTCE SUPPLIES
73927	PRODUCTIVITY PLUS ACCOUNT	212964	11/12/2021	212.26	VHCL MTCE SUPPLIES
73971	PROFESSIONAL JANITORIAL	212965	11/12/2021	2,100.00	JANITORIAL
74405	PYRAMID GRAPHICS & SPORTS	213095	11/24/2021	1,649.60	SUSTENANCE SUPPLIES
74740	RJ PERFORMANCE INC	213040	11/19/2021	217.48	VHCL MTCE SUPPLIES
74973	TOM REA	212903	11/5/2021	82	TRAINING
76105	ROBYN REESE	212904	11/5/2021	900	GRANT
76296	CHRISTINA REINHARD	213041	11/19/2021	66.86	TRAVEL & CONFERENCE
76580	JOSHUA REYNOLDS	213042	11/19/2021	13.1	TRAVEL & CONFERENCE
77180	RICHARD LEVI RITZ	213043	11/19/2021	146.59	SUSTENANCE SUPPLIES
77466	ROCHESTER ARMORED CAR	213096	11/24/2021	319.51	OTHER PROF SERV
77797	ROSENBAUER MOTOR, LLC	213044	11/19/2021	570.89	VHCL MTCE SUPPLIES
77965	ROTARY CLUB OF OTTUMWA	212966	11/12/2021	155	DUES & MEMBERSHIPS

**CITY OF OTTUMWA
 VENDOR PAYMENT REPORT
 NOVEMBER, 2021**

Vendor #	Vendor Name	Check #	Check Date	Amount	Reason
78105	ROYAL PORTABLE TOILETS	213045	11/19/2021	301.32	SANITATION
78708	JOHN SANDEGREN HEATING	213097	11/24/2021	3,500.00	OPERATING SUPPLIES
79358	SCHUMACHER ELEVATOR CO	212905	11/5/2021	1,598.70	PERMITS
81507	SHRED-IT USA	213047	11/19/2021	137.32	OTHER PROF SERV
82127	ZACH SIMONSON	213098	11/24/2021	126.56	TRAVEL & CONFERENCE
82136	SINCLAIR NAPA	212915	11/8/2021	779.19	VHCL MTCE SUPPLIES
83160	SOLENIS	213099	11/24/2021	4,213.60	OPERATING SUPPLIES
83880	SOUTHERN IOWA DIESEL, INC	212968	11/12/2021	188.11	VHCL MTCE SUPPLIES
83920	SOUTHERN IOWA ELECTRIC	212969	11/12/2021	78.14	OPERATING SUPPLIES
85289	JORDAN STATON	213048	11/19/2021	29.96	TRAVEL & CONFERENCE
86196	THE STITCH DOCTOR	213100	11/24/2021	326.52	OPERATING SUPPLIES
86970	SUPREME STAFFING INC	212907	11/5/2021	29,327.43	CONTRACT EMPLOYEES
88000	TEAMSTER LOCAL UNION 238	213116	11/24/2021	1,298.84	POLICE UNION DUES PAYABLE
88053	TECHNOLOGY SERV & SOLUTIO	213050	11/19/2021	15,408.80	TECHNOLOGY SERVICES
88427	THERMO FISHER SCIENTIFIC	212908	11/5/2021	48.94	LAB SUPPLIES
88697	THUMBS UP GIFTS & AWARDS	213102	11/24/2021	16	TOOLS & SMALL EQUIP
90846	UPS	213103	11/24/2021	262.03	POSTAGE & SHIPPING
90861	US CELLULAR	213104	11/24/2021	181.92	CONTRACTUAL SERVICES
91835	USA BLUE BOOK	213052	11/19/2021	1,575.62	OPERATING SUPPLIES
92555	THE VAN METER COMPANY	213106	11/24/2021	1,357.83	OPERATING SUPPLIES
92648	VEENSTRA & KIMM INC	213107	11/24/2021	54,947.61	MISCELLANEOUS
93371	VULCAN INDUSTRIES INC.	212972	11/12/2021	444	OPERATING SUPPLIES
94075	WAPELLO CO AGRICULTURAL	213053	11/19/2021	35	TRAINING
95000	WAPELLO COUNTY UNITED WAY	213117	11/24/2021	26	FICA CITY SHARE PAYABLE
95120	WAPELLO RURAL WATER ASSC	212973	11/12/2021	43.93	WATER
95368	WAYNE'S TIRE	213108	11/24/2021	371	VHCL MTCE SUPPLIES
95411	RYAN WEBSTER	212975	11/12/2021	155.14	SUSTENANCE SUPPLIES
95611	WELLMARK BC & BS OF IOWA	212911	11/5/2021	415,352.36	GROUP HEALTH CLAIMS
96741	WILCOX EQUIPMENT	213055	11/19/2021	45.04	VHCL MTCE SUPPLIES
97305	WINDSTREAM	212976	11/12/2021	750.54	TELEPHONE/IT
97334	WINN CORP	213056	11/19/2021	20,058.79	STREET MAINT SUPPLIES
97577	WOODRIVER ENERGY LLC	213109	11/24/2021	5,299.52	NATURAL GAS
ACH	US TREASURY			62,218.01	EMPLOYERS SHARE OF FICA
ACH	US TREASURY			65,065.67	EMPLOYERS SHARE OF FICA
ACH	US TREASURY			57,685.12	EMPLOYERS SHARE OF FICA
ACH	TREASURER STATE OF IOWA			17,211.95	EMPLOYERS SHARE OF STATE TAX
ACH	TREASURER STATE OF IOWA			15,977.02	EMPLOYERS SHARE OF STATE TAX
ACH	TREASURER STATE OF IOWA			22,093.00	EMPLOYERS SHARE OF STATE TAX
ACH	IPERS			66,620.43	EMPLOYERS SHARE OF IPERS

Totals for November

2,796,859.57

REPORT DATE 11/30/2021
 SYSTEM DATE 12/14/2021
 FILES ID 0

CITY OF OTTUMWA
 STATEMENT OF CHANGES IN CASH BALANCE
 AS OF 11/30/2021

PAGE 1
 TIME 14:27:10
 USER TJ

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	BEG. PERIOD	CASH	CASH	END PERIOD	OUTSTANDING	TREASURY
		BALANCE	DEBITS	CREDITS	BALANCE	CHECKS	BALANCE
TOTALS FOR FUND	001 GENERAL OPER	4250548.58	987818.41	1302149.03	3936217.96	11453.53	3947671.49
TOTALS FOR FUND	002 PARKING RAMP	37410.01	1192.00	232.47	38369.54		38369.54
TOTALS FOR FUND	003 GENERAL-ARPA	1815704.30	6083.25		1821787.55		1821787.55
TOTALS FOR FUND	110 ROAD USE TAX	4642899.47	322113.99	286260.89	4678752.57	768.43	4679521.00
TOTALS FOR FUND	112 EMPLOYEE BEN	1729795.08	284194.27	440481.51	1573507.84		1573507.84
TOTALS FOR FUND	119 EMERGENCY FU		9027.30	9027.30			
TOTALS FOR FUND	121 SALES TAX 1%	5111562.13	864395.51	30833.33	5945124.31		5945124.31
TOTALS FOR FUND	122 *****						
TOTALS FOR FUND	123 AGASSI TIF D						
TOTALS FOR FUND	124 VOGEL URBAN						
TOTALS FOR FUND	125 WESTGATE TIF	-450261.61	19682.14		-430579.47	9784.50	-420794.97
TOTALS FOR FUND	126 AIRPORT TIF	48049.92	7745.01	16875.00	38919.93		38919.93
TOTALS FOR FUND	127 PENNSYLVANIA						
TOTALS FOR FUND	128 WILDWOOD HWY	70968.46	76.33	6835.25	64209.54		64209.54
TOTALS FOR FUND	129 RISK MANAGEM	949183.05	55307.33	26198.00	978292.38		978292.38
TOTALS FOR FUND	131 AIRPORT FUND	257075.32	205829.13	213771.03	249133.42	10527.43	259660.85
TOTALS FOR FUND	133 LIBRARY FUND	278896.79	76132.95	57225.89	297803.85	333.51	298137.36
TOTALS FOR FUND	135 CEMETERY FUN	9483.70	25268.65	24561.22	10191.13	82.08	10273.21
TOTALS FOR FUND	137 HAZ-MAT FUND	173362.81	11429.46	9549.15	175243.12	30.21	175273.33
TOTALS FOR FUND	141 2018 UPPER S	8078.12			8078.12		8078.12
TOTALS FOR FUND	142 HOAP/HILP ES						
TOTALS FOR FUND	143 EPA BROWNIE						
TOTALS FOR FUND	144 2013 CDBG HO						
TOTALS FOR FUND	145 DOWNTOWN REV						
TOTALS FOR FUND	146 DOWNTOWN STR	64579.43		129782.15	-65202.72		-65202.72
TOTALS FOR FUND	147 CDBG P-2 MAS	17628.32			17628.32		17628.32
TOTALS FOR FUND	148 2016 OWW CDB						
TOTALS FOR FUND	151 OTHER BOND P	1154762.70	8364.00	17038.14	1146088.56	150.00	1146238.56
TOTALS FOR FUND	162 SSMID DISTRI	56971.06	1562.09	15955.16	42577.99		42577.99
TOTALS FOR FUND	167 FIRE BEQUEST	18732.23			18732.23		18732.23
TOTALS FOR FUND	169 START UP/DON	-165.20			-165.20		-165.20
TOTALS FOR FUND	171 RETIREE HEAL						
TOTALS FOR FUND	173 LIBRARY BEQU	116351.49	129.56	6013.12	110467.93	1287.04	111754.97
TOTALS FOR FUND	174 COMMUNITY DE	124292.97			124292.97		124292.97
TOTALS FOR FUND	175 POLICE BEQUE	187480.20			187480.20	16.00	187496.20
TOTALS FOR FUND	177 HISTORIC PRE	2409.02			2409.02		2409.02
TOTALS FOR FUND	200 DEBT SERVICE	1586940.75	180961.04	262143.16	1505758.63		1505758.63
TOTALS FOR FUND	301 STREET PROJE	3868876.90		263489.39	3605387.51		3605387.51
TOTALS FOR FUND	303 AIRPORT PROJ	-73152.08		169583.09	-242735.17		-242735.17
TOTALS FOR FUND	307 SIDEWALK & C	156806.57		2046.31	154760.26		154760.26
TOTALS FOR FUND	309 PARK PROJECT	225100.97		474.98	224625.99		224625.99
TOTALS FOR FUND	311 LEVEE PROJEC	364575.47		12855.72	351719.75		351719.75
TOTALS FOR FUND	313 EVENT CENTER	100230.67			100230.67		100230.67
TOTALS FOR FUND	315 SEWER CONSTR	6072044.09		353168.30	5718875.79	477.00	5719352.79
TOTALS FOR FUND	320 WEST END FLO						
TOTALS FOR FUND	501 CEMETERY MEM	2713.29			2713.29		2713.29
TOTALS FOR FUND	503 CEMETERY PER	350.00	520.00	550.00	320.00		320.00
TOTALS FOR FUND	610 SEWER UTILIT	3477302.71	501212.13	323815.62	3654699.22	2127.58	3656826.80
TOTALS FOR FUND	611 SEWER SINKIN	1377000.00			1377000.00		1377000.00
TOTALS FOR FUND	612 STORM WATER						
TOTALS FOR FUND	613 SEWER IMPROV	3716668.00	41667.00		3758335.00		3758335.00
TOTALS FOR FUND	670 LANDFILL FUN	1216627.22	222189.17	184577.18	1254239.21	34488.91	1288728.12

REPORT DATE 11/30/2021
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CITY OF OTTUMWA
 STATEMENT OF CHANGES IN CASH BALANCE
 AS OF 11/30/2021

PAGE 2
 TIME 14:27:10
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ACCOUNT NUMBER	ACCOUNT DESCRIPTION	BEG. PERIOD	CASH	CASH	END PERIOD	OUTSTANDING	TREASURY
		BALANCE	DEBITS	CREDITS	BALANCE	CHECKS	BALANCE
TOTALS FOR FUND	671 LANDFILL RES	1167302.00			1167302.00		1167302.00
TOTALS FOR FUND	673 RECYCLING	346766.07	86237.55	37415.98	395587.64	450.12	396037.76
TOTALS FOR FUND	690 TRANSIT FUND	651154.21		853.71	650300.50	116004.16	766304.66
TOTALS FOR FUND	695 1015 TRANSIT						
TOTALS FOR FUND	720 BRIDGEVIEW E	11691.16	106362.00	179325.00	-61271.84		-61271.84
TOTALS FOR FUND	750 GOLF COURSE	33089.62		1900.00	31189.62		31189.62
TOTALS FOR FUND	810 POOLED INVES	-50719714.50	6542.99		-50713171.51		-50713171.51
TOTALS FOR FUND	820 PAYROLL CLEA	421305.55	456700.32	659621.02	218384.85	3498.09	221882.94
TOTALS FOR FUND	840 EQUIPMENT PU	1275946.37	16100.00		1292046.37		1292046.37
TOTALS FOR FUND	860 GROUP HEALTH	5746508.41	294865.75	420014.92	5621359.24		5621359.24
TOTALS FOR FUND	861 POST 65 RETI	381485.10	27036.84	24201.48	384320.46	23971.00	408291.46
TOTALS FOR FUND	862 DENTAL INSUR	85964.65	7831.00	7481.08	86314.57		86314.57
TOTALS FOR FUND	863 LIFE INSURAN	34811.00	5659.49	187.68	40282.81		40282.81

TOTALS FOR ALL LISTED FUNDS		2204192.55	4840236.66	5496493.26	1547935.95	215449.59	1763385.54

REPORT DATE 11/30/2021
SYSTEM DATE 12/14/2021
FILES ID 0

CITY OF OTTUMWA
STATEMENT OF CHANGES IN CASH BALANCE
AS OF 11/30/2021

PAGE 3
TIME 14:27:10
USER TJ

SUMMARY PAGE INFORMATION

ERRORS DETECTED: 0

END OF REPORT



December 21, 2021

TO: Ottumwa City Council Members

FROM: Tom X. Lazio, Mayor

SUBJECT: APPOINTMENT TO CITY BOARDS AND/OR COMMISSIONS

Recommend appointment to the Planning and Zoning Commission, term to expire 04/01/2026.

Kossi David Bossou
1620 Greenwood Dr.

Recommend re-appointments to the Historic Preservation Commission, terms to expire 01/01/2025.

Mary Stewart
1618 N. Court

Robert Swanson
165 W. Alta Vista

CITY OF OTTUMWA
Biographical Data for Appointment to City Advisory Board

received
12-13-21

The information contained on this form is for the use of the Mayor and City Council in order to fill vacancies on City Advisory Boards Commissions, Committees, or Task Forces.

Biographical forms may be submitted at any time during the year; however, they will be purged January 31 of each year. If you have not been appointed to an advisory board during the preceding year, and still desire appointment, please resubmit an updated biographical form or advise in writing that the initial form is still usable.

Board, Commission, Committee, or Task Force to which appointment is desired:

Planning and zoning Commission

Name: Kossi David Bossou Telephone: 641 980 8062

Email: (optional) _____

Address: 1620 Greenwood Dr ZIP: 52501

Business: _____ Telephone: _____

Address: _____ ZIP: _____

Date Available for Appointment _____ E-Mail: _____

Present occupation: Career Campus Coordinator

Previous Employment: Diversity Advocate

Answer the following: (Use additional sheets if necessary)

Community Service:

(List boards, commissions, committees and organizations currently serving or have served on, offices held and in what city).

American Gothic Performing Arts

Please list any professional or vocational licenses or certificates you hold.

Personal:

(Have you ever worked for the City of Ottumwa?)

Yes _____ No

(If yes, please list dates and names of departments)

Are you related to any employee or appointee of the City of Ottumwa? (If yes, please indicate name and relationship.)

Yes _____ No

Rules of law and ethics prohibit members from participating in and voting on matters in which they pay have a direct or indirect financial interest. Are you aware of any potential conflicts of interest which may develop from your occupation or financial holdings in relation to your responsibilities as a member of the advisory body to which you seek appointment). (If yes, please indicate any potential conflicts).

Yes _____ No

Are you aware of the time commitment necessary to fulfill the obligations of the advisory body to which you seek appointment?

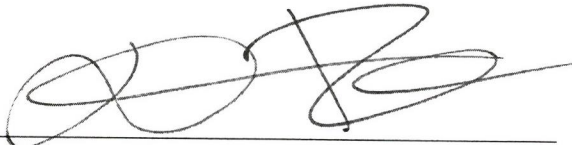
Yes No _____

Please furnish brief written responses to the three following questions: (Use additional sheets if necessary.)

1. What is there specifically in your background, training, education, or interests which qualifies you as an appointee?
Being a voice of Diversity and wanting Ottumwa to grow and be the best it can be. Speaking at the City Council, Cara Galloway told me to look into it.
2. What do you see as the objectives and goals of the advisory body to which you seek appointment?
I Hope to help bring tons of options here to help this Diverse town.
3. How would you help achieve these objectives and goals? What special qualities can you bring to the advisory body?

I understand what it is like to be an immigrant in Ottumwa, the day to day. Their voices need to be heard. They also want Ottumwa to be a better place for their children.

I hereby certify that the following information is correct to the best of my knowledge.



Signature

12-10-21

Date

You are invited to attach additional pages or submit supplemental information which you feel may assist the Mayor and City Council in their evaluation of your application.

WHEN COMPLETED MAIL ORIGINAL TO: OFFICE OF THE MAYOR
Ottumwa City Hall
105 E Third Street
Ottumwa, IA 52501

One of the goals of the City Council is to balance advisory board appointments in terms of gender and age.

The following information is desirable but not required for appointment.

Year of Birth 02-28-1999 Male Female

Number of years a city resident 12

**YOUTH BOARD
MEMBER APPLICANT ONLY**

Name of School

Year

CITY OF OTTUMWA
Staff Summary

2021 DEC 16 PM 1:03

**** ACTION ITEM ****

Council Meeting of : Dec 21, 2021

Administration
Department

Barbara Codjoe
Prepared By
Barbara Codjoe
Department Head



City Administrator Approval

AGENDA TITLE: Approve the appointment of Michael Mier to Airport Line Technician at the Ottumwa Regional Airport.

Public hearing required if this box is checked.

RECOMMENDATION: Approve the appointment of Micheal Mier to Airport Line Technician at the Ottumwa Regional Airport on or about December 26, 2021.

DISCUSSION: Appoint Michael Mier to Airport Line Technician at the Ottumwa Regional Airport. There was a resignation of a Line Technician as of December 12th.

This is a part-time, non-union position. This is not civil service since it is a part-time position. The job was posted on our website, Facebook page, LinkedIn and also Indeed. After interviews, we would like to offer the position to Michael Mier. Mike has worked through Supreme Staffing at the airport for the past few years. Mike also has experience hauling materials for fuel for many years.

Source of Funds: N/A

Budgeted Item: Budget Amendment Needed:

FILED
21 DEC 16 AM 11:23
CITY CLERK
OTTUMWA, ILL.

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of : Dec 21, 2021

Philip Rath

Prepared By

Administration

Department

Department Head



City Administrator Approval

AGENDA TITLE: Consideration of Approving Order Form with Zencity Technologies US, Inc. to Increase Civic Engagement

Public hearing required if this box is checked.

RECOMMENDATION: Approve the order form and contract with Zencity

DISCUSSION: Zencity is a platform that assists communities with collecting citizen feedback through a variety of public platforms. This information is then grouped with all other data points and builds a picture of what the community is talking about - framing it into positive, negative, and neutral trends. This information should help ensure correct, positive information is disseminated. Additionally, if there are specific areas of interest we could request an "insight" be created to dive deeper into the topic. The cost of this program has been deeply discounted (65%) if the City signs on before year-end.

Source of Funds:

Budgeted Item: Budget Amendment Needed:



ZENCITY ORDER FORM

Order form #: 00013754

Order form prepared for: City of Ottumwa, IA

Order form expiration date: 12-30-2021

This Order Form ("Order Form") is entered into between the Zencity entity detailed below ("Zencity"), and the entity identified below ("Customer", and jointly with Zencity the "Parties"), as of the Effective Date (as defined below) which shall remain in effect for the duration of the Initial Term as defined below and any renewal term (the "Term") unless agreed otherwise explicitly and in writing between the Parties. This Order Form includes and incorporates the Zencity Terms and Conditions attached hereto as Appendix A (the "T&Cs"). In the event of any conflict between this Order Form and the T&Cs, the terms of this Order Form shall prevail. All prices are quoted in USD.

ZENCITY	
Entity (legal) name:	Zencity Technologies US, Inc.
Full address:	1313 N Market St, Suite 5100 Wilmington, DE 19801
Contact:	Kim Ingino
Phone:	303-718-0686
Email:	kim@zencity.io

CUSTOMER	
Entity (legal) name:	City of Ottumwa, IA
Full address:	105 E. Third St. Ottumwa, IA 52501
Contact:	Phil Rath
Phone:	641-931-0952
Email:	rathp@ottumwa.us

RECURRING FEES					
SKU	Product Description	Unit Price	QTY (units)	Initial Term Discount	Net Price
ZC-CORE	Zencity core SaaS platform allowing state and local governments to better understand and engage with their residents, for cities with up to 25,000 residents, including: <ul style="list-style-type: none"> • Full integration with all data sources provided by Zencity • User credentials for 10 users • 6 annual Zencity Insight reports • Setup of unlimited Zencity Projects 	\$24,000	1 year	65%	8,5000
Total Gross List Price					\$24,000
Total Initial Term Discounts					\$15,5000
Total Fees					\$8,500

Any additional modules, quantity increases or other custom development and integration work requested by Customer during the Term shall require an Order Form executed by the Parties, and shall be subject to the prevailing Zencity rate card subject to amendment from time to time.

ORDER FORM TERMS	
Effective Date:	The date attached the Customer's signature below.
Initial Term:	12 months, commencing on the Effective Date.
Fees:	The Fees are exclusive of any applicable taxes (including sales tax) and withholdings, which will be added to the Fees and paid by Customer, to the extent applicable. It is agreed that during the first 24 months of this agreement as of the Effective Date, the prices set forth in this Order Form shall not increase, and that the renewal following that (i.e the third year) shall be subject to price increase of up-to 6%.
Payment Terms:	The Fees shall be payable on an annual basis within 60 days of the Effective Date and on each annual anniversary thereof.
Customer Billing Contact:	Name: Phil Rath, Phone: 641-931-0952, Email: rathp@ottumwa.us
Customer PO # (if applicable):	

CUSTOMER

Signature: _____

Name: _____

Title: _____

Date: _____

ZENCITY

Signature: _____

Name: _____

Title: _____

Date: _____

Appendix A

Zencity Terms and Conditions

1. SOFTWARE LICENSE & SUPPORT SERVICES

- 1.1. Subject to the terms and conditions of these Zencity Terms and Conditions and of the applicable Order Form (collectively, the "**Agreement**"), Zencity hereby grants to Customer a personal, non-exclusive, non-transferable limited license to use the products and services licensed by Zencity to Customer (the "**Licensed Program**") identified in the applicable Order Form entered into by Zencity and Customer and the documentation and user manuals for the Licensed Program supplied by Zencity to Customer throughout the Term (the "**Documentation**").

For the purposes of this Section 1.1, the term "use" shall be only in accordance with the confidentiality provisions of this Agreement and shall include the rights to use the Licensed Program only for the use of the Customer's organization, company or institution.

For the purposes of this Section 1.1 the term "use" shall not include: (i) the right to make, use, or sell products incorporating the Licensed Program, or (ii) the right to sub-license the Licensed Program.

No right is granted to the source code of the Licensed Program or to create derivative works thereof or to transfer ownership of the media containing such software except as a part of, or with, or for use in the equipment with which it operates.

- 1.2. Routine customer support is available via email. Any claim will be answered within 24 hours of the report. On or before the Effective Date, Customer and Zencity shall each designate a liaison as a respective point of contact for technical issues. Each party may change such liaison upon written notice from time to time at reasonable intervals. Zencity will not be obligated to provide support to any person other than the Customer's designated liaison.
- 1.3. During the Term, Customer may have access to Updates upon request at no additional cost. "**Updates**" shall mean certain new features as determined by Zencity, or fixes of minor errors in the Licensed Program which are incorporated in a new release of the Licensed Program.
- 1.4. Certain upgrades can be delivered to Customer upon commercial terms and conditions to be agreed upon. "**Upgrades**" shall mean enhancements, new functionalities that are added into the Licensed Program.

2. RESTRICTIONS AND RESPONSIBILITIES

- 2.1. Customer agrees not to, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Licensed Program, Documentation or data related to the Licensed Program, except to the extent such a restriction is limited by applicable law; modify, translate, or create derivative works based on the Licensed Program; or copy, reproduce, rent, lease, distribute, assign, sell, or otherwise dispose of the Licensed Program, in whole or in part, or otherwise commercially exploit, transfer, or encumber rights to the Licensed Program; or remove any proprietary notices.
 - 2.2. Customer will use the Licensed Program only in compliance with all applicable laws and regulations (including, but not limited to, any export restrictions, surveillance and monitoring restrictions, and any privacy and data protection requirements).
 - 2.3. Customer shall be responsible for obtaining and maintaining any equipment and other services needed to connect to, access, or otherwise use the Licensed Program and Customer shall also be responsible for (a) ensuring that such equipment is compatible with the Licensed Program, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) for all uses of Customer user accounts with or without Customer's knowledge or consent. To the extent Customer provides any Personal Data (as defined below) of personnel for registration purposes, Customer represents and warrants that it has any right, license, consent, and power and it has provided any notice, as required under applicable law, to provide Zencity with such Personal Data and will be fully and solely responsible for providing only Personal Data of personnel related to the Customer.
3. **PROPRIETARY RIGHTS.** Zencity retains all right, title, and interest in the Licensed Program, Documentation and any future modifications and enhancements thereof, and all intellectual property rights (including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark, and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature) therein. Customer is granted only a limited right of use to the Licensed Program and Documentation as set forth herein, which right of use is not coupled with an interest and is revocable in accordance with the terms of this Agreement.
 4. **CONFIDENTIALITY.** Each party (the "**Receiving Party**") agrees not to disclose (except as permitted herein) any Confidential Information of the other party (the "**Disclosing Party**") without the Disclosing Party's prior written consent. "**Confidential Information**" means all confidential business, technical, and financial information of the disclosing party that is marked as "Confidential" or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the disclosure (including the terms of the applicable License Agreement). Zencity's Confidential Information includes, without limitation, the software underlying the Licensed Program and all Documentation. The Receiving Party agrees: (i) to use and disclose the Confidential Information only in connection with this Agreement; and (ii) to protect such Confidential Information using the measures that Receiving Party employs with respect to its own Confidential Information of a similar nature, but in no event with less than reasonable care. Receiving Party shall, before receipt or usage of such Confidential Information inform its personnel of Receiving Party's confidentiality obligations under this Agreement. Notwithstanding the foregoing, Confidential Information does not include information that: (i) has become publicly known through no breach by the Receiving Party; (ii) was rightfully received by the Receiving

Party from a third party without restriction on use or disclosure; or (iii) is independently developed by the Receiving Party without access to such Confidential Information. Notwithstanding the above, the Receiving Party may disclose Confidential Information to the extent required by law or court order, provided that prior written notice of such required disclosure and an opportunity to oppose or limit disclosure is given to the Disclosing Party.

5. **DATA AND MATERIALS LICENSE.**

- 5.1. Customer grants Zencity a non-exclusive, transferable, perpetual, worldwide, and royalty-free license to use any data or information provided by Customer for use in, by, or in connection with the Licensed Program, any information collected, and/or any analysis of any such information conducted by the Licensed Program.
- 5.2. Any content created by Customer and provided to Zencity for use in connection with the Licensed Program or other services provided by Zencity ("**Customer Materials**") shall be the sole property of the Customer. Customer hereby grants Zencity and its successors and assigns a perpetual, irrevocable, transferrable, worldwide, royalty-free, fully paid-up, and non-exclusive license under any of Customer's intellectual property, moral or privacy rights to use, copy, distribute, display, modify and create derivative works of any Customer Materials for the provision of the services in accordance with the terms of this Agreement. The parties acknowledge that Zencity does not require any Personal Data to be provided in order to provide the Licensed Program and Customer undertakes that it shall not provide Zencity with any Personal Data as part of the Customer Materials. To the extent the Customer Materials shall include any Personal Data it shall be incidental and Customer shall be fully liable for such Personal Data in accordance with the terms of this Agreement and applicable law.

6. **FEES.**

- 6.1. The fees for the Licensed Program ("**Fees**") are set forth in the applicable License Agreement. Properly submitted invoices for which payment is not received within fourteen (14) days of the invoice due date shall accrue a late charge of 1.5% interest per month, compounding annually. The Fees are exclusive of any applicable taxes, which, if payable by Zencity, shall be billed to and paid by Customer, including any bank fees related to the Customer's wire transfer. Customer may not withhold or set-off any amounts from the Fees. For the avoidance of doubt, discounts or credits relating to any term defined in any Order Form shall apply to said term only and shall not carry over to any Renewal Term.

7. **TERM & TERMINATION**

- 7.1. This Agreement shall commence on the Effective Date and continue for the period of the Licensed Program purchased pursuant to any applicable and outstanding Order Form, including any renewal term, unless earlier terminated in accordance with this Section 7. In the event of any Renewal Term, the Fees payable for the Licensed Program shall be updated as specified in the Order Form. Either party may terminate this Agreement immediately by giving written notice to the other party if: (i) the other party breaches a material provision of this Agreement and fails to cure the breach within seven (7) days after being given written notice thereof; or (ii) the other party is judged bankrupt or insolvent, makes a general assignment for the benefit of its creditors, a trustee or receiver is appointed for such party; or any petition by or on behalf of such party is filed under any bankruptcy or similar laws.
- 7.2. The Parties agree that at least 60 days prior to the lapse of the Initial Term or each Renewal Term, they shall negotiate a Renewal Term in good faith. The Initial Term shall be automatically extended for successive renewal terms of 12 months each (each, a "**Renewal Term**" and collectively with the Initial Term, the "**Term**") unless either party provides written notice of non-renewal to the other party at least 90 days before the end of each applicable term.
- 7.3. Upon termination, Customer will pay in full for the Licensed Program up to and including the effective date of termination. Upon any termination of this Agreement: (a) the license of the Licensed Program hereunder shall immediately terminate; and (b) each party shall return to the other party or, at the other party's option, destroy all Confidential Information of the other party in its possession.
- 7.4. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

8. **WARRANTY AND DISCLAIMER**

- 8.1. Zencity represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Licensed Program shall perform in accordance with generally prevailing industry standards.
- 8.2. Customer represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; (ii) it owns all right, title, and interest in and to all data, including without limitation, any Personal Data that may be included therein, provided to Zencity (if any) for use in connection with this Agreement, or possesses the necessary authorization thereto; and (iii) Zencity's use of such data or materials including Customer Materials as contemplated hereunder will not violate the rights of any third party; (iv) it has all right, license and consent required to provide Zencity with the Customer Materials, including Personal Data contained therein, if and to the extent provided in accordance with Section 5.2 above; (v) the Customer Materials and Zencity's use thereof in accordance with the terms of this Agreement does not and will not infringe upon any third party's right;

and (vi) it shall at all times use the Licensed Program in compliance with applicable law. "**Personal Data**" have the definition ascribed to it by the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("**GDPR**") or any parallel term in the jurisdiction in which the Licensed Program is being used.

- 8.3. ZENCITY DOES NOT WARRANT THAT USE OF THE LICENSED PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE LICENSED PROGRAM. EXCEPT AS SET FORTH IN THIS SECTION 8, THE LICENSED PROGRAM IS PROVIDED "AS IS" AND ZENCITY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ZENCITY DOES NOT WARRANT THAT ANY OR ALL FAILURES, DEFECTS OR ERRORS WILL BE CORRECTED, OR WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED PROGRAM WILL MEET CUSTOMER'S REQUIREMENTS.
- 8.4. To the extent the Licensed Program or any services provided by Zencity hereunder are provided through or in connection with any third-party services, Zencity shall not have any responsibility for any technical issues or limitations resulting from the use of such third-party service, including actions of Zencity on such third-party service taken on behalf of and at the instruction of Customer. Customer acknowledges and agrees that use of any third-party service shall be in accordance with such third party's terms and privacy policy.
9. **LIMITATION OF LIABILITY.** NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS, AND EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR RELATED TERMS AND CONDITIONS UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA (EXCEPT AS OTHERWISE SET FORTH IN SECTIONS 2.3 AND 5.2) OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO ZENCITY (OR, IN THE CASE OF CUSTOMER, PAYABLE) FOR THE LICENSED PROGRAM UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.
10. **MISCELLANEOUS.** Capitalized terms not otherwise defined in these Terms and Conditions have the meaning set forth in the applicable License Agreement. Neither party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of this Agreement, other than payment obligations, due to any act of God, act of governmental authority, or due to war, riot, labor difficulty, pandemic, failure of performance by any third-party service, utilities, or equipment provider, or any other cause beyond the reasonable control of the party delayed or prevented from performing. Zencity shall have the right to use and display Customer's logos and trade names for marketing and promotional purposes in connection with Zencity's website and marketing materials, subject to Customer's trademark usage guidelines (as provided to Zencity). If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable or transferable by either party without the other party's prior written consent, provided however that either party may assign this Agreement to a successor to all or substantially all of its business or assets. This Agreement (including the License Agreement) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed by both parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws provisions and the competent courts of New York City shall have exclusive jurisdiction to hear any disputes arising hereunder.

FILED

2021 DEC 17 PM 1:39

CITY CLERK

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Dec 21, 2021


Prepared By

City Clerk _____
Department

Department Head



City Administrator Approval

AGENDA TITLE: Consideration of market salary adjustment for City Clerk position based upon city comparables.

Public hearing required if this box is checked.

RECOMMENDATION: Approve the market adjustment of \$2,500 to the City Clerk's salary effective January 1, 2022.

DISCUSSION: The City Clerk is an integral part of the administrative team and should be compensated at the same level as some of the other Department Heads and supervisors. The City Clerk is a key position as outlined by the Code and hired and fired directly by the City Council. Her evaluation will be done closer to her anniversary in March 2022. This item is to approve a market adjustment to her current salary in order to align with other department heads and supervisors within the City as well as other city comparables.

Source of Funds: General Fund

Budgeted Item: Budget Amendment Needed: No

Chris Reinhard

From: Tom Lazio
Sent: Wednesday, December 15, 2021 1:09 PM
To: Bob Meyers; Holly Berg; Marc Roe; Matt Dalbey; Sandra Pope
Cc: Chris Reinhard
Subject: Salary adjustment for City CLerk
Attachments: salary recomendation for Clerk-2- 12-2-21.docx; Chris Reinhard letter for raise 9-10-21.docx

Dear Council members,

I have attached two memos that I did back in Sept. and early Dec. on an adjustment to the Clerk's pay. I was going to put this on the Agenda for December 7th but after talking to Phil and Barb agreed to hold off until the meeting on the 21st. I want you to have some time to think about what I am asking and get any information that you feel is relevant to make the decision.

I am not asking you to do an evaluation of Chris but rather to make a salary adjustment to keep her in line with other people who have been hired in the City.

The new Council can do the "pay plan review" and see where we stand as a City. I don't think it is fair to Chris to make her wait until that is done.

Sincerely,

Mayor Tom Lazio

This message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 USC 2510-2521, and contain information intended for the specified individual(s) only. This information is confidential. If you are not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Dec 21, 2021

Planning & Development
Department

Zach Simonson
Prepared By
Zach Simonson
Department Head



City Administrator Approval

AGENDA TITLE: RESOLUTION NO. 218-2021: RESOLUTION ADOPTING THE
AMENDED AND RESTATED OTTUMWA URBAN REVITALIZATION
PLAN FOR THE OTTUMWA REVITALIZATION AREA

Public hearing required if this box is checked.

RECOMMENDATION: PASS AND ADOPT RESOLUTION NO. 218-2021.

DISCUSSION: The state legislature recently removed the taxation category for multi-family residential property and lumped all residential property into the same classification for taxation. As a result, all Iowa communities with an urban revitalization plan have had to revisit and amend their plans to adjust for this change. City Staff worked with our attorneys from Ahlers and Cooney to develop an amended and restated Urban Revitalization

Source of Funds:

Budgeted Item: Budget Amendment Needed:

Plan for the entire City of Ottumwa.

Urban Revitalization empowers the City to offer tax emptions for improvements within the Urban Revitalization Area. In the City of Ottumwa, the entire City is included in the area and the area maintains a blight finding and classification that allows us to provide tax exemptions for qualifying improvements that increase the value of commercial or industrial property by more than 15% and residential property by more than 10%.

This plan will offer an exemption to all residential property that is improved by more than 10% of its value. That exemption will be for 100% of the value of the improvements for three years. We have removed the five-year sliding scale that was offered in the previous plan but was rarely used and sometimes caused confusion for applicants. Simplifying this schedule will hopefully encourage more participation in the program. Ottumwa's blight classification allows us to continue to offer an exemption that few other communities can offer. Most communities are required by law to cap the exemption at the first \$75 thousand of new value. That is not the case in this plan. That makes Ottumwa a more attractive place to build a home or to do significant improvements to a home.

This plan also creates a new exemption for contributing residential historic properties in National Registry-listed historic districts or individually listed residential historic properties on the National Register. For historic improvements that are approved by the Historic Preservation Commission and that satisfy Department of Interior standards, historic property owners will be eligible for a 5-year, 100% exemption on the value of improvements. The Historic Preservation Commission unanimously recommended this exemption at the Dec. 1, 2021 meeting. This advances a planning priority identified in the upcoming 2021 Ottumwa Housing Plan which identifies a need for neighborhood conservation in historic districts.

Because multi-residential property is no longer a tax category, this plan also creates an exemption for residential property with more than three units. Properties in this category are eligible for a 10-year sliding scale exemption. That schedule is:

First Year - 100%
Second Year - 100%
Third Year - 80%
Fourth Year - 80%
Fifth Year - 60%
Sixth Year - 60%
Seventh Year - 40%
Eighth Year - 40%
Ninth Year - 20%
Tenth Year - 20%

This exemption schedule is lightly larger than the current multi-residential exemption. This reflects a planning priority identified in the upcoming 2021 Housing Plan which recommends incentivizing middle-density in-fill development. However, this exemption is not the maximum allowed by law, which would be 100% for 10 years because we hope that high density, big-ticket development will still pursue the Urban Renewal, TIF approach which will allow the Council to select only the best projects for larger incentives.

Finally, this plan preserves the existing five year exemption for commercial and industrial improvements:

- First Year - 80%
- Second Year - 65%
- Third Year - 45%
- Fourth Year - 25%
- Fifth Year - 10%

This resolution would adopt the plan. These incentives would be available citywide until the plan is altered or unless state law changes.

ITEMS TO INCLUDE ON AGENDA

CITY OF OTTUMWA, IOWA

December 21, 2021

5:30 P.M.

Amended and Restated Ottumwa Urban Revitalization Plan

- Public hearing on the matter of the adoption of the Amended and Restated Ottumwa Urban Revitalization Plan for the Ottumwa Revitalization Area
- Resolution adopting the proposed Amended and Restated Ottumwa Urban Revitalization Plan for the Ottumwa Revitalization Area

IMPORTANT INFORMATION

1. The above agenda items should be included, along with any other agenda items, in the meeting agenda. The agenda should be posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting. If no such office exists, the notice must be posted at the building in which the meeting is to be held.
2. If you do not now have a bulletin board designated as above mentioned, designate one and establish a uniform policy of posting your notices of meeting and tentative agenda.
3. Notice and tentative agenda must be posted at least 24 hours prior to the commencement of the meeting.

NOTICE MUST BE GIVEN PURSUANT TO CHAPTER 21,
CODE OF IOWA, AND THE LOCAL RULES OF THE CITY.

December 21, 2021

The City Council of the City of Ottumwa, State of Iowa, met in regular session, in the Council Chambers, City Hall, 105 East Third Street, Ottumwa, Iowa, at 5:30 P.M., on the above date. There were present Mayor Lazio, in the chair, and the following named Council Members:

Bob Meyers, Sandra Pope, Holly Berg, Matt Dalbey, Marc Roe

Absent: None

Vacant: None

* * * * *

This being the time and place fixed for a public hearing on the matter of the adoption of the Amended and Restated Ottumwa Urban Revitalization Plan, the Mayor asked the City Clerk whether any written objections had been filed with respect to the proposed Amended and Restated Plan. The City Clerk reported that zero written objections had been filed. The Mayor then called for any oral objections to the adoption of the Amended and Restated Plan and none were made. The public hearing was closed.

Council Member Roe then introduced the following Resolution entitled "RESOLUTION ADOPTING THE AMENDED AND RESTATED OTTUMWA URBAN REVITALIZATION PLAN FOR THE OTTUMWA REVITALIZATION AREA," and moved:

- that the Resolution be adopted.
- to defer action on the Resolution and the proposal to the meeting to be held at _____ .M. on the _____ day of _____, 2021, at this place.

Council Member Meyers seconded the motion. The roll was called, and the vote was:

AYES: Bob Meyers, Sandra Pope, Holly Berg, Matt Dalbey,

Marc Roe

NAYS: None

Whereupon, the Mayor declared the measure duly adopted.

RESOLUTION NO. 218-2021

RESOLUTION ADOPTING THE AMENDED AND RESTATED
OTTUMWA URBAN REVITALIZATION PLAN FOR THE
OTTUMWA REVITALIZATION AREA

WHEREAS, pursuant to the provisions of Iowa Code Chapter 404, by action of the City Council on April 21, 1992, the City of Ottumwa, Iowa (the "City") adopted the Ottumwa Urban Revitalization Plan (the "Original Plan") for the Ottumwa Revitalization Area (the "Revitalization Area" or "Area"); and

WHEREAS, the Original Plan has subsequently been amended twice, most recently by the adoption of Amendment No. 2 to the Original Plan, adopted on April 4, 2017; and

WHEREAS, by the foregoing action, the Council has determined that the Revitalization Area within the City can be revitalized as authorized by Code of Iowa Chapter 404 (the "Act"); and

WHEREAS, a proposed Amended and Restated Ottumwa Urban Renewal Plan (the "Amended and Restated Plan" or "Plan") has been prepared to amend the Original Plan, the purpose of which is to (i) restate and amend the provisions of the Original Plan, and (ii) modify the tax abatement exemption schedules offered under the Amended and Restated Plan; and

WHEREAS, after published notice was given, as required by the Act, the City Council held a public hearing at its meeting on December 21, 2021, on the Amended and Restated Plan and considered all objections, comments, and evidence presented.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, STATE OF IOWA:

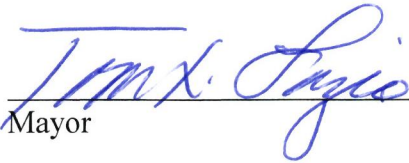
Section 1. That all objections received, if any, at the public hearing referred to in the preamble above are found to be without sufficient merit to warrant amending the proposed Amended and Restated Plan.

Section 2. That the Amended and Restated Plan, attached hereto as Exhibit 1 and incorporated herein by reference, be and the same is hereby approved and adopted as "Amended and Restated Ottumwa Urban Revitalization Plan for the City of Ottumwa, State of Iowa", and that the Amended and Restated Plan is hereby in all respects approved. The City Clerk is hereby directed to file a certified copy of the Amended and Restated Plan, along with a copy of this Resolution, with the Recorder for Wapello County, Iowa, to be recorded, and with the Assessor for Wapello County, Iowa.

Section 3. That, notwithstanding any resolution, ordinance, plan, amendment, or other documents, the Amended and Restated Plan shall be in full force and effect from the date of this Resolution until the Council amends or repeals the Plan, as amended.



Section 4. That all other provisions of the Original Plan not affected or otherwise revised by the Amended and Restated Plan are hereby ratified, confirmed, and approved in all respects, and that all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed, to the extent of such conflict.

PASSED AND APPROVED this 21st day of December, 2021.



Mayor

ATTEST:

City Clerk

ATTACH AMENDED AND
RESTATED PLAN LABELED AS
EXHIBIT 1 HERE

Exhibit 1

AMENDED AND RESTATED OTTUMWA URBAN REVITALIZATION PLAN

CITY OF OTTUMWA, IOWA

Original Plan – 1992

Amendment No. 1 – 1999

Amendment No. 2 – 2017

Amended and Restated Plan – 2021

**AMENDED AND RESTATED
OTTUWMA URBAN REVITALIZATION PLAN
FOR THE
OTTUMWA REVITALIZATION AREA
IN THE
CITY OF OTTUMWA, IOWA**

I. INTRODUCTION AND HISTORY

The Urban Revitalization Act, Chapter 404 of the *Code of Iowa*, is intended to encourage development, redevelopment, and revitalization within a designated area of a city by authorizing property tax development incentives to the private sector. Qualified real estate within a designated area may be eligible to receive a total or partial exemption from property taxes on improvements for a specified number of years. The primary intent of this act is to provide communities with a long-term increase or stabilization in their tax base by encouraging rehabilitation or new construction which might not otherwise have occurred.

The City Council of the City of Ottumwa, Iowa (the "City") adopted the 1992 Urban Revitalization Plan (the "Original Plan") by Resolution No. 32-1992 on April 21, 1992 to establish a revitalization area under the provisions of Iowa Code Chapter 404 known as the Ottumwa Revitalization Area (the "Revitalization Area" or "Area"), which included all real estate within the corporate limits of the City of Ottumwa, as then in existence. The Original Plan established various schedules for partial exemption from taxation for improvements to property within the Area.

The Original Plan included an initial three-year term, but allowed for up to four additional one-year extensions. Accordingly, Resolution No. 182-1994, adopted on December 20, 1994, extended the Original Plan until June 3, 1996; Resolution No. 166-1995, adopted November 21, 1995, extended the Original Plan until June 2, 1997; Resolution No. 144-1996, adopted November 19, 1996, extended the Original Plan until June 3, 1998; and Resolution No. 136-1997, adopted December 2, 1997, extended the Original Plan until June 3, 1999.

Subsequently, the Original Plan was amended by Amendment No. 1 to the Original Plan, adopted by Resolution No. 80-1999 on May 4, 1999, which repealed the Original Plan's expiration date. In 2017, the Original Plan was further amended by Amendment No. 2 to the Original Plan, adopted by Resolution No. 66-2017 on April 4, 2017, which updated various provisions, added exemption schedules, and added a limitation to eligibility for property in any urban renewal area.

This Amended and Restated Ottumwa Urban Revitalization Plan (the "Amended and Restated Plan" or "Plan") consolidates the provisions of the Original Plan and the prior amending documents. This Amended and Restated Plan restates many provisions of the Original Plan, as previously amended. This Amended and Restated Plan also amends the provisions of the Original Plan, as previously amended, by updating various provisions of the Original Plan, as previously amended, and adding new exemption schedules under the Plan.

Except as modified by this Amended and Restated Plan, the provisions of the Original Plan, as previously amended, are hereby ratified, confirmed and approved and shall remain in full force and effect as provided therein. In case of any conflict or uncertainty, the terms of this Amended and Restated Plan shall control. Any parts of the Original Plan in conflict with this Amended and Restated are hereby repealed.

II. DESIGNATION OF REVITALIZATION AREA

Chapter 404 provides that the City Council may designate an area of the City as a revitalization area, if that area meets any of the criteria set forth in Section 404.1. Section 404.1(2), Section 404.1(3), Section 404.1(4), and Section 404.1(5) provide the following criteria, respectively:

2. "An area which by reason of the presence of substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, incompatible land use relationships, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the actual value of land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or a combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, or welfare in its present condition and use."
3. "An area in which there is a predominance of buildings or improvements which by reason of age, history, architecture or significance should be preserved or restored to productive use."
4. "An area which is appropriate as an economic development area as defined in Section 403.17." [Section 403.17(10) provides that "economic development area" means an area of a municipality designated by the local governing body as appropriate for commercial and industrial enterprises or housing and residential development for low and moderate income families, including single or multi-family housing.]
5. "An area or an area designated as appropriate for public improvements related to housing and residential development, or construction of housing and residential development, including single or multi-family housing."

With the adoption of this Amended and Restated Plan, the City is clarifying and affirming that the Revitalization Area, as described herein, is designated as a revitalization area meeting the criteria of Section 404.1(2), Section 404.1(3), Section 404.1(4), and Section 404.1(5).

With the adoption of this Plan, the City Council affirms that the rehabilitation, conservation, redevelopment, economic development, or a combination thereof, of the Area, is necessary in the interest of the public health, safety, and welfare of the residents of the City and that the Revitalization Area substantially meets the criteria established in Section 404.1 of the *Code of Iowa* for a revitalization area.

The City Council has previously determined, and affirms, that revitalization activities under the Plan will further the following planning objectives:

- Prevent further deterioration and/or blighting of the Area by encouraging rehabilitation and additions to existing buildings and new construction through abatement of taxes on the value of the improvements.
- Encourage the development of new and varied housing opportunities within the Area.
- Improve economic conditions in the Area by incentivizing commercial and industrial development.

III. DESCRIPTION OF AREA

The Revitalization Area includes the following real property:

All real property contained within the incorporated limits of the City of Ottumwa, Wapello County, State of Iowa as of the adoption of the Amended and Restated Plan.

To the extent allowed by law, any property annexed into the City after the effective date of this Plan shall be considered to have been part of the Area as of the effective date of its annexation to the City.

A map of the Revitalization Area, as of the Plan's effective date, is attached hereto as Exhibit A.

IV. EXISTING ZONING

Existing zoning classifications of the property within the Area include:

- AG – Agricultural and Urban Reserve District
- RR – Rural Residential District
- R-1 – Single Family Residential District (Low Density)
- R-2 – Two-Family Residential District
- R-3 – Townhouse Residential District (Moderate Density)
- R-4 – Multifamily Residential District (Medium Density)
- R-5 – Multifamily Residential District (High Density)
- R-MHP – Mobile Home Park District
- C-1 – Neighborhood Commercial District
- C-2 – Community Commercial District
- CS-1 – Commercial Shopping Center District
- C-3 – Commercial Mixed-Used District
- C-4 – Downtown Mixed-Use District
- BP – Business Park District
- I-1 – Limited Industrial District
- I-2 – General Industrial District

The City's zoning ordinance(s) and a detailed zoning map are available for public inspection at City Hall.

V. EXISTING AND PROPOSED LAND USE

Existing land use categories are the same as the zoning classifications described above.

New and expanded commercial, industrial, and residential development, including improvements to and revitalization of existing commercial, industrial, and residential structures, is proposed for the Revitalization Area, in accordance with the City's zoning ordinance(s).

VI. PROPOSALS FOR EXPANDING CITY SERVICES

No extensions or upgrades to existing municipal services or infrastructure are currently planned as part of this Plan. As development and redevelopment within the Area warrants, municipal services within the Area will be expanded and improved, as needed and as financially feasible, to serve new and expanded development.

VII. ELIGIBLE IMPROVEMENTS

The Plan is applicable to all of the property in the Area assessed as residential, multi-residential (prior to January 1, 2022), commercial, or industrial ("Eligible Property").

Qualifying Improvements, as used in this Plan, include rehabilitation and additions to any existing buildings on Eligible Property, as well as new construction of buildings on vacant Eligible Property or on Eligible Property with existing buildings.

Actual value added by improvements, as used in this Plan, means the actual value added by Qualifying Improvements as of the first year for which the exemption was received. In order to be eligible for tax abatement, the increase in actual value of the Eligible Property from the Qualifying Improvements must be at least fifteen percent (15%) for Eligible Property assessed as commercial, industrial, or multi-residential, and ten percent (10%) for Eligible Property assessed as residential.

All Qualifying Improvements, in order to be considered eligible for tax abatement, must be completed in conformance with all applicable ordinances and regulations for the City of Ottumwa and must be completed during the time the Area is designated as a revitalization area.

VIII. LIMITATION TO ELIGIBILITY FOR PROPERTY IN URBAN RENEWAL AREA

The City has established urban renewal areas that overlap with the Revitalization Area and, in the future, may establish additional urban renewal areas that overlap with the Revitalization Area. The City has a tax increment financing program within these urban renewal areas that is designed to provide incentives for development. Accordingly, a property that, in the determination of the City Council, is within an urban renewal area and is receiving either direct or indirect benefits that were

financed through a tax increment financing program, shall not be eligible for tax abatement under the Plan absent specific approval from the City Council.

IX. EXEMPTIONS

The following exemption schedules are available for Eligible Properties with Qualifying Improvements under this Plan:

Residential

All Eligible Property assessed as residential is eligible to receive exemption from taxation on the actual value added by the Qualifying Improvements. The amount of the exemption is one hundred percent (100%) on the actual value added by the Qualifying Improvements. The exemption is for a period of three (3) years.

Residential – Historical Contributing Building

All Eligible Property assessed as residential and (1) listed as a “contributing building” in the nomination papers for the Court Hill Historic District, Fifth Street Bluff Historic District, Vogel Place Historic District or North Fellows Historic District, or (2) individually listed on the National Register of Historic Places is eligible to receive an exemption from taxation on the actual value added by the Qualifying Improvements. In order to be eligible for this exemption, the Qualifying Improvements must not increase the population density of the facilities being improved and must be found to be historically sensitive based on the criteria established by the Ottumwa Planning and Development Department.

The amount of the exemption is one hundred percent (100%) on the actual value added by the Qualifying Improvements. The exemption is for a period of five (5) years.

This exemption is available for this particular subset of residential property in lieu of the general residential property exemption set forth above, and is made available to further the City’s planning objectives with respect to preserving and appropriately redeveloping significant historical structures.

Residential with Three or More Separate Dwelling Units

All Eligible Property assessed as residential under Iowa Code Section 441.21(14)(a)(6) on or after January 1, 2022, having three or more separate dwelling units, is eligible to receive an exemption from taxation on the actual value added by the Qualifying Improvements. The exemption is for a period of ten (10) years. The amount of the partial exemption is equal to a percent of the actual value added by the Qualifying Improvements, determined as follows:

First Year	–	100%
Second Year	–	100%

Third Year	-	80%
Fourth Year	-	80%
Fifth Year	-	60%
Sixth Year	-	60%
Seventh Year	-	40%
Eighth Year	-	40%
Ninth Year	-	20%
Tenth Year	-	20%

This exemption is available for this particular subset of residential property in lieu of the general residential property exemption set forth above, and is made available to further the City's planning objectives with respect to ensuring the availability of a variety of housing options and promoting the development of multi-family residential properties.

Commercial or Industrial

All Eligible Property assessed as commercial or industrial is eligible to receive an exemption from taxation on the actual value added by the Qualifying Improvements. The exemption is for a period of five (5) years. The amount of the partial exemption is equal to a percent of the actual value added by the Qualifying Improvements, determined as follows:

First Year	-	80%
Second Year	-	65%
Third Year	-	45%
Fourth Year	-	25%
Fifth Year	-	10%

Multi-residential (Prior to January 1, 2022)

All Eligible Property assessed, prior to January 1, 2022, as multi-residential property if the multi-residential property consists of three or more separate living quarters with at least seventy-five percent of the space used for residential purposes, with respect to Qualifying Improvements completed prior to January 1, 2022, is eligible to receive an exemption from taxation on the actual value added by the Qualifying Improvements. The exemption is for a period of ten (10) years. The amount of the partial exemption is equal to a percent of the actual value added by the Qualifying Improvements, determined as follows:

First Year	-	80%
Second Year	-	70%
Third Year	-	60%
Fourth Year	-	50%
Fifth Year	-	40%
Sixth Year	-	40%
Seventh Year	-	30%
Eighth Year	-	30%

Ninth Year	-	20%
Tenth Year	-	20%

X. APPLICATION PROCEDURES

Property owners must file an application, on the form provided by the City, for each new exemption claimed. The application shall be filed by the property owner with the City Council by February 1 of the assessment year for which the exemption is first claimed, but not later than the year in which all improvements included in the project are first assessed for taxation, or the following two assessment years. The application shall contain, but is not limited to the following information:

- The nature of the improvement(s);
- The cost of the improvement(s);
- Estimated or actual completion date of the improvement(s); and
- The tenants that occupied the property on the date the City adopted the resolution adopting the Original Plan.

Property owners applying for an exemption on a property assessed as commercial or industrial must identify in their application which commercial/industrial exemption option they have selected.

Property owners may submit a proposal for an improvement project to the City Council to receive prior approval for eligibility for a tax exemption on the project. The City Council shall give its prior approval if the project is in conformance with this Plan for revitalization. However, if the proposal is not approved, the owner(s) may submit an amended proposal for the City Council to approve or reject. Such prior approval shall not entitle the owner(s) to exemption from taxation until the improvements have been completed and found to be qualified for the exemption under this Plan.

XI. APPLICATION REVIEW

The City Council shall, subject to review by the County Assessor, approve all applications submitted for approval if:

1. The project, as determined by the City Council, is in conformance with this Plan and all other requirements of City Code; and,
2. The project is located within the Area; and
3. The eligible improvements were made during the time the Area was so designated.

The City Council will determine which exemption is applicable to the project (if any), subject to review by the County Assessor, based upon the terms of the Plan in effect when the application is reviewed and approved by the Council.

All approved applications shall be forwarded to the County Assessor by March 1 for review, pursuant to Iowa Code Section 404.5. The County Assessor shall make a physical review of all

properties with approved applications. The County Assessor shall determine the increase in actual value for tax purposes due to the improvements and notify the applicant of the determination, which may be appealed to the local board of review pursuant to the provisions of the Iowa Code. After the initial tax exemption is granted, the County Assessor shall continue to grant the tax exemption for the time period specified on the approved application. The tax exemptions for the succeeding years shall be granted without the owner(s) having to file an application for succeeding years.

XII. OTHER SOURCES OF REVITALIZATION FUNDS

The City is not aware of a federal, state, or private grant or loan program that is permanently a source of funding for residential improvements in the Revitalization Area. However, it is not the intention of the City to prohibit the use of any other appropriate federal or state revitalization or incentive programs within the Area. The City Council encourages all property owners to investigate other public and private funding sources for improvements to real property, and to apply to those sources which are applicable to the types of improvements being proposed.

XIII. RELOCATION PROVISIONS

The City does not anticipate the displacement or relocation of any persons, families, or businesses as a result of the improvements to be made in the Revitalization Area. However, if the relocation or displacement of a qualified tenant results from a property owner's action to qualify for a tax exemption under this Plan, upon the City's verification of such relocation or displacement, the City may require the property owner to compensate the qualified tenant for at least one month's rent and actual relocation expenses. A "qualified tenant" means the legal occupant of a residential dwelling unit which is located within the designated Revitalization Area and who has occupied the same dwelling unit continuously since one year prior to the adoption of the Original Plan.

XIV. ASSESSED VALUATIONS AND OWNERS OF RECORD

A listing of the names and addresses of the owners of record for all real estate in the Revitalization Area, along with the assessed valuations stated separately for land and buildings for the real estate, as of the date the Original Plan was adopted, is too voluminous to attach but is maintained in the office of the City Clerk.

XV. TIME FRAME

Revitalization activities in the Area shall be applicable under this Plan until the City repeals the ordinance establishing the Area, or repeals or amends the exemption benefits contained in this Plan. If at any time, in the opinion of the City Council, the desired level of revitalization has been attained or economic conditions are such that the continuation of the exemption granted would cease to be of benefit to the City, then the City Council may repeal the ordinance establishing the Revitalization Area, pursuant to Section 404.7 of the *Code of Iowa*. In the event the ordinance is repealed, all previously approved exemptions shall continue until their expiration. The City reserves the right to extend, amend, terminate, or repeal the Plan and/or the ordinance to the extent allowed by law.

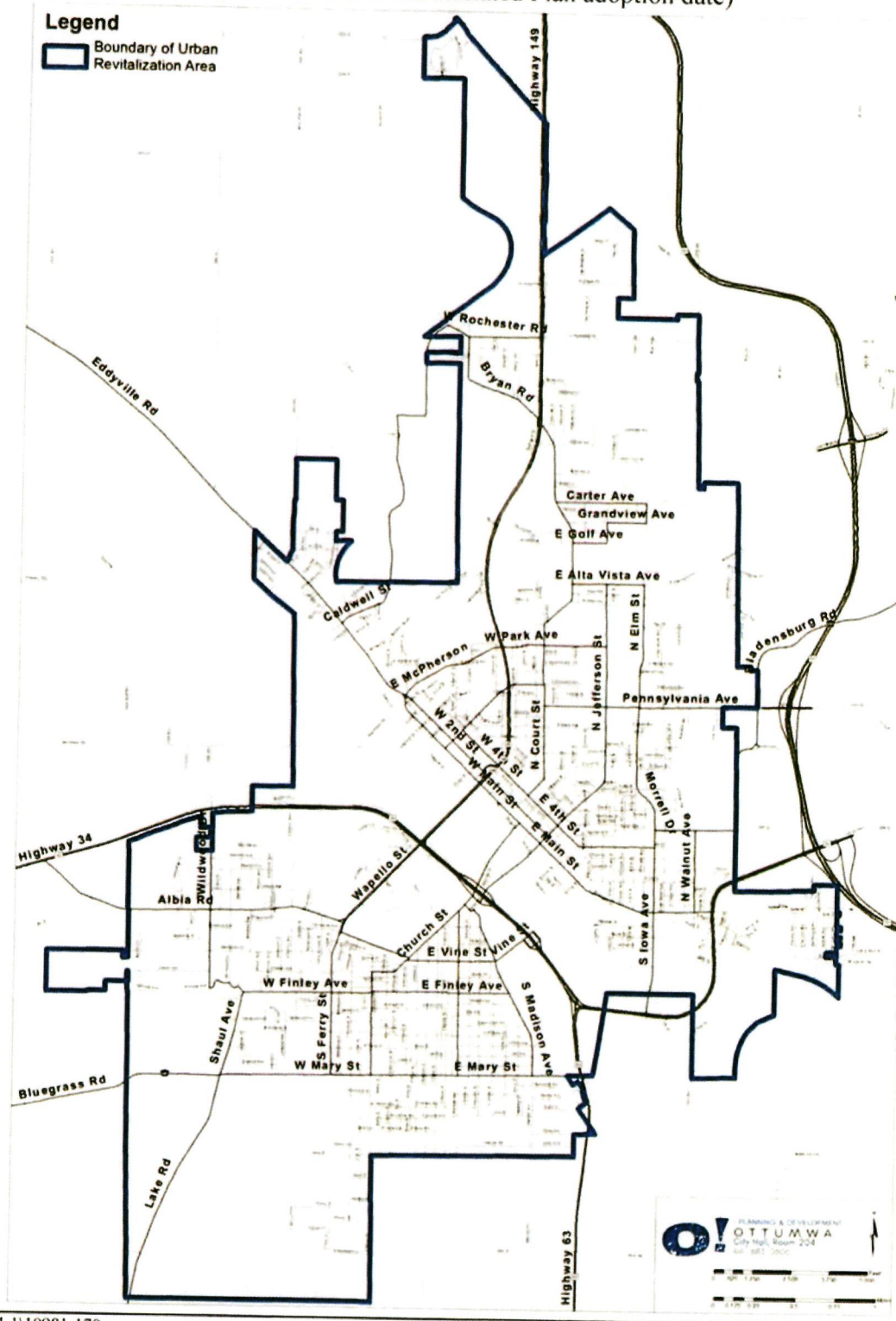
XVI. SEVERABILITY

If any part of the Amended and Restated Plan is determined to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the previously adopted Original Plan as a whole or any part of the Original Plan, prior amendments, or the Amended and Restated Plan not determined to be invalid or unconstitutional.

XVII. EFFECTIVE DATE

This Amended and Restated Plan shall be effective upon the approval of a resolution by the City Council adopting the Amended and Restated Plan ("Effective Date"). Applications submitted under this Plan following the Effective Date shall be eligible to apply only for those exemptions contained in this Amended and Restated Plan, subject to the terms of the Plan. All exemptions awarded prior to the Effective Date shall continue until their expiration.

EXHIBIT A
MAP OF REVITALIZATION AREA
 (as of Amended and Restated Plan adoption date)



01964304-1\10981-170

CERTIFICATE

STATE OF IOWA

)

) SS

COUNTY OF WAPELLO

)

I, the undersigned City Clerk of the City of Ottumwa, State of Iowa, do hereby certify that attached is a true and complete copy of the portion of the records of the City showing proceedings of the Council, and the same is a true and complete copy of the action taken by the Council with respect to the matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of meeting and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective city offices as indicated therein, that no Council vacancy existed except as may be stated in the proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of the Council hereto affixed this 21st day of December, 2021.



Christ Reinhard
City Clerk, City of Ottumwa, State of Iowa

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of : Dec 21, 2021

Planning & Development
Department

Zach Simonson

Prepared By

Zach Simonson

Department Head



City Administrator Approval

AGENDA TITLE: Resolution No. 224-2021: A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND SUBMIT THE COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION FOR THE OTTUMWA NORTH MARKET STREET FAÇADE IMPROVEMENT PROJECT AND, IF FUNDED, TO SIGN ALL CONTRACT RELATED DOCUMENTS.

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution No. 224-2021

DISCUSSION: The Iowa Economic Development Authority is seeking projects on a first-come-first-serve basis for the COVID-19 Community Development Block Grant Program. The IEDA CV Facade Program provides grants for up to \$50 thousand per facade for projects in COVID-19-impacted commercial districts, such as downtown Ottumwa. Staff has identified 105-107 and 114-118 N Market as a suitable project and the property

Source of Funds: 174-437

Budgeted Item: Budget Amendment Needed:

owners are invested in contributing their share. Area 15 Regional Planning has provided grant assistance including preparing the application which has been included in the Council packet. This resolution authorizes the staff to submit the application.

The application has a total budget of \$446,000. Staff proposes providing match through the Facade program. The property owners would contribute \$101,000 and the grant would provide \$50 thousand per facade.

Community Development and Housing Needs Assessment

December 21, 2021 | Ottumwa City Hall

Major Housing and Community Development Needs of Local LMI Persons

1. Strengthen neighborhoods and create healthy, safe, and affordable housing environments.
2. Update and enforce zoning, building, and nuisance codes.
3. Continued improvements to utility systems including water treatment and distribution, sanitary sewer collection and treatment, stormwater system separation, and broadband internet.
4. Economic development, including the creation/retention of living wage jobs.
5. Downtown revitalization to create vibrant downtown commercial districts along Main Street and the Oxbow, including high quality upper-story housing opportunities.
6. Improve connectivity of multi-modal trail system to encourage walking and bicycling for transportation.

Other Community Development and Housing Needs

1. Continue to promote economic development and attract new local businesses in the City.
2. Road and sidewalk improvements to strengthen neighborhoods and create healthy, safe environments in affordable neighborhoods.
3. Continue to support infill housing activity with grant funds and tax abatement programs.
4. Provide trails for walking and biking to increase connectivity.
5. Utilize vacant land and facilities for housing and/or mixed-use development.

Planned or Potential Activities to Address Housing and Community Needs

1. Carry out recommendations outlined in the Our Ottumwa 2020 Comprehensive Plan, specifically identified in Chapter 13: Implementation and Chapter 14: Amendments.
 - a. Housing Goals
 - i. Maintain and improve the existing residential neighborhoods
 - ii. Foster investment and growth in new housing in all categories and prices
 - b. Quality of Life Goals
 - i. Continue to enhance and improve the Downtown and Riverfront
 - ii. Maintain and expand the existing parks and open space system, recreation programs, and trails network
 - iii. Develop additional library and community meeting space to serve the changing needs of Ottumwa
 - iv. Protect and enhance the community's natural resources
 - v. Improve the City's sanitary sewer infrastructure
 - vi. Preserve the historical and cultural heritage of Ottumwa
 - vii. Promote community pride and stewardship of place

c. Growth Goals

- i. Secure an economic leadership role for Ottumwa in its seven-county region
- ii. Focus on new industrial and commercial development to grow the community's tax base
- iii. Retain quality employers and make Ottumwa their first choice for any business expansion
- iv. Grow and support the community's labor pool
- v. Update the City Zoning and Subdivision regulations to reflect the goals and recommendations of the Comprehensive Plan
- vi. Complete strategic annexations to ensure an adequate supply of land for future development, especially around the airport and highway interchanges
- vii. Continue to partner with the Legacy Foundation and Indian Hills Community College to support job training and business development / incubation
- viii. Invest in Airport infrastructure for commercial and industrial development
- ix. Seek opportunities to make improvements that will create long-term savings in costs and energy use
- x. Promote a viable and economically resilient Quincy Place area, with updated tenants, improved pedestrian appeal, and a broader mix of uses
- xi. Develop and expand upon arts & cultural local economic development opportunities for Ottumwa residents and businesses

2. Carry out recommendations outlined in the update of the 2021 Ottumwa Housing Plan:

- a. Annually identify and target neighborhoods for cleanup assistance, code enforcement, nuisance abatement and demolition of dilapidated structures.
- b. Improve community outreach and communication regarding home improvement and housing assistance programs available to Ottumwa residents and residential developers.
- c. Create an enhanced program to acquire and award blighted or vacant residential lots for in-fill development.
- d. Develop a tiered incentives program and policy to support new residential construction: Type, size, and price point.
- e. Continue to seek partnerships with the development community to build new housing.
- f. Promote the development of accessible, senior housing across the continuum of care and accessible housing for people with disabilities.

RESOLUTION NO. 224-2021

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND SUBMIT THE COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION FOR THE OTTUMWA NORTH MARKET STREET FAÇADE IMPROVEMENT PROJECT AND, IF FUNDED, TO SIGN ALL CONTRACT RELATED DOCUMENTS.

WHEREAS, the City Council has determined that downtown revitalization is a high priority for the City of Ottumwa; and

WHEREAS, the target area was determined to be blighted by Resolution No. 223-2021 and, if funded, the project will eliminate blighted conditions caused by physical deterioration of façades; and

WHEREAS, the scope of work will be consistent with Ottumwa Municipal Code Section 10.9, the Commercial Property Maintenance Code, adopted by Ordinance 3042-2012; and

WHEREAS, the City Council of Ottumwa, Iowa, intends to submit an application requesting assistance from the Iowa Economic Development Authority (IEDA) through the Community Development Block Grant (CDBG) COVID-19 (CV) commercial façade improvement fund not to exceed \$250,000; and

WHEREAS, local match will be provided in the amount of \$95,000 from the City through an allocation in the Downtown Development Program with additional assistance from the participating property owners in the amount of \$101,000 for a total project of \$446,000; and

WHEREAS, the CDBG CARES Program notice requires that grantees ensure Duplication of Benefits (DOB) does not occur for CDBG-CV funds; and

WHEREAS, the CDBG CARES Program notice requires that all CDBG-CV grantees adopt DOB policies and procedures;

WHEREAS, the IEDA has developed "Community Development Block Grant Coronavirus (CDBG-CV) Duplication of Benefits Policies and Procedures" for non-entitlement communities to utilize;

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT:

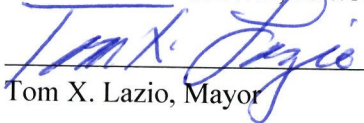
The Mayor of the City of Ottumwa is authorized to sign all documents related to the CDBG Application to the COVID-19 commercial façade improvements fund, and, if funded, is hereby authorized to sign all grant related contract documents; and furthermore, the City does hereby commit \$95,000 from Capital Improvement Fund.

BE IT FURTHER RESOLVED THAT, the City adopts IEDA's Duplication of Benefits Policies and Procedures.

BE IT FURTHER RESOLVED THAT, the City has authorized the Area 15 Regional Planning Commission (RPC) to submit the CDBG-COVID 19 application and intends to employ the services of Area 15 RPC for grant administration services, if awarded.


APPROVED, PASSED, AND ADOPTED this 21st day of December 2021.

CITY OF OTTUMWA, IOWA



Tom X. Lazio, Mayor

ATTEST:



Christina Reinhard, City Clerk



CONTRACT FOR GRANT APPLICATION ASSISTANCE

This contract for grant application assistance has been agreed to by and between the **City of Ottumwa, Iowa**, hereinafter referred to as the CITY, and the **Area 15 Regional Planning Commission**, hereinafter referred to as the RPC.

WHEREAS, the CITY wishes to prepare a Community Development Block Grant (CDBG) Application to the Iowa Economic Development Authority (IEDA) COVID-19 (CV) Program; and

WHEREAS, the CITY wishes to contract with the RPC to provide the technical assistance required to carry out the grant application services; and

WHEREAS, the CITY recognizes that the completion of an environmental review prior to application submittal provides for a more competitive grant proposal; and

WHEREAS, the CITY understands that the RPC will incur substantial expense in providing technical assistance and the CITY enters into this contract with the understanding that it will enter into a further grant administration contract with the RPC if the CDBG Application is funded or it will reimburse the RPC for grant application assistance services if grant administration is awarded to another provider.

NOW, THEREFORE, BE IT RESOLVED that the parties do mutually agree as follows:

- A. TECHNICAL ASSISTANCE STAFF: The RPC represents that it has, or shall acquire, all personnel necessary to perform the services described in the Scope of Services.
- B. SCOPE OF SERVICES: The RPC shall assist the CITY with all activities relating to the preparation and submission of the CDBG Application, including:
1. The RPC shall assist the CITY with the preparation and submission of the CDBG Application.
 2. The RPC shall assist the CITY in shall facilitate discussion between all project stakeholders, including but not limited to the CITY, property owners, and IEDA.
 3. The RPC staff shall assist the CITY in arranging, and will attend, all public hearings required to complete and submit the CDBG Application.
 4. The RPC shall assist the CITY in completing a slum and blight survey and will prepare the slum and blight resolution, as required by the CDBG Application.
 5. The RPC shall complete prepare an Environmental Review Record (ERR), which will evaluate the environmental impacts of the proposed project and will be developed in a format satisfying the pre-application directives provided by IEDA.
- C. COMPENSATION:
1. The RPC shall complete activities #4-5 in the Scope of Services for a lump-sum total of two thousand five hundred dollars (\$2,500). Payment shall be made no later than thirty (30) days after receipt of invoice for services, unless other terms are agreed to by both parties and attached to this contract.
 2. If the CDBG Application IS NOT funded, the CITY will pay no compensation to the RPC for grant application services, activities #1-3 in the Scope of Services.
 3. If the CDBG Application IS funded, the CITY agrees to either:
 - A.) enter into a further contract with the RPC for administration of the CDBG grant at a cost not to exceed the administrative costs as identified in the CDBG grant application, with no compensation payable to the RPC for grant application services; **OR**

B.) pay the RPC a fee of five thousand dollars (\$5,000) as reimbursement for activities #1-3 as provided in the Scope of Services if the CITY chooses to solicit proposals for grant administration services and awards a grant administration contract to a provider other than the RPC.

D. CONTRACT DURATION: This contract shall be in effect for a period of eighteen (18) months from the date of signature, or until the CDBG Application is funded and the grant administration contract has been executed, whichever occurs last. If the application is not funded, the RPC will complete any necessary revisions to the ERR for no more than one CDBG application resubmittal. Any necessary revisions will be carried out at no additional cost, assuming there are no substantial changes in the scope of work. Either the CITY or the RPC shall have the right to terminate this contract and the CDBG full application process upon ten (10) days written notice.

E. INDEMNIFICATION: The CITY shall hold the RPC, its officers and employees, harmless from any and all claims losses, damages or liability whatsoever resulting from or arising out of this contract or the project to which it pertains.

CITY OF OTTUMWA, IOWA

AREA 15 REGIONAL PLANNING COMMISSION

By: *Tom X. Lajoie*
Title: MAYOR

CHAIR, RPC BOARD

12-21-21
DATE

DATE

ATTEST:

Christ Rhoad
CITY CLERK



FEDERAL ASSURANCES SIGNATURE PAGE

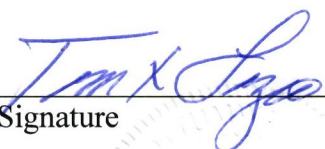
I, Tom X. Lazio, (applicant official) hereby certify that in carrying out the activities funded under the CDBG Program, the City of Ottumwa:

- A. will minimize displacement of persons as a result of such activities;
- B. will conduct and administer the program in conformity with Public Law 88-352 (Title VI of the Civil Rights Act of 1964), and Public Law 90-284 (Title VIII of the Civil Rights Act of 19687) and will affirmatively further fair housing);
- C. will provide for opportunities for citizen participation, hearings, and access to information with respect to our community development program comparable to the requirements found under sections 104(a)(2) and 104(a)(3) of Title I of the Housing and Community Development Act of 1975 as amended through 1987; and
- D. will not attempt to recover any capital costs of public improvements assisted in whole or part under the CDBG Program by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (i) funds received under the CDBG Program are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under Public Law 93-383, as amended, or (ii) for purposes of assessing any amount against properties owned and occupied by persons of low and moderate income who are not of very low income, the city/county has certified to the State that it lacks sufficient funds received under the CDBG Program to comply with the requirements of clause (i) above.

I also certify that to the best of my knowledge and belief, data in the application is true and correct, including commitment of local resources; the document has been duly authorized by the governing body of the applicant; and the applicant will comply with all applicable federal and state requirements, including the following, if assistance is approved:

- A. Civil Rights Acts;
- B. Housing and Community Development Acts of 1974, as amended;
- C. Age Discrimination Act of 1975;
- D. Section 504 of the Rehabilitation Act of 1973;
- E. Davis-Bacon Act, as amended, where applicable under Section 110 of the Housing and Community Development Act of 1974, as amended; Contract Work Hours and Safety Standards Act; the Copeland Anti-Kickback Act; the Department of Defense Reauthorization Act of 1986 and the Fair Labor Standards Act.
- F. National Environmental Policy Act of 1969 and 24 CFR 58 (Environmental Review).
- G. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;
- H. State of Iowa Citizen Participation Plan;
- I. Lead-based Paint Poisoning Prevention Act;
- J. Residential Anti-displacement and Relocation Assistance Plan;
- K. Government-wide Restriction on Lobbying and the Hatch Act; and
- L. Prohibition on the Use of Excessive Force.

Tom X. Lazio, Mayor
Typed Name of Applicant Official


Signature

12.21.2021
Date

Christina Reinhard, City Clerk
Typed Name of Person Attesting


Signature

12.21.2021
Date

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 11/30/2018)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information

Indicate whether this is an Initial Report or an Update Report

1. Applicant/Recipient Name, Address, and Phone (include area code): City of Ottumwa 105 E. Third St., Ottumwa, IA 52501 (641) 683-0600		2. Social Security Number or Employer ID Number: 42-6005094
3. HUD Program Name Community Development Block Grant - COVID-19		4. Amount of HUD Assistance Requested/Received \$250,000
5. State the name and location (street address, City and State) of the project or activity: North Market Street Facade Project, 105 E. Third St., Ottumwa, IA 52501		

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3). <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of \$200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9 <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No.
--	---

If you answered "No" to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form. **However,** you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(Note: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

- All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
- any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

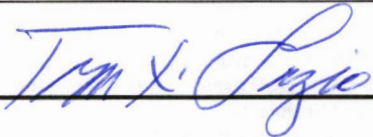
Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity (\$ and %)

(Note: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation.

I certify that this information is true and complete.

Signature: 	Date: (mm/dd/yyyy) 12/21/2021
---	----------------------------------

X

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is **voluntary**. HUD is **authorized to collect this information under the Housing and Community Development Act of 1987 42 U.S.C.3543 (a)**. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:

- (1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of \$200,000 during the during the fiscal year;
- (2) You are updating a prior report as discussed below; or
- (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. Update reports (filed by "Recipients" of HUD Assistance):

General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. **NOTE:** In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to **either** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD **and any other source** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need

not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.



SITE MAP

NORTH



HISTORICAL PHOTOGRAPHS



EXISTING PHOTOGRAPH

PROVIDE NEW METAL COPING

TUCKPOINT 100% OF HISTORIC FACADE BRICK.

PROVIDE NEW EXTENDED FRAME AND MOULDING.

PROVIDE NEW CEMENT BOARD TRIM & PANEL.

PROVIDE NEW LIGHTS (2 TOTAL).

PROVIDE NEW ALUMN. STOREFRONT DOORS (2 TOTAL)

REMOVE EXISTING SLIP COVER.

REMOVE EXISTING DOORS.



PROPOSED RENDERING

OWNER'S NAME: _____
 SIGNATURE: _____
 DATE: _____

OWNER'S APPROVAL OF DESIGN AT THIS TIME. SMALL ADJUSTMENTS CAN BE MADE AT A LATER DATE. (COLORS ARE NOT INCLUDED IN THIS SIGNOFF).

105-107 N MARKET ST.

CURTIS ARCHITECTURE & DESIGN PC

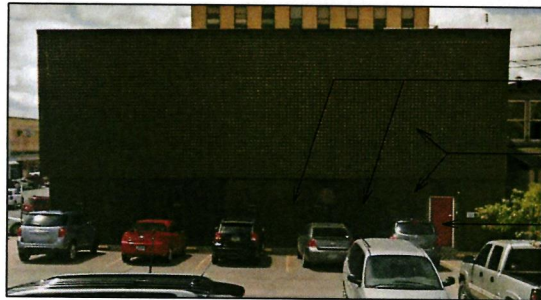
NOT FOR CONSTRUCTION
 FOR GRANT APPLICATION ONLY
 8/10/2021



SITE MAP



HISTORICAL PHOTOGRAPHS



EXISTING PHOTOGRAPH

PROVIDE NEW METAL COPING

TUCKPOINT & REPAINT 100% OF HISTORIC FACADE BRICK.

PROVIDE NEW LOWER LEVEL WINDOWS AND SILLS
PROVIDE NEW INSULATED DOOR.



PROPOSED RENDERING

REMOVE EXISTING LOWER LEVEL WINDOWS (2).

REMOVE EXISTING SLIP COVERS.

REMOVE EXISTING DOORS.

105-107 N MARKET ST.

OWNER'S NAME: _____
SIGNATURE: _____
DATE: _____

OWNER'S APPROVAL OF DESIGN AT THIS TIME. SMALL ADJUSTMENTS CAN BE MADE AT A LATER DATE. (COLORS ARE NOT INCLUDED IN THIS SIGNOFF).



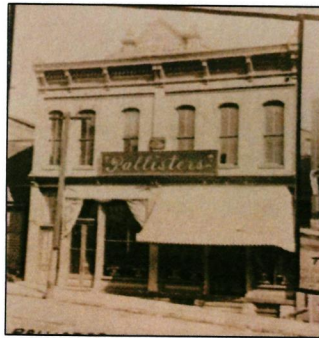
CURTIS ARCHITECTURE & DESIGN PC

NOT FOR CONSTRUCTION
FOR GRANT APPLICATION ONLY
8/10/2021

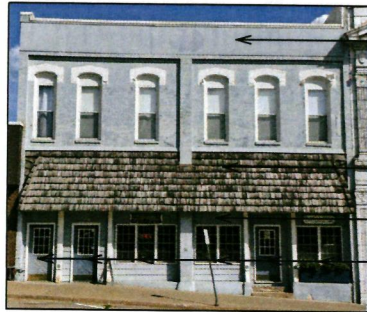


SITE MAP

NORTH



HISTORICAL PHOTOGRAPH



EXISTING PHOTOGRAPH

REMOVE EXISTING PLYWOOD.

REMOVE EXISTING OVERHANG ROOF.

REMOVE EXISTING SIDING.

REMOVE EXISTING WINDOWS & DOOR.



PROPOSED RENDERING

PROVIDE NEW METAL COPING

TUCKPOINT & REPAIR 100% OF FACADE BRICK.

SCRAPE & REPAIR EYEBROWS.

TUCKPOINT & REPAIR BRICK SILLS.

SCRAPE & REPAIR STOREFRONT CORNICE & COLUMNS.

SCRAPE & REPAIR DECORATIVE TRANSOMS. PROVIDE BULKHEAD BEHIND AS NECESSARY.

PROVIDE NEW ALUM. INSULATED STOREFRONT DOORS & WINDOWS

PROVIDE NEW UPPER LEVEL ENTRY DOOR & TRANSOM.

PROVIDE NEW KNEE WALLS W/ CEMENT BOARD TRIM & PANEL.

REPAIR, SCRAPE & REPAIR CONCRETE BASE.

114-118 N MARKET ST.

OWNER'S NAME: _____
SIGNATURE: _____
DATE: _____

OWNER'S APPROVAL OF DESIGN AT THIS TIME. SMALL ADJUSTMENTS CAN BE MADE AT A LATER DATE. (COLORS ARE NOT INCLUDED IN THIS SIGNOFF).

 CURTIS ARCHITECTURE & DESIGN PC

NOT FOR CONSTRUCTION
FOR GRANT APPLICATION ONLY
9/28/2021

Ottumwa North Market St. Façade Improvement Project Overall Cost Projection

Building (Addresses)	Construction Cost	Architect Fee	CDBG Admin.	Misc. Fees	Total Cost	CDBG Amount	Local Total	Owner Share	%	City Share	%
105-107 N Market St	\$ 220,000.00	\$ 26,400.00	\$ 12,000.00	\$ 4,500.00	\$ 262,900.00	\$ 150,000.00	\$ 112,900.00	\$ 55,900.00	25.4%	\$ 57,000.00	21.7%
114-118 N Market St	\$ 155,000.00	\$ 18,600.00	\$ 8,000.00	\$ 1,500.00	\$ 183,100.00	\$ 100,000.00	\$ 83,100.00	\$ 45,100.00	29.1%	\$ 38,000.00	20.8%
TOTAL	\$ 375,000.00	\$ 45,000.00	\$ 20,000.00	\$ 6,000.00	\$ 446,000.00	\$ 250,000.00	\$ 196,000.00	\$ 101,000.00		\$ 95,000.00	
		12%	8%		100%	56.1%	43.9%	^ of Constr.	26.9%	21.3%	
		Of Constr.	Of Grant			of Total	of Total	of Total >	22.6%	of Total	

Breakdown of 105-107 Cost Estimates

105-107 N. Market St.	Construction Cost	Architect Fee	CDBG Admin.	Misc. Fees	Total Cost	CDBG Amount
2 Front Façades	\$ 77,300.00	\$ 9,276.00	\$ 8,000.00	\$ 3,000.00	\$ 97,576.00	\$ 100,000.00
1 Side Façade	\$ 142,700.00	\$ 17,124.00	\$ 4,000.00	\$ 1,500.00	\$ 165,324.00	\$ 50,000.00
TOTAL	\$ 220,000.00	\$ 26,400.00	\$ 12,000.00	\$ 4,500.00	\$ 262,900.00	\$ 150,000.00

State of Iowa

Community Development Block Grant Coronavirus (CDBG-CV)

Duplication of Benefits Policies and Procedures

I - INTRODUCTION

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136) (CARES Act) was signed into law, making CDBG coronavirus (CDBG-CV) funds available to the U.S. Department of Housing and Urban Development (HUD) in addition to individuals, business, education, and other federal agencies as part of the \$2.2 trillion bill. CDBG-CV dollars were allocated to current CDBG grantees with the intention to help communities fund the additional costs of the COVID-19 (coronavirus) pandemic.

For Fiscal Year 2020, HUD allocated \$31,367,906 of CDBG-CV funds to the State of Iowa non-entitlement areas through the Iowa Economic Development Authority (IEDA).

Unlike annual CDBG allocations, all CDBG-CV funds must support activities that “prevent, prepare for, and respond to coronavirus”. Specific regulations for CDBG and CDBG-CV funds used for this purpose are detailed in the Federal Register *Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs*. (FR-6218-N-01 “CDBG CARES Program Notice”)

The CDBG CARES Program Notice requires that grantees ensure that Duplication of Benefits (DOB) does not occur for CDBG-CV and applicable Fiscal Year 2019 and 2020 CDBG funds, including the creation of policies and procedures.

The Iowa IEDA Accounting and Community Investments teams are committed to the effective management of CDBG and CDBG-CV. This document establishes a set of policies and procedures to prevent DOB and IEDA will be updated periodically to incorporate changes in the CDBG-CV Grant program.

CARES ACT REQUIREMENTS

The CARES Act requires HUD to ensure that there are adequate procedures in place to prevent any duplication of benefits as required by federal regulations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”). The Stafford Act says that grantees must analyze assistance to prevent a federal grant from paying costs that have already been paid for, or will be paid for, by another Federal program, insurance, or other sources.

To comply with the CARES and Stafford Acts, all CDBG-CV grantees, including the State of Iowa and their unit of local government (UGLG) and other grantees, are required to develop and maintain adequate policies and procedures to prevent DOB.

Preventing DOB generally means that grantees may not use CDBG-CV funds for costs already fully covered by other programs.

The CARES Act requires that all CDBG-CV grantee DOB policies and procedures address (individually or collectively) each activity or program.

These CDBG-CV DOB policies and procedures also apply to the use of fiscal year 2019 and 2020 formula CDBG funds for activities to prevent, prepare for, and respond to coronavirus.

III.B.9. Duplication of Benefits

The CARES Act requires HUD to ensure that there are adequate procedures in place to prevent any duplication of benefits as required by section 312 of the Stafford Act, as amended by section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115–254; 42 U.S.C. 5121 et seq.).

A grantee is required to develop and maintain adequate procedures to prevent a duplication of benefits that address (individually or collectively) each activity or program. A grantee’s policies and procedures are not adequate unless they include, at a minimum: (1) A requirement that any person or entity receiving CDBG–CV assistance (including subrecipients and direct beneficiaries) must agree to repay assistance that is determined to be duplicative; and (2) a method of assessing whether the use of CDBG–CV funds will duplicate financial assistance that is already received or is likely to be received by acting reasonably to evaluate need and the resources available to meet that need. CDBG CARES Program Notice

ENABLING LEGISLATION

CARES ACT

The Coronavirus Aid, Relief, and Economic Security Act CARES Act was signed on March 27, 2020 as Public Law 116-136. The act allows HUD to modify some CDBG program rules and authorizes the Secretary of HUD to grant waivers and alternative requirements to 24 CFR 570.481(a)(2).

Prevention of DOB is a requirement per the CARES Act and corresponding HUD Federal Register Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs. (FR–6218–N–01)

Grantees must prevent Duplication of Benefits as required by Section 312 of the Stafford Act, as amended by section 1210 of the Disaster Recovery Reform Act of 2018.

STAFFORD ACT

The COVID-19 pandemic is an emergency of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207, as amended (the “Stafford Act”).

DOB is regulated by Section 312 of the Stafford Act, as amended by section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 2 U.S.C. 5121 et seq.).

The Stafford Act prohibits recipients of federal disaster grants from receiving financial assistance under any other program, or from insurance or any other source, for the same disaster loss.

DRRA

The Disaster Recovery Reform Act of 2018 (DRRA) Public Law No: 115-254 amending the Stafford Act amends DOB in the Stafford Act for disasters occurring between 2016 and 2021 and no longer applies to any DOB analysis after October 5, 2023. by allowing loans to be considered non-duplicative.

The DRRA includes certain exceptions for subsidized loans in the calculation of DOB. Specific questions related to the applicability of subsidized loans for DOB calculation should be directed to IEDA staff.

UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

2 CFR Part 200 requires that costs for federal grants must “be **necessary and reasonable**” and applies to all CDBG and CDBG-CV funding. These requirements prohibit using a federal grant for costs that have already been or will be paid from another source, and that the costs are considered reasonable if they do not “exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.”

Within DOB policies and procedures, grantees must verify that additional funding will not duplicate payments, and that the costs are both accurate and within a market-rate or practical standard for specific work or products. When evaluating costs, grantees are encouraged to consider questions such as, “Is there a need for the assistance? Is the cost necessary for an eligible activity? Does it meet program standards?”

Stafford Act

Sec. 312. Duplication of Benefits (42 U.S.C. 5155)

(a) General Prohibition –

The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

II - ROLES AND RESPONSIBILITIES

IEDA

Iowa Economic Development Authority (IEDA), also referred to as “the state”, is the recipient of State CDBG and CDBG-CV funding from HUD that is distributed to both entitlement and non-entitlement units of government in order to prevent, prepare for and respond to coronavirus. The structure and process of distribution is summarized in the state’s CDBG Method of Distribution.

IEDA is responsible for ensuring that entitlement and non-entitlement units of government that receive CDBG or CDBG-CV funds to prevent, prepare for, and respond to coronavirus comply with this DOB Policy and Procedure. IEDA is responsible for the administration, revision, interpretation, and application of this document.

ENTITLEMENTS

Entitlement jurisdictions receive direct CDBG and CDBG-CV allocations from HUD but may also receive additional funds from IEDA.

HUD Entitlement entities may create their own DOB policies and procedures or adopt IEDA’s DOB policies and procedures for the implementation of CDBG and CDBG-CV funds. If the entitlement unit of government uses its own DOB policies and procedures, it must clearly define how the entity will research potential DOB, calculate DOB, and collect all DOB documentation for each program. Entitlement entities’ DOB policies and procedures must be approved by IEDA before funds will be allocated.

NON-ENTITLEMENTS (UGLG)

Non-Entitlement jurisdictions (also referred to as “Units of General Local Government” (UGLG)) apply to IEDA for CDBG and CDBG-CV funding. Funding for non-entitlement entities may be administered by the region’s Council of Government (COG) or a qualified entity as determined by IEDA.

IEDA’s DOB policies and procedures must be accepted and utilized by non-entitlement entities, even if policies and procedures will be carried out by a regional council of governments (COG) or other subrecipient. The non-entitlement entity procedures are provided in this document.

Subgrantees can be entitlements or non-entitlements, or other organizations, who receive CDBG or CDBG-CV directly from IEDA.

Recipient Organizations run programs using CDBG or CDBG-CV funds for Grantees. These are often non-profit organizations but can be any organization type that is eligible to receive HUD funding.

Beneficiaries directly receive CDBG-funded goods and services that meet a national objective. Beneficiaries may be individuals or households/families.

METHOD OF DISTRIBUTION

IEDA is required to share Method of Distribution (MOD) information with potential applicants. *24 CFR 91.320(k)(1)(i); 24 CFR 570.490(a)(2).*

IEDA took potential DOB into account in the creation of eligible activities to prevent, prepare for, and respond to coronavirus within the CDBG-CV MOD. The MOD for CDBG-CV describes the program types that are eligible for CDBG-CV funding from IEDA, in order of priority. Each activity type will have different types of potential DOB sources and risks.

ENTITLEMENTS

Iowa entitlement jurisdictions submitted applications to IEDA stating what activities would be funded by CDBG-CV. IEDA's review considers concurrent CDBG-CV funding given directly to entitlements by HUD when analyzing potential DOB.

NON-ENTITLEMENTS

IEDA will request applications and fund only programs described in the MOD. UGLGs must look for potential DOB based on the funded program(s).

The State's Method of Distribution is available here: [\(INSERT HYPERLINK\)](#)

III DUPLICATION OF BENEFITS

DEFINITION

Duplication of Benefits (DOB) occurs when Federal financial assistance is provided to a person or entity through a program to address losses resulting from a Federally-declared emergency or disaster, and the person or entity has received (or would receive, by acting reasonably to obtain available assistance) financial assistance for the same costs from any other source.

A Duplication of Benefits occurs when:

- A Beneficiary receives assistance, and
- The assistance is from multiple sources (i.e. private insurance, SBA, PPP, non-profits, City, State, etc.), and
- The assistance amount exceeds the total need for a specific purpose.

DOB is considered for the program, family, or individual beneficiary receiving financial assistance. In other words, DOB is considered for those incurring the costs paid by CDBG funding, not necessarily those distributing or administering funds.

TYPES OF ASSISTANCE

Assistance considered to be a potential DOB includes:

- Cash awards
- Insurance proceeds
- Grants
- Awards or assistance under local, state or federal programs, and private or nonprofit organizations
- Other HUD grants (e.g. HOME, ESG, ESG-CV, HOPWA)

Assistance not considered to be a potential DOB includes:

- Personal assets such as money in a checking or savings account (excluding insurance proceeds or other assistance deposited into the applicant's account)
- Declined or cancelled loans
- Private loans
Forgivable /government-subsidized loans (provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency). Note: CDBG-CV funds do not need to be used to pay down SBA loans
- Unemployment benefits
- Retirement accounts
- Credit cards and lines of credit
- In-kind donations (although these non-cash contributions known to the grantee reduce total need)
- Assistance provided for a different purpose than the CDBG-eligible activity, or a general, non-specific purpose (e.g., "disaster relief/recovery") and not used for the same purpose
- Funds received for a different disaster declaration other than the coronavirus pandemic

- Funds not available to the applicant, like when insurance funds must be used for a forced mortgage payoff

Potential DOB will vary by program type. Subgrantees in Iowa should pay special attention to the following potential sources of coronavirus pandemic benefits:

<https://files.hudexchange.info/resources/documents/CARES-Act-Programs-CDBG-Awareness-Duplication-Benefits.pdf>

ORDER OF ASSISTANCE

“Order of Assistance” analysis for DOB does not apply to CDBG-CV funds. Program funds can be awarded to beneficiary regardless of other awards or assistance sought by the beneficiary as long as a need for assistance exists and the CDBG-CV award does not or will not duplicate any other form of eligible assistance.

DOB RISK

The risk of DOB occurring varies by program activity and application process. For example, a small business grant program that will approve \$30,000 grants for job retention, in a period of time when many businesses are eligible for other sources of assistance, will require more scrutiny and documentation than a public services program using \$8,000 of CDBG-CV for PPE to be used by employees in a senior center.

The level of risk of DOB informs the level of required documentation. For example, low-risk public services may solely require a self-certification that the beneficiary did not receive duplicative benefits. On the contrary, business or rental assistance, may require more detailed analysis and evaluation of potential DOB.

To comply with the federal prohibition against the duplication of disaster benefits, Grantees must ensure that all DOB policies and procedures are followed within recipient organizations and/or administering agencies. Monitoring, training, and other assistance may be needed by recipient organizations, with particular attention on programs with a high risk of DOB.

DOB MONITORING/REVIEW

Subgrantees are responsible for monitoring and overseeing programs to ensure compliance with all program rules and regulations, including DOB.

In addition, IEDA will monitor both entitlement and non-entitlement entities for DOB compliance in addition to typical CDBG or CDBG-CV program monitoring. Programs with a higher risk of DOB or higher individual funding amounts will have a higher amount of examination by IEDA. The level of monitoring is defined in each subgrantee’s grant agreement with IEDA.

NON-ENTITLEMENT DESK MONITORING REQUIREMENTS

For programs with a low risk of DOB, IEDA will examine at least **5% of all intake and DOB calculation documentation** chosen at random. These will typically be public service activities.

For programs that award higher amounts of funding per beneficiary and/or have a high risk of DOB, IEDA will examine at least **20% of assistance for DOB documentation** at random.

IV – IEDA DOB PROCEDURES

All IEDA CDBG-CV subgrantees must have a DOB policy that analyzes and documents that subrecipients, assisted individuals or families, businesses, and other entities that receive CDBG-CV assistance have not previously received, or will not receive, duplicative assistance from another source before CDBG-CV assistance is provided.

Entitlement subgrantees may utilize their own DOB policies and procedures OR adopt IEDA's DOB policies and procedures. If entitlement subgrantees will use their own DOB policies and procedures, these policies and procedures must be submitted to IEDA prior to the allocation of funding.

Non-entitlement subgrantees must accept and utilize IEDA's policies and procedures for DOB.

All subgrantees will:

- Identify and calculate the total DOB
- Identify the additional assistance received for the same purpose/activity
- Recapture funds if necessary

APPENDIX 1: IEDA DOB PROCEDURES

Required to be utilized by all non-entitlement subgrantees

Subgrantees must show a duplication of benefits analysis before providing CDBG-CV assistance and should only pay for unmet needs/needs not met by other sources of assistance. Subgrantees are required to maintain adequate documentation justifying the compliance with these DOB procedures in accordance with all other recordkeeping and documentation requirements.

INFORMATION SHARING

Due to the high volume of federal, state, local and private programs and activities responding to the impact of COVID-19 within the State of Iowa, all programs must include an information sharing agreement (*Consent to Release Form*) to allow the subgrantee to share any DOB-related data with other subgrantees, entitlement jurisdictions, and the State to protect against DOB from occurring.

DOB RISK

Based on the specific program(s) carried out by a subgrantee, they will be responsible for different levels of protection against DOB. The State of Iowa has identified activities as either being “high” or “low” risk for DOB. High risk activities may include activities such as business or rental assistance and low activities may include activities such as foodbanks or other public services.

Beneficiaries of all high-risk activities are required to execute a DOB Certification and Subrogation Agreement with the beneficiary.

All applicant information will be collected by grantees and provided to IEDA upon request.

DOB INFORMATION SHOULD BE PROVIDED TO IEDA AS INSTRUCTED IN IOWAGRANTS.GOV. DOB EVALUATION PROCESS

STEP 1: REVIEW LOCAL, STATE, FEDERAL ASSISTANCE PROGRAMS

Research potentially duplicative funding sources on a local, program level to manage DOB risk. Maintain a list of potential duplicative funding sources and structure program applications in a manner to identify potential duplicative sources.

Subgrantees should cross reference applications and program guidelines for each program against this list of potential sources of DOB to ensure that the program is adequately monitoring for instances of DOB.

IEDA will make available on its website a list of potential duplication of benefits already identified.

STEP 2: CERTIFICATION BY BENEFICIARY

Each beneficiary of CDBG-CV funds will list other sources of assistance and sign a DOB certification form as well as *Consent to Release* form/certification. Forms may vary by program type and may be combined with existing certification forms for CDBG.

High risk activities require that the beneficiary also sign a subrogation agreement.

STEP 3: REVIEW OF COST REASONABLENESS

Subgrantees must evaluate costs and determine that they are “reasonable” and “necessary” per 2 CFR 200. Proposed costs must be accurate and within a market-rate or practical standard for specific work or products. They must also be a necessary component to the core project.

STEP 4: ASSESS THE AMOUNT OF NEED BASED ON THE TOTAL COST FOR THE ACTIVITY

Identification of total need (e.g. total cost)

STEP 5: CALCULATION OF ADDITIONAL ASSISTANCE

The subgrantee determines which financial assistance sources it must exclude as duplicative and non-duplicative for the DOB calculation. Subgrantees must exclude amounts that are:

- Provided for a different purpose; or
- Provided for the same purpose (eligible activity), but for a different, allowable use (cost).

STEP 6: CALCULATION OF UNMET NEED

Once a grantee has determined the total need and the total assistance, it must calculate the difference between these amounts. This amount is the maximum allowable award of CDBG-CV to the beneficiary. (The “unmet need”.)

STEP 7: AWARD OF FUNDING WITH PAYBACK CLAUSE

If a beneficiary subsequently receives a duplicative benefit, it must repay the subgrantee either directly or through the administering entity, if present. A clause requiring payback of DOB must be in all CDBG-CV contracts.

In the event that additional funds are determined to be a DOB, funds will be withheld from future pay requests or, if all funds have been expended, the beneficiary will be required to repay the funds.

EXAMPLES

1. CDBG-CV funding a different purpose (cost) than a subsidized loan. Not a DOB.

Pete’s Pella Bistro, a for-profit business, shut down because of the COVID-19 emergency and disaster declarations. The Bistro owners applied for and received an SBA Paycheck Protection Program (“PPP”) loan to help keep staff employed. The loan will be fully forgiven if the funds are used for payroll costs, interest on mortgages, rent, and utilities (at least 60% of the forgiven amount must have been used for payroll). They are now applying for CDBG-CV assistance.

There is no DOB if:

- The CDBG grantee provides CDBG-CV for costs of CDBG-eligible activities that are not one of the eligible uses of SBA PPP loans (e.g. payroll, employee health insurance, mortgage interest, rent, utilities, interest on debt obligations) AND
- The Bistro has not received financial assistance for that cost from some other source AND
- Financial need still remains for the business for costs not eligible to be covered by the SBA PPP loan.

The Bistro needs working capital for masks and sanitizer for the staff to begin table service. As this was not a cost covered by the SBA PPP loan, CDBG-CV may be used to assist the business.

2. Calculating DOB for the same type of costs.

The McCord family has a loss of income due to one parent’s workplace shutting down for four months due to coronavirus-related restrictions. The McCords qualify as low-income (under 80%

of the area median income) under the County's 2020 HUD income limits and are applying for Jasper County's CDBG Rental Assistance Program. The County CDBG program will pay for up to three months of emergency rental assistance up to a \$2,500 limit per household.

The County calculates DOB by:

- Assessing need.
 - The McCord's monthly rent is \$1,000/month.
Total need = $\$1,000 \times 3 = \$3,000$
- Determining potential duplicative costs, or other sources that have been/will be used to pay all or part of the family's \$3,000 rent cost.
 - The family will receive \$300 for rent from a State of Iowa CARES Act assistance program through their town.
 - The McCords indicate that \$200/month has also been pledged by the local Community Action Agency for rent assistance.
 $\$200 \times 3 \text{ months} = \600
 $\$300 + \$600 = \$900$ total assistance from other sources
- Calculating the maximum monthly award to avoid DOB. This is the amount left to meet the family's rent need after factoring in the other funding sources.
 $\$3,000$ (total need) - $\$900$ (assistance from other sources) = $\$2,100$ total maximum CDBG assistance for rent.
 $\$2,100$ is under the County's $\$2,500$ CDBG program limit for assistance so the family is awarded the full $\$2,100$, paid as $\$700$ /month directly to the landlord.
- Documenting DOB compliance.
The County retains all DOB determination calculations, documentation of total rent need and other assistance amounts.

3. Certifying low-risk DOB.

The City of Muscatine is awarding CDBG-CV funds to a local food pantry to help pay for the additional staffing needed to keep up with increased food need in the community due to the coronavirus pandemic.

The food pantry has added an additional statement to the intake form that the person or household receiving the food assistance:

- Has been financially or otherwise negatively impacted by the COVID-19 (coronavirus pandemic)
- Lists the other food assistance amounts received or expected to be received this month. e.g. Food Assistance Program (SNAP); Women, Infants, & Children (WIC); Child and Adult Care Food Program (CACFP)

- Has individual or household food needs remaining even if receiving additional food assistance.

DOCUMENTATION

Grantee must adequately document the cost charged to the Federal award. See 2 CFR 200.403(g).

GRANTEE DOB DOCUMENTATION MUST INCLUDE THE FOLLOWING:

1. *PROGRAM DESCRIPTIONS*
Program descriptions must, at minimum, include the HUD national objective, a description of program beneficiaries, and anticipated funding per organization / beneficiary.
2. *ANALYSIS OF RISK OF DOB PER PROJECT*
Risk will be considered based on the number of potentially duplicative funding sources on a local level, the amount of funding per beneficiary, on-site and desk monitoring frequency, and the potential for additional financial assistance in the future for the same program and purpose.
3. *EVALUATION PROCESS OF DOB PER PROJECT AND BENEFICIARY*
Process should identify which grantee staff will conduct each DOB step.

V - RESOURCES

HUD GUIDANCE

- **MEMO: CDBG CORONAVIRUS RESPONSE GRANTEE RESOURCES RELATED TO PREVENTING DUPLICATION OF BENEFITS (PDF)**
- **SUMMARY OF PRIMARY CDBG ACTIVITY CATEGORIES TO SUPPORT CORONAVIRUS (PDF)**
- **CARES ACT PROGRAMS THROUGH SBA, FEMA, IRS, TREASURY, USDA, AND HHS FOR CDBG GRANTEE AWARENESS FOR DUPLICATION OF BENEFITS (PDF)**
- **CDBG-CV COVID-19 FACT SHEET (PDF)**
- **UPDATES TO DUPLICATION OF BENEFITS REQUIREMENTS UNDER THE STAFFORD ACT FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) DISASTER RECOVERY GRANTEES**

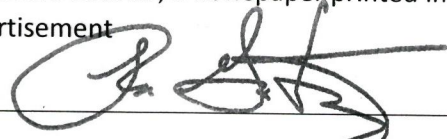
APPENDIX: FORMS

PROOF OF PUBLICATION

STATE OF IOWA
WAPELLO COUNTY

I, Ron Gutierrez, being duly sworn on my oath, say I am the Publisher of the Ottumwa Courier, a newspaper printed in said Wapello County, Iowa and of general circulation there in, and that the advertisement

Notice of Public Hearing



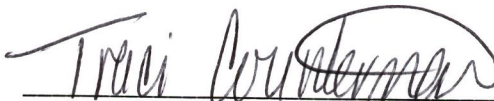
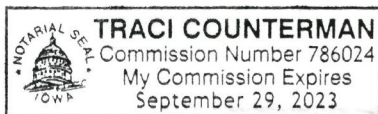
City of Ottumwa

hereto attached was published in

said newspaper for 1 consecutive week's to-wit: 12/11/21

Subscribed and

sworn to before me, and in my presence, by the said 11th day of December, 2021



Notary Public

In and for Wapello County

Printer's fee \$15.05

COPY OF ADVERTISEMENT

NOTICE OF PUBLIC HEARING OF THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA, ON AN APPLICATION FOR THE IOWA ECONOMIC DEVELOPMENT AUTHORITY COVID-19 PROGRAM FOR A COMMUNITY DEVELOPMENT BLOCK GRANT Public notice is hereby given that the City Council of the City of Ottumwa, Iowa, will hold a public hearing on December 21, 2021, in the Council Chambers, City Hall, 105 East Third Street, Ottumwa, Iowa, at 5:30 P.M., at which meeting the Council proposes to take action on an application to the Iowa Economic Development Authority (IEDA) Community Development Block Grant COVID-19 Program (CDBG-CV). The application will be for commercial facade improvements in the COVID-19-impacted downtown commercial district, including properties at 105-107 N Market St. and 114-118 N Market St. Any persons interested may appear at said meeting of the Council and present evidence for or against the application. Dated this 7th day of December, 2021. City Clerk, City of Ottumwa, Iowa

PH Notice
IEDA-CDBG application
N. Market Street.

Item No. H.-1.

CITY OF OTTUMWA

Staff Summary

**** ACTION ITEM ****

Council Meeting of: December 21, 2021

Alicia Bankson

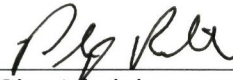
Prepared By



Department Head

Engineering

Department



City Administrator Approval

AGENDA TITLE: Resolution #200-2021. Authorizing the Mayor to execute Pipeline License Agreements identified as BNSF Agreement #21W-10277 (Sewer Lines) and BNSF Agreement #21W-11375 (Water Line) between BNSF Railway Company and the City of Ottumwa for the Green Street Storm Sewer Improvement Project.

****Public hearing required if this box is checked. ****

****The Proof of Publication for each Public Hearing must be attached to this Staff Summary. If the Proof of Publication is not attached, the item will not be placed on the agenda.****

RECOMMENDATION: Pass and adopt Resolution #200-2021.

DISCUSSION: During the Main Street Projects (Vine Street to Green Street portion) a separate storm system was installed and then re-combined at the Main and Green Street intersection. This project will connect the newly installed storm systems and complete the backbone for future separation.

As part of this project two (2) storm sewer pipelines, 36 inches in diameter inside a 48 inch steel casing and one (1) potable water pipeline, 20 inches in diameter inside a 30 inch steel casing, will be installed at the Green Street crossing

BNSF permitting process requires Pipeline License agreements. The processing fee for each Pipeline is \$1,500.00. The Agreement requires the City to provide Railroad Protective Liability Insurance or to participate in BNSF's Railroad Insurance Program at a cost of \$1,266.00 per Agreement. Staff recommends BNSF Insurance.

Ottumwa Water Works will reimburse the City of Ottumwa for the fees incurred for the water pipeline.

The Licenses shall continue for a period of fifty (50) years.

	<u>City of Ottumwa</u>	<u>Ottumwa Water Works</u>
Contract Fee (\$1,500 per line)	\$3,000.00	\$1,500.00
Railroad Protective Liability Insurance	<u>\$1,266.00</u>	<u>\$1,266.00</u>
	\$4,266.00	\$2,766.00

Source of Funds: TIF/Road Use/Sewer Fund/LOST

Budgeted Item:

Budget Amendment Needed:

RESOLUTION #200-2021

AUTHORIZING THE MAYOR TO EXECUTE PIPELINE LICENSE AGREEMENTS IDENTIFIED AS BNSF AGREEMENT #21W-10277 (SEWER LINES) AND BNSF AGREEMENT #21W-11375 (WATER LINE) BETWEEN BNSF RAILWAY COMPANY AND THE CITY OF OTTUMWA FOR THE GREEN STREET STORM SEWER IMPROVEMENT PROJECT

WHEREAS, The Green Street Storm Sewer Improvement Project requires the installation of two (2) pipelines, 36 inches in diameter inside a 48 inch steel casing to carry sanitary sewer across or along BNSF's rail corridor at or near the station of Ottumwa; and

WHEREAS, The Green Street Storm Sewer Improvement Project requires the installation of one (1) pipeline, 20 inches in diameter inside a 30 inch steel casing to carry potable water across or along BNSF's rail corridor at or near the station of Ottumwa; and

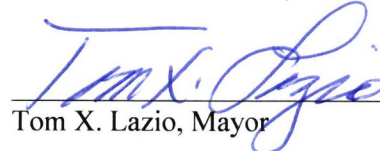
WHEREAS, The Pipeline Licenses shall continue for a period of fifty (50) years; and

WHEREAS, This resolution will authorize the Mayor to sign the Pipeline License Agreements.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT: The Mayor is authorized to sign the Pipeline License Agreements between the BNSF Railway Company and the City of Ottumwa.

APPROVED, PASSED, AND ADOPTED, this 21st day of December 2021

CITY OF OTTUMWA, IOWA



Tom X. Lazio, Mayor

ATTEST:



Christina Reinhard, City Clerk





Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Rd., Suite 110
Fort Worth, Texas 76155
tel +1 817-230-2600, fax +1 817 306-8265

November 29, 2021

City of Ottumwa
Attention: Mr. Daniel Sturm
105 E Third Street
Ottumwa, IA 52501

21W-10277

Dear Mr. Sturm:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please provide one (1) signed copy via email for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

- Online payment through RP site in the amount of \$1,500.00 payable to BNSF Railway Company which covers the contract fee.

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement.
2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

In lieu of providing a separate policy for Railroad Protective Liability Insurance, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional \$1,266.00 with your online payment.

PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.

Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website www.BNSFcontractor.com prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.

Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase to \$1,600.00.

Sincerely,

Patricia Villegas

Patricia Villegas
Permit Manager
Attachment

PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective _____, 20__ (the "Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CITY OF OTTUMWA** ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline[s], 36 inches in diameter inside a(n) 48 inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Ottumwa, County of Wapello, State of Iowa, Line Segment 0001, Mile Post 279.488 and 279.489 as shown on the attached Drawing No. 81402, dated November 3, 2021, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of fifty (50) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry storm sewer, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of three thousand and No/100 Dollars (\$3,000.00) as compensation for the use of the Premises.
7. Costs and Expenses.
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

- 7.3 Licensors, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.
8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensors within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensors excepts and reserves the right, to be exercised by Licensors and any other parties who may obtain written permission or authority from Licensors:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensors in its sole discretion deems appropriate, provided Licensors uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. Right to Require Relocation. If at any time during the term of this License, Licensors desires the use of its rail corridor in such a manner as would, in Licensors's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensors to such effect, make such changes in the Pipeline as in the sole discretion of Licensors may be necessary to avoid interference with the proposed use of Licensors's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensors in its sole discretion, to the Pipeline promptly upon Licensors's request.

LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Pipeline.
- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensors's representative, the Scheduling Agent or its designee. Licensee shall notify Licensors's Roadmaster, at telephone (319) 758-5638, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensors of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensors's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.
12. Boring and Excavation.
- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3rd parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided,

however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Licensor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 **Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.**

14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations
 - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
 - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
 - Bodily injury and property damage.
 - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
- Waiver of subrogation in favor of and acceptable to Licensor.
- 15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:
- Endorsed to include the Pollution Exclusion Amendment.
 - Endorsed to include the Limited Seepage and Pollution Endorsement.
 - Endorsed to remove any exclusion for punitive damages.
 - Endorsed to include Evacuation Expense Coverage Endorsement.
 - No other endorsements restricting coverage may be added.
 - The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
 - The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

- Licensee may **elect** to participate in Licensor's Blanket Policy;
- Licensee **declines** to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

- 15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.
- 15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.
- 15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.

- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.
- 15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.
- 15.6.18 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.
- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Licensor's property. Upon request by Licensor, Licensee agrees to furnish Licensor with proof, satisfactory to Licensor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall immediately report to Licensor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Licensor may, at Licensor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Licensor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Licensor's satisfaction and a copy of the audit report shall promptly be provided to Licensor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C.

§1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- 17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

DISCLAIMER OF WARRANTIES

18. **No Warranties.**

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.**

LIENS AND TAXES

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the**

Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.

23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.

23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Licensor.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor for no additional consideration.

MISCELLANEOUS

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. **Assignment.**
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. **THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.**
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges

granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

- 26.4 Licensor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.
27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2650 Lou Menk Dr.
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of Ottumwa
105 E Third Street
Ottumwa, IA 52501

28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.
29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. **Severability.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.
33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155

By: _____
Shane Krueger
Vice President, Permits and Special Projects

LICENSEE:

City of Ottumwa

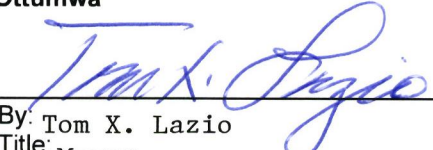
By:  _____
By: Tom X. Lazio
Title: Mayor

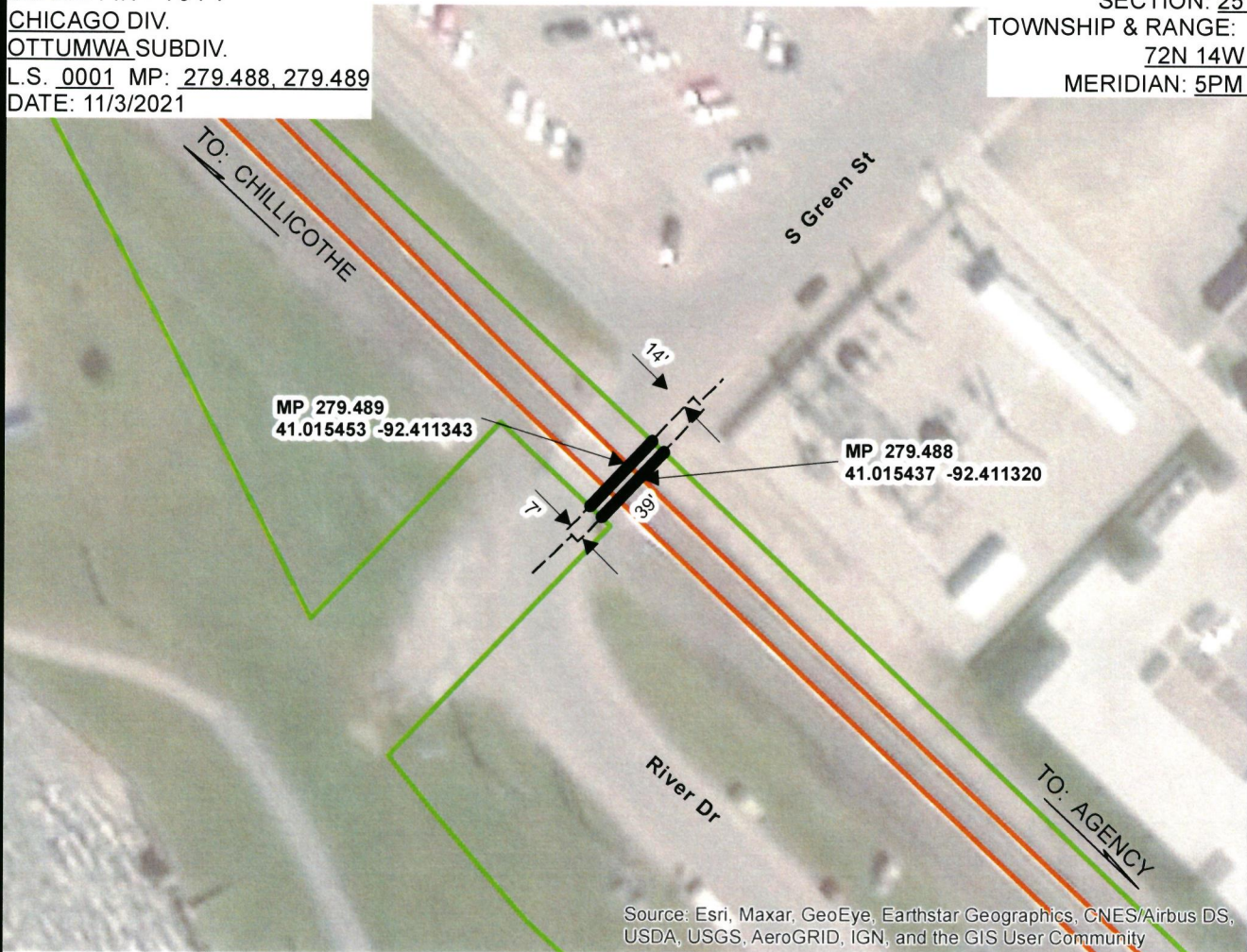
EXHIBIT "A"



MAP REF. s50129

SCALE: 1 IN = 75 FT
 CHICAGO DIV.
 OTTUMWA SUBDIV.
 L.S. 0001 MP: 279.488, 279.489
 DATE: 11/3/2021

SECTION: 25
 TOWNSHIP & RANGE:
 72N 14W
 MERIDIAN: 5PM



DESCRIPTION OF PIPELINE
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	2-36"	2-48"	LENGTH ON R/W:	39'	39'
CONTENTS:	STORM SEWER		WORKING PRESSURE:	0	
PIPE MATERIAL:	REINFORCED CONCRETE	STEEL	BURY: BASE/RAIL TO TOP OF CASING		6'
SPECIFICATIONS / GRADE:	CLASS III	35,000 PSI	BURY: NATURAL GROUND		6'
WALL THICKNESS:	4"	0.625"	BURY: ROADWAY DITCHES		6'
COATING:	-	EPOXY	CATHODIC PROTECTION		NO

VENTS: NUMBER 0 SIZE - HEIGHT OF VENT ABOVE GROUND -
 NOTE: CASING TO BE JACKED OR DRY BORED ONLY

OTTUMWA
 COUNTY OF WAPELLO

STATE OF IA

JNC



Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Rd., Suite 110
Fort Worth, Texas 76155
tel +1 817-230-2600, fax +1 817 306-8265

December 2, 2021

City of Ottumwa
Attention: Mr. Larry Seals
105 E Third Street
Ottumwa, IA 52501

21W-11375

Dear Mr. Seals:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please provide one (1) signed copy via email for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

- Online payment through RP site in the amount of \$1,500.00 payable to BNSF Railway Company which covers the contract fee.

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement.
2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

In lieu of providing a separate policy for Railroad Protective Liability Insurance, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional \$1,266.00 with your online payment.

PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.

Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website www.BNSFcontractor.com prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.

Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase to \$1,600.00.

Sincerely,

Patricia Villegas
Permit Manager
Attachment

PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective _____, 20__ (the "Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CITY OF OTTUMWA** ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, 20 inches in diameter inside a 30 inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Ottumwa, County of Wapello, State of Iowa, Line Segment 0001, Mile Post 279.50 as shown on the attached Drawing No. 82344, dated July 22, 2021, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry potable water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of one thousand five hundred and No/100 Dollars (\$1,500.00) as compensation for the use of the Premises.
7. Costs and Expenses.
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

- 7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.
8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Pipeline.
- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's Roadmaster, at telephone (319) 758-5638, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.
12. Boring and Excavation.
- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3rd parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided,

however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Licensor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 **Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.**

14. **Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**
15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:
- 15.1 Commercial General Liability "CGL" Insurance.
- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations
 - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
 - b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
 - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
 - c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
 - d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.
- 15.2 Business Automobile Insurance.
- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
 - Bodily injury and property damage.
 - Any and all vehicles owned, used or hired.
 - b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- 15.3 Workers' Compensation and Employers' Liability Insurance.
- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
- Waiver of subrogation in favor of and acceptable to Licensor.
- 15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:
- Endorsed to include the Pollution Exclusion Amendment.
 - Endorsed to include the Limited Seepage and Pollution Endorsement.
 - Endorsed to remove any exclusion for punitive damages.
 - Endorsed to include Evacuation Expense Coverage Endorsement.
 - No other endorsements restricting coverage may be added.
 - The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
 - The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

- Licensee may **elect** to participate in Licensor's Blanket Policy;
- Licensee **declines** to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

- 15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.
- 15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.
- 15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.

15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.18 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.

16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.

16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.
- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Licensor's property. Upon request by Licensor, Licensee agrees to furnish Licensor with proof, satisfactory to Licensor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall immediately report to Licensor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Licensor may, at Licensor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Licensor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Licensor's satisfaction and a copy of the audit report shall promptly be provided to Licensor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C.

§1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- 17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

DISCLAIMER OF WARRANTIES

18. **No Warranties.**

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.**

LIENS AND TAXES

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the**

Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.
24. Surrender of the Premises.
- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Licensor.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor for no additional consideration.

MISCELLANEOUS

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. **Assignment.**
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges

granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

- 26.4 Licensor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.
27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.
- If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155
Attn: Permits/Licenses
- with a copy to: BNSF Railway Company
2650 Lou Menk Dr.
Fort Worth, TX 76131
Attn: Senior Manager Real Estate
- If to Licensee: City of Ottumwa
105 E Third Street
Ottumwa, IA 52501
28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.
29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However,

nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
 - 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
 - 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155

By: _____
By:
Title:

LICENSEE:

City of Ottumwa

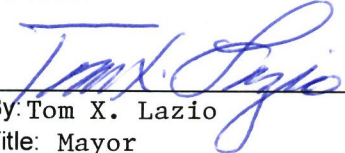
By:  _____
By: Tom X. Lazio
Title: Mayor

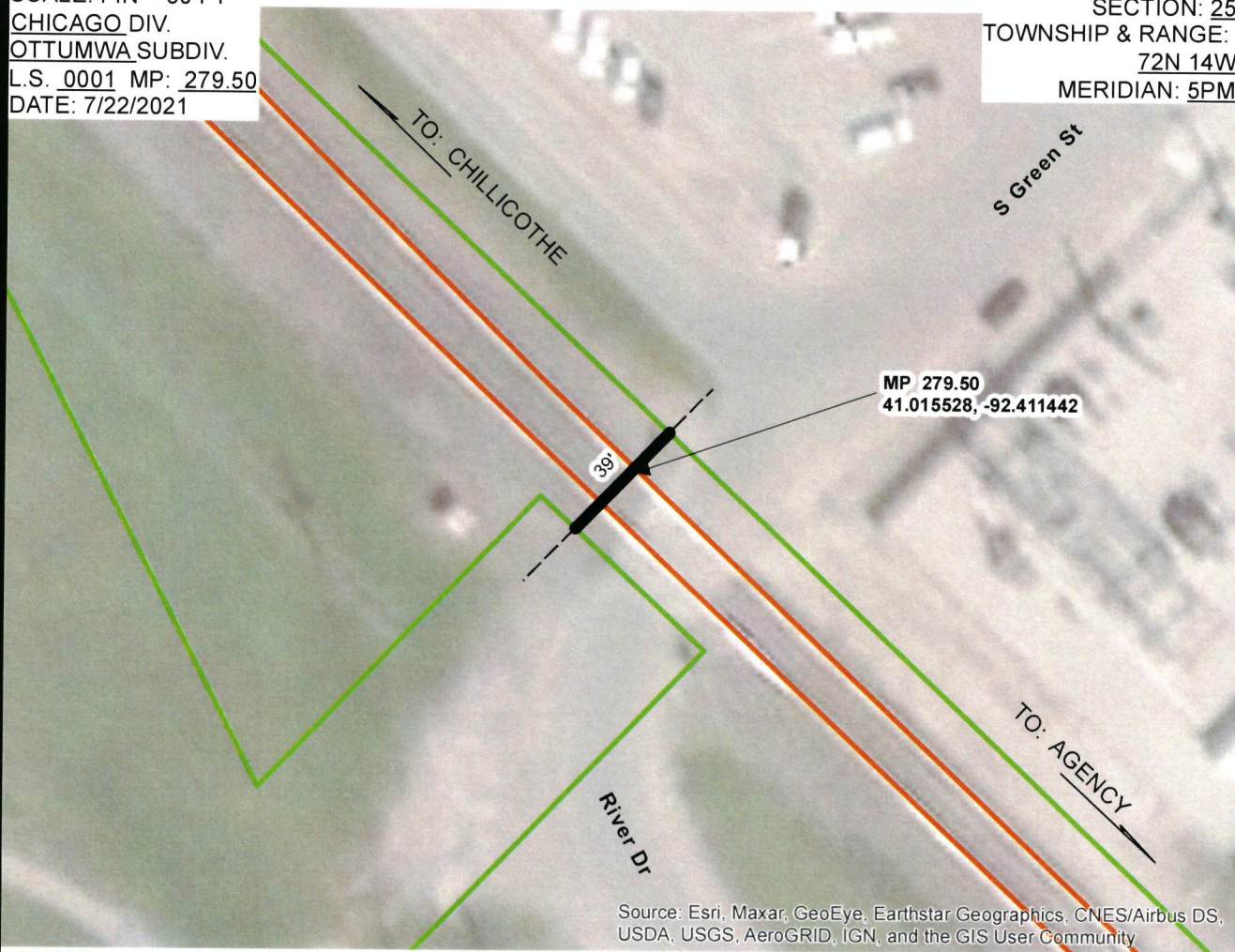
EXHIBIT "A"
 ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND



CITY OF OTTUMWA

SCALE: 1 IN = 50 FT
 CHICAGO DIV.
 OTTUMWA SUBDIV.
 L.S. 0001 MP: 279.50
 DATE: 7/22/2021

SECTION: 25
 TOWNSHIP & RANGE:
 72N 14W
 MERIDIAN: 5PM



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

DESCRIPTION OF PIPELINE
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	<u>20"</u>	<u>30"</u>	LENGTH ON R/W:	<u>39'</u>	<u>39'</u>
CONTENTS:	<u>POTABLE WATER</u>		WORKING PRESSURE:	<u>60 PSI</u>	
PIPE MATERIAL:	<u>PVC</u>	<u>STEEL</u>	BURY: BASE/RAIL TO TOP OF CASING		<u>8.25'</u>
SPECIFICATIONS / GRADE:	<u>35,000 PSI</u>	<u>35,000 PSI</u>	BURY: NATURAL GROUND		<u>8.25'</u>
WALL THICKNESS:	<u>0.47"</u>	<u>0.47"</u>	BURY: ROADWAY DITCHES		<u>8.25'</u>
COATING:	<u>-</u>	<u>EPOXY</u>	CATHODIC PROTECTION		<u>YES</u>

VENTS: NUMBER 0 SIZE - HEIGHT OF VENT ABOVE GROUND -
 NOTE: CASING TO BE JACKED OR DRY BORED ONLY

OTTUMWA
 COUNTY OF WAPELLO

STATE OF IA

NAF

MAP REF. S50129

Item No. H.-2.

CITY OF OTTUMWA STAFF SUMMARY

Council Meeting of: December 21, 2021

Item No: _____

Cathy Shepherd
Prepared By

Health
Department

Zach Simonson
Department Head

[Signature]
City Administrator

AGENDA TITLE: Resolution No. 209-2021, a Resolution by the Ottumwa City Council assessing 2021 weed mowing charges against certain lots in the City of Ottumwa, Iowa.

PURPOSE: This resolution assesses 2021 weed mowing charges of ~~\$37,590.00~~ to 120 properties.

\$37,315 119

RECOMMENDATION: Pass and adopt Resolution No. 209-2021.

DISCUSSION: The attached report lists 120 properties that were mowed by the City's mowing contractor in 2021. Owners whose properties were mowed in 2021 were billed for the mowing charges and those charges on the attached list remain unpaid. Total charges for mowing assessment for 2021, including administrative fees, are ~~\$37,590.00~~.

315

Costs recovered are detailed in the chart shown.

Mowing Year	# of Properties	Calendar Assessment Cost	Fiscal Year	Fiscal Year Mowing Costs Recovered
2017	100	\$45,278.00	2017	\$16,105.00
2018	141	\$52,511.00	2018	\$67,568.00
2019	132	\$41,991.00	2019	\$24,686.00
2020	118	\$33,300.00	2020	\$10,576.00
2021	120	\$37,590.00	2021	\$1,910.00

\$37,315

RESOLUTION NO. 209 -2021

A RESOLUTION BY THE OTTUMWA CITY COUNCIL ASSESSING 2021 WEED MOWING CHARGES AGAINST CERTAIN LOTS IN THE CITY OF OTTUMWA, IOWA.

WHEREAS, in accordance with Section 24-6(c) of the Municipal Code of the City of Ottumwa, Iowa, public notice was given to property owners of the City to cut or destroy any weeds, vines, brush and dead, damaged or unsightly bushes, trees or other offensive growth; and

WHEREAS, upon the failure of the property owner to cut or destroy said growth, the City caused the same to be done by the City of Ottumwa's weed mowing contractor for calendar year 2020, and said costs to be assessed to the owner or owners of the lot or parcel of ground; and

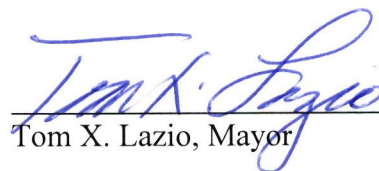
WHEREAS, the Code of Iowa, Section 364.12, allows the City Council to assess costs of abating nuisances against real estate taxes in the same manner as the property tax, and in accordance with Section 24-6(c) of the Ottumwa Municipal Code, said costs and expenses associated with the cutting of weeds are to be assessed against the owner of said lots or parcels; and

WHEREAS, said costs for the mowing of weeds, vines, etc., for calendar year 2021 are attached and made a part of this resolution.

NOW, THEREFORE BE IT RESOLVED THAT the attached 2021 weed mowing charges be assessed against the respective properties and the City Clerk to certify said assessments to the County Treasurer to be collected on the tax rolls.

Passed and Adopted this 21st day of December, 2021

City of Ottumwa, Iowa



Tom X. Lazio, Mayor

ATTEST:




Chris Reinhard, City Clerk

Chris Reinhard

From: Cathy Shepherd
Sent: Monday, December 20, 2021 3:45 PM
To: Chris Reinhard
Cc: Zach Simonson
Subject: 2021 Mowing Assessment - fee received

Our office received a payment in the amount of \$275.00 from Thousand Keys LLC.

The property associated with the payment is 319 N. McLean.

It will be posted today.

Cathy Shepherd

Clerk – Building and Code Inspections
Rm. 203 – City Hall
105 E. Third St.
Ottumwa, IA 52501
641-683-0610
FAX: 641-683-0609
shepherdc@ottumwa.us

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2021 ASSESSED MOWING FEES

	ADDRESS MOWED	OWNER'S NAME	LEGAL DESCRIPTION	TOTAL FEES	ASSESSED FEES	W/ASSESSED FEES
1	2ND ST 815 W	LUNT RELIABILITY SERVICES	007413230017000 DIXON & HUTCHINSON'S ADD. NW 29 1/2' LOT 12. (815 W SECOND)	\$125.00	\$150.00	\$275.00
2	3RD & CLAY	WILLIAM & KAREN BROWN	007413230059000 DIXON & HUTCHINSON'S ADD W 47 1/2' OF SE 77' LOT 54 LAND ON W 3RD)	\$450.00	\$150.00	\$600.00
3	3RD & CLAY	WILLIAM & KAREN BROWN	007413230061000 DIXON & HUTCHINSON'S ADD SE 47' OF NW 1/2 LOT 54	\$450.00	\$150.00	\$600.00
4	3RD ST W 901	CHUCK & BARBARA RUBY	007413230055000 DIXON & HUTCHINSONS ADD SE 1/2 LOT 52	\$500.00	\$150.00	\$650.00
5	3RD ST W 905	CHUCK & BARBARA RUBY	007413230056000 DIXON & HUTCHINSON'S ADD. SE 54' OF NW 1/2 LOT 52.(VACANT LAND,THIRD ST)	\$500.00	\$150.00	\$650.00
6	3RD ST W 914	TONI S SMITH	007413230035000 DIXON & HUTCHINSON'S ADD. NW 50' LOT 37	\$200.00	\$150.00	\$350.00
7	3RD ST W 926	JAMES SCOTT RUPP KIMBERLY A SKINNER	007413230037000 DIXON & HUTCHINSON'S ADD LOT 39 & SE 11' LOT 40	\$660.00	\$150.00	\$810.00
8	3RD ST W 932	MAXINE ZAPATA	007413230038000 DIXON & HUTCHINSON'S ADD. NW 56' LOT 40	\$325.00	\$150.00	\$475.00
9	4TH ST W 618	LAWRENCE/SARAH LAUMEYER	7413460011000 A.G.HARROW'S ADD NW 14'LOT 13;ALL LOT 14; NW 36'OF A.L.36 SW NE SEC 24-72-14	\$170.00	\$150.00	\$320.00
10	5TH ST W 119	AMY VANDERBURG	007413760001000 OTTUMWA ORIGINAL LOT 18 BLK 1/2-4 SE 1/2 LOT 19 BLK 1/2-4 (119 W 5TH)	\$200.00	\$150.00	\$350.00
11	5TH ST W 123	PAUL D TRUITT	007413760141000 OTTUMWA ORIGINAL NW 1/2 LT 19 IN 1/2 BLK 4;SE 10.2'LT 20 1/2 BLK4 (123-125 W 5TH)	\$150.00	\$150.00	\$300.00
12	5TH ST W 131	PAUL D TRUITT	007413760003000 OTTUMWA ORIGINAL NW 63.66' OF SW 83' LOT 20 IN 1/2-BLK 4 (131 W FIFTH)	\$150.00	\$150.00	\$300.00
13	ADELLA ST S LOT 37	GWENDOLYN R SANDERS	007416140008000 H BEAVERS 2ND LOT 37(LAND S-ADELLA)	\$320.00	\$150.00	\$470.00
14	ADELLA ST S LOT 48	GWENDOLYN R SANDERS	007416140019000 H BEAVERS 2ND LOT 48(LAND-S ADELLA)	\$455.00	\$150.00	\$605.00

15	ALBIA RD 1405	NEIL F/DIANE O FERGUSON	007417540256000 PT AL13 S1/2 NW 26-7 2-14 DES AS FOLL:S45 6' E367FOLL: BG C N W/E ALG MOWERY ETC.	\$750.00	\$150.00	\$900.00
16	ALLISON ST 815	RICHARD W/DORA J PILCHER	007416740029000 MOWERY,ASBURY & HACKWORTH SUB LT 4 BLK 7 & E 1/2 ALLEY ADJ(815 ALLISON)	\$500.00	\$150.00	\$650.00
17	ALLISON ST 817	RICHARD W/DORA J PILCHER	007416740030000 MOWERY ASBURY & HACK WORTH ADD LOT 5 BLK 7 & E 1/2 ALLEY IN REAR(817 ALLISON)	\$500.00	\$150.00	\$650.00
18	ALTA VISTA AVE E 312	312 EAST ALTA VISTA, LLC	7411570074000 AUD SUB SE SEC18-72- 13 AL 11(339.6X641) AL 12(339.6X641) SE (ST JOSEPH HOSPITAL)	\$500.00	\$150.00	\$650.00
19	BENTON ST N 211	SHERRY L SMITH	007414040017000 SUMMERS ADDITION LOT 16 EX SW 12' & EX NE 4' (211 N BENTON)	\$125.00	\$150.00	\$275.00
20	BOONE 919	ROLAND C/LINDA S DAVIS	007416280149000 CLINTON PLACE LOT 11 BLK 11 (919 BOONE)	\$425.00	\$150.00	\$575.00
21	BRANHAM AVE 2721	MARY ANNE HILL	7411310107000 RIVERVIEW ADD LOT 7 BLK 9 (2721 BRANHAM)	\$102.50	\$150.00	\$252.50
22	BRANHAM AVE 2721 LOT 6	MARY ANNE HILL	7411310106000 RIVERVIEW ADD LOT 6 BLK 9	\$102.50	\$150.00	\$252.50
23	CASA BLANCA LN 1441	LESLIE GREINER	7417430016000 WORMHOUDT 5TH ADD LOT 16 (1441 CASA BLANCA)	\$125.00	\$150.00	\$275.00
24	CHERRY ST S LOT 8	MALLORICK INVESTMENTS	007410120168000 BLAKES ADD LOT 8 BLK 17 (VAC LOT-S CHERRY)	\$500.00	\$150.00	\$650.00
25	CHERRY ST S 115	BARBARA ANN STRAYER & BERNARD A BOHE	007410120179000 BLAKES ADD LOT 2 BLK 19 & S 1/2 OF S 35' LOT 3 BLK 19 (115 S CHERRY)	\$125.00	\$150.00	\$275.00
26	CLARENCE ST 325	HAROLD KEMPF	007413500034000 HIGHLAND PARK ADD LOT 37: E 10' VACATED VALLEY ST ADJ ON W	\$500.00	\$150.00	\$650.00
27	CLAY N 212	WETTYNA COCKERHAM	007414040044000 SUMMERS ADDITION SW 50'OF NE 168' OF NW 60'LOT 33 (212 N CLAY)	\$150.00	\$150.00	\$300.00
28	CLAY N 307	JEANNE G DYE	007414050004000 SUMMERS 2ND ADD LOT 4 (307 N CLAY)	\$150.00	\$150.00	\$300.00
29	CLAY ST N LOT 9	CARLUS & ROSALIE ALLMAN	007414060030000 SUMMER'S 3RD ADD LOT 9 EX THE E 15' (VAC LOT ON CLAY)	\$500.00	\$150.00	\$650.00
30	CLEM 221	NICASIUS A AWUNGDEH	7414070005000 SUMMERS SUB DIV NE 10' LOT 2; SW 50' LOT 3 (221 CLEM)	\$125.00	\$150.00	\$275.00
31	CLEM LOT 3 ON	NICASIUS A AWUNGDEH	007414070006000 SUMMERS SUB DIV ALL EX 50' OF SW END LOT 3	\$125.00	\$150.00	\$275.00

32	COLLEGE ST S 112	CYNTHIA M PAGE	007411240108000 OTTUMWA ORIG NW 9' OF NE 36' LT273 BLK 19; NE36' LT274 BLK 19	\$500.00	\$150.00	\$650.00
33	DAVIS N 126	JUDITH MARTZ	007417190032000 R S SMITHS 3RD ADD S 33' LOT 51 BLK 7 (126 N DAVIS ST)	\$125.00	\$150.00	\$275.00
34	DAVIS S LOT 482 ON	SHAWN A/ANGELA M KELLAR	7416510082000 J.B.HAMMOND'S SUB. LOT 482 (LOT ON S DAVIS)	\$145.00	\$150.00	\$295.00
35	DAVIS S LOT 483 ON	SHAWN A/ANGELA M KELLAR	007416510083000 J.B.HAMMOND'S SUB. LOT 483 (LOT ON S DAVIS)	\$145.00	\$150.00	\$295.00
36	DAVIS S 868	SHAWN A/ANGELA M KELLAR	007416510084000 J.B.HAMMOND'S SUB. LOT 484 (868 S DAVIS)	\$195.00	\$150.00	\$345.00
37	ELLIS ST 849	SAMUEL JUAREZ	007416980036000 ROBINSONS 4TH ADD E 3' LOT 129; ALL LOT 130; W 7' LOT 131 (849 ELLIS)	\$150.00	\$150.00	\$300.00
38	FELLOWS S 145	FELIPE MENDOZA	007410830061000 JANNEY ADD LOT 11 BLK 3	\$225.00	\$150.00	\$375.00
39	FERRY S 422	SHELL POINT MORTGAGE SERVICE	7417310067000 WILLIAMS PARK ADD LOT 70 (422 S FERRY)	\$455.00	\$150.00	\$605.00
40	FINLEY E 826	JOHN P/DOROTHY JEAN BEEDILL	007416950032000 ROBINSONS ADD LOT 30 (826 E FINLEY)	\$225.00	\$150.00	\$375.00
41	FOSTER AVE S 419	JEREMY & ALMA BROWN	007411000023000 MANNINGS 1ST ADD LOT 20 BLK 1	\$455.00	\$150.00	\$605.00
42	GARA ST 316	MATTHEW W/JESSICA M MILNER	007410560013000 FOSTER/CHAMBERS ADD LOT 18 (316 GARA)	\$125.00	\$150.00	\$275.00
43	GARA ST 414	GEORGE POST & BECKY RUPE	007410560007000 FOSTER/CHAMBERS ADD LOT 12	\$195.00	\$150.00	\$345.00
44	GREEN ST N 512	YAHARA/JUVENAL MARQUEZ	007410310030000 CONANT & CHAMBERS ADD LOT 2 (512 N GREEN)	\$500.00	\$150.00	\$650.00
45	HACKBERRY LOT 12	JOHN & SHARON BIBB	007410120007000 BLAKE'S ADD LOT 12 BLK 2	\$500.00	\$150.00	\$650.00
46	HANCOCK S 902	DANIEL D/CHRISTY L HAMRE	7416540114000 HARDING PARK ADD. LOT 1 BLK 3 (902 S HANCOCK)	\$300.00	\$150.00	\$450.00
47	HERRMAN 420	JACOB MATHIS	7411600084000 LOT 17 OF AL 3 SE SE C.29-72-13, KNOWN AS HERRMANN'SSUB. (420 HERRMAN)	\$455.00	\$150.00	\$605.00
48	HIGHLAND 1214	ALICE A ASZMAN	7413500019000 HIGHLAND PARK ADD E 55' LOT 21 (1214 W HIGHLAND)	\$660.00	\$150.00	\$810.00

49	HOLT ST LOT 1	ERIC D MORROW	007414250002000 LOT 2 OF LOT 1 OF ZOLLARS SUB. W 1/2 NE	\$545.00	\$150.00	\$695.00
50	HOLT ST E 801	CURTIS HORNBACK	007414200006000 ZOLLARS 5TH ADDITION LOT 136 (801 E HOLT)	\$150.00	\$150.00	\$300.00
51	HOLT ST E 818	BRANDON BULLOCK	007413550010000 JAQUES/FAUCETTS WPT L7&8 BG 14 1/2'SE W COR L7&8/E93/S93/NW ALG SW SD LOT-BG (818 E HOLT)	\$125.00	\$150.00	\$275.00
52	HOLT ST N 324	RONALD & CATHERINE SLACK	007414250019000 ALL EX S 1' LOT 4 OF LOT 8 ZOLLARS SUB OF W 1/2 NE SEC 24-72-14	\$500.00	\$150.00	\$650.00
53	IOWA AVE S 121	JOYCE A JOHNSON	007410830098000 JANNEY ADD LOT 17 BLK 4 (121 S IOWA AVE)	\$500.00	\$150.00	\$650.00
54	IOWA AVE S 122	FAMILY HOMES ASSOCIATION IN	7411010029000 MANNING'S 2ND ADD. LOT 29 BLK 1 (122 S.IOWA AVE.)	\$500.00	\$150.00	\$650.00
55	IOWA AVE S 141	HAROLD G KEMPF 'LE'	7410830092000 JANNEY ADD LOT 12 BLK 4 (141 S IOWA)	\$455.00	\$150.00	\$605.00
56	IOWA AVE S 309	DEAN FRANTZ/WANNA ROGERS	007410750069000 HAYNES ADD LOT 29 & LOT 30 (309 S IOWA)	\$250.00	\$150.00	\$400.00
57	JEFFERSON N 435	JACK VANDERHYDE	7411180006000 MCGREW SUB PT L2 CM 71.5 SW E COR L2/NW 169.8/W37/S53.2/SE 144.3/NE15/NE68.5BG	\$500.00	\$150.00	\$650.00
58	JEFFERSON N 706	ELIZABETH A GEE	007410310017000 CONANT & CHAMBERS LOT 21	\$150.00	\$150.00	\$300.00
59	KRUGER ST 514	ROBERT J CARLSON	007410310022000 CONANT & CHAMBERS LOT 26	\$500.00	\$150.00	\$650.00
60	LEE AVE 813	JACK/LOIS LOVING	7416280121000 CLINTON PLACE LOT 11 BLK 9 (813 LEE)	\$500.00	\$150.00	\$650.00
61	LEE AVE 817	SARAH L HENRY	007416280120000 CLINTON PLACE LOT 10 BLK 9	\$500.00	\$150.00	\$650.00
62	LOT ON E MAIN	SUSAN TENNISON	007411410003000 STILES PLACE LOT 2 (LOT ON E. MAIN)	\$95.00	\$150.00	\$245.00
63	MAIN ST E 1922	SUSAN TENNISON	007411410004000 STILES PLACE LOT 3 (1922 E MAIN)	\$95.00	\$150.00	\$245.00
64	MAIN ST E 1928	SUSAN TENNISON	007411410006000 STILES PLACE W 1/2 LOT 4 (1928 E. MAIN)	\$95.00	\$150.00	\$245.00
65	CORNER LOT ON E MAIN	SARAH REAVES	007411090001000 MINERAL SPRINGS ADD SE COR LOT 1, SE 51. 6' LOT 2 (2311 E. MAIN)	\$95.00	\$150.00	\$245.00

66	MAIN ST E 2309	SARAH REAVES	007411090003000 MINERAL SPRINGS ADD MIDDLE 35'OF LOT 1; MIDDLE 40'OF LOT 2 (2309 E. MAIN)	\$95.00	\$150.00	\$245.00
67	MAIN ST E 2311	SARAH REAVES	007411090002000 MINERAL SPRINGS PT L 1&2 BG NELN MAIN 20' NW E COR L1/69.3/34 .9/86.8/30.2 TO BG	\$95.00	\$150.00	\$245.00
68	MAIN ST E 2433	JEREMIAH SHERWOOD	007411100002000 MINERAL SPRINGS 2ND LOT 29 EX SE'LY 5' (2433 E. MAIN)	\$125.00	\$150.00	\$275.00
69	MAIN ST E 2425	JOY L HOWARD	7411090029000 MINERAL SPRINGS ADD LOT 27 (2425 E. MAIN)	\$365.00	\$150.00	\$515.00
70	MAIN ST W 1609	MITCHELL HECKETHORN	007413350014000 A L GRAVES ADDITION LOT 14 (1609 W. MAIN)	\$125.00	\$150.00	\$275.00
71	MAPLE ST E 113	INTEGRITY DESIGN & DEVELOPMENT LLC	007410590004000 FULTON PLACE LOT 3 (113 E. MAPLE)	\$125.00	\$150.00	\$275.00
72	MARY E 602	JUAN JOSE PEREZ ESPARAZA	7416540054000 HARDING PARK ADD LOT 1 BLK 2 (602 E. MARY)	\$125.00	\$150.00	\$275.00
73	MARY E 602 LOT 2	JUAN JOSE PEREZ ESPARAZA	007416540055000 HARDING PARK ADD LOT 2 BLK 2 (LOT ON E. MARY)	\$45.00	\$150.00	\$195.00
74	MCLEAN N 310	C & J ENTERPRISE LLC	007413030004000 BROWN'S 1ST ADD LOT 2 (310 N. MC LEAN)	\$225.00	\$150.00	\$375.00
75	MCLEAN N 319	THOUSAND KEYS ACQUISITIONS 2A LLC	7414350023000 PT AL 6 W 1/2 NE SEC 24 NW 120'/NE 43'/SE 120'/SW 43' TO BEG (319 N. MC LEAN)	\$275.00	\$150.00	\$425.00
				<i>Paid 12-20-21</i>		
76	MCLEAN 357	DEREK/CLAUDIA GATES	007413150005000 CORY & ROBERT'S ADD. LOT 13 (357 N. MC LEAN)	\$95.00	\$150.00	\$245.00
77	MCPHERSON 301	EDWARD E WARD	00007413500010000 HIGHLAND PARK ADD LOT 12 (LOT ON MC PHERSON)	\$455.00	\$150.00	\$605.00
78	MILNER ST S 109	ROBERT E TAYLOR JR	007417270003000 TISDALE'S ADD LOT 3 BLK 1 (109 S. MILNER)	\$125.00	\$150.00	\$275.00
79	MINNEOPA 730	AMY B SHILHANEK	007416340006000 EMANUEL IRREG LOT 6 (730 MINNEOPA)	\$125.00	\$150.00	\$275.00
80	MOORE ST N 238	MARIA T CLARK	007417170014000 R S SMITH'S ADD S 1/2 LOT 14 BLK 1 (238 N MOORE)	\$125.00	\$150.00	\$275.00
81	MOORE ST N 309	BRADFORD L/VIVIAN L DAY	007417170050000 R S SMITH'S ADD N 1/2 LOT 14 BLK 2 (309 N. MOORE)	\$125.00	\$150.00	\$275.00
82	MOORE ST S 422	EDGAR CASTILLO MERIDA/ REBECCA CASTILLO	007416250006000 H C CHAMBERS SUB LOT 6 (422 S MOORE) (422-A S MOORE-APT)	\$125.00	\$150.00	\$275.00

83	LOT 19 ON S MOORE	RHAM 2 LLC	007416590019000 JEFFERSON PARK ADD LOT 19 (LOT ON S. MOORE)	\$102.50	\$150.00	\$252.50
84	MOORE ST S 711	RHAM 2 LLC	007416590018000 JEFFERSON PARK ADD LOT 18 (711 S. MOORE)	\$102.50	\$150.00	\$252.50
85	LOT 17 ON S MOORE	CHESTER C/SHERRY L GEE	007416590017000 JEFFERSON PARK ADD LOT 17 (LOT ON S. MOORE)	\$102.50	\$150.00	\$252.50
86	MOORE ST S 715	CHESTER C/SHERRY L GEE	007416590016000 JEFFERSON PARK ADD LOT 16 (715 S. MOORE)	\$102.50	\$150.00	\$252.50
87	MORRIS 704	JULIE E SMITHART	007416590202000 JEFFERSON PARK ADD LOT 204 (704 MORRIS)	\$125.00	\$150.00	\$275.00
88	OTTUMWA ST 220	MICHAEL W/SILVERTHORNE J NICHOLSON	007413220003000 DEVINS SUB OF GILMOR ES SUB. LOT 3 (220 OTTUMWA ST)	\$500.00	\$150.00	\$650.00
89	PENNSYLVANIA E 234	JERRY L RICHMOND	007411580175000 LOT 27 OF AL 1 SW NW SEC. 19-72-13 (234 E. PENN)	\$225.00	\$150.00	\$375.00
90	LOT 66 ON PHILLIPS	JUDSON LETTS	007413960065000 SIBERELLS 1ST ADD LOT 66 BLK 6 (VAC LOT ON PHILLIPS)	\$91.25	\$150.00	\$241.25
91	LOT 67 ON PHILLIPS	JUDSON LETTS	007413960066000 SIBERELLS 1ST ADD LOT 67 BLK 6 (VAC LOT ON PHILLIPS)	\$91.25	\$150.00	\$241.25
92	234 PHILLIPS	JUDSON LETTS	007413960063000 SIBERELLS 1ST ADD LOT 64 BLK 6 (234 PHILLIPS)	\$91.25	\$150.00	\$241.25
93	236 PHILLIPS	JUDSON LETTS	007413960064000 SIBERELLS 1ST ADD LOT 65 BLK 6 (236 PHILLIPS)	\$91.25	\$150.00	\$241.25
94	PLUM 1013	CENTRAL IOWA VENTURES	007410120088000 BLAKES ADD-PT L10 BG SWCOR L10/E ALG SLN 23'/N48.6/E4/N91.4/ W27-NWCOR/S WLN 140B	\$125.00	\$150.00	\$275.00
95	PLUM 1014	DANIEL ROJAS	007410120094000 BLAKES ADD LOT 3 BLK 11 (1014 PLUM)	\$150.00	\$150.00	\$300.00
96	PLUM 1022	LARRY K STROUD	7410120091000 BLAKES ADD N 1/2 LOT 1 BLK 11 (1022 PLUM)	\$225.00	\$150.00	\$375.00
97	SAMANTHA 2241, LOT 105	KELLY R KLINGSMITH	007413240105000 FAIRPORT ADDITION LOT 105 (VAC LOT ON SAMANTHA)	\$800.00	\$150.00	\$950.00
98	SAMANTHA 2241, LOT 106	KELLY R KLINGSMITH	7413240106000 FAIRPORT ADDITION LOT 106 (LOT ON W SAMANTHA)	\$800.00	\$150.00	\$950.00
99	SAMANTHA 2241, LOT 107	KELLY R KLINGSMITH	7413240107000 FAIRPORT ADDITION LOT 107 (2241 W SAMANTHA)	\$800.00	\$150.00	\$950.00

100	SAMANTHA 2241, LOT 108	KELLY R KLINGSMITH	7413240108000 FAIRPORT ADDITION LOT 108 (LOT ON W SAMANTHA)	\$800.00	\$150.00	\$950.00
101	SHERIDAN AVE S 518	MARJEAN KOCEJA	007416500016000 AE HAMMONDS 2ND ADD LOT 46	\$500.00	\$150.00	\$650.00
102	LOT 10 ON STELLER	DONALD E/HAROLD E/MABE REEVES	007410600034000 GARFIELD PARK ADD LOT 10 BLK 2 (LOT ON STELLER)	\$125.00	\$150.00	\$275.00
103	TAFT 306	SARAH LAUMEYER	007413250153000 FAIRVIEW ADD LOT 19 BLK 9 (306 TAFT)	\$155.00	\$150.00	\$305.00
104	TINDELL 301	TAX HOLDING LLC	007413960038000 SIBERELLS 1ST ADD LOT 40 & 41 BLK 4 (301 TINDELL)	\$200.00	\$150.00	\$350.00
105	TUTTLE 925	LARRY D/KAREN S MEIXNER	007416540227000 HARDING PARK ADD LOT 56 BLK 4 (925 TUTTLE)	\$200.00	\$150.00	\$350.00
106	TUTTLE LOT 16 1006	WILLIAM T/LADONNA K BEALL	7416540248000 HARDING PARK ADD. LOT 16 BLK 5 (LOT ON TUTTLE)	\$490.00	\$150.00	\$640.00
107	TUTTLE LOT 17 1006	WILLIAM T/LADONNA K BEALL	7416540249000 HARDING PARK ADD. LOT 17 BLK 5 (LOT ON TUTTLE)	\$490.00	\$150.00	\$640.00
108	TUTTLE LOT 18 1006	WILLIAM T/LADONNA K BEALL	7416540250000 HARDING PARK ADD. LOT 18 BLK 5 (1006 TUTTLE)	\$500.00	\$150.00	\$650.00
109	VAN BUREN S 120	JOSE/MARTHA SOTO	007411010073000 MANNING'S 2ND ADD LOT 22 BLK 3 (120 S VAN BUREN)	\$500.00	\$150.00	\$650.00
110	VENTURE DR OUTLOT 1	HORNE DEVELOPMENT LP	007417800004010 HORNE SUB DIV OUTLOT 1 EX PARCEL A	\$950.00	\$150.00	\$1,100.00
111	VENTURE DR SUBDIVISION	HORNE DEVELOPMENT LP	7417800005000 HORNE SUB DIV O L 2 EX PT IN BK 527 PG 866	\$950.00	\$150.00	\$1,100.00
112	VENTURE DR OUTLOT 5	HORNE DEVELOPMENT LP	7417840004000 HORNE SECOND SUB OF LOT 3 OF HORNE SUB DIV OUTLOT 5	\$960.00	\$150.00	\$1,110.00
113	WABASH 802	JERRY A HOUK	007416970022000 ROBINSONS 3RD ADD LOT 83 (802 WABASH)	\$125.00	\$150.00	\$275.00
114	WALNUT AVE N 105	DOROTHY MAE BLAKELY (ROSS)	007411290016000 KATE REDMANS 2ND ADD LOT 43	\$500.00	\$150.00	\$650.00
115	WALNUT AVE N 109	FELIPE MENDOZA	007411290017000 REDMANS 2ND LOT 44	\$500.00	\$150.00	\$650.00
116	WAPELLO ST N 601	APRIL/ERIC SHAUMAN	007413380024000 HACKWORTH'S SUB OF GIL. LOT 19 (601 N WAPELLO)	\$200.00	\$150.00	\$350.00

117	WAPELLO ST N 1323	TRACY S REED	007413100011000 CASTLE'S 2ND ADD LOT 13 (1323 N WAPELLO)	\$150.00	\$150.00	\$300.00
118	WARD S 328	JOHN HENRY SHEPHERD JR	007416640011000 LEIGHTON & BANNISTER S 1ST ADD ALL EX S 14'LT 9 BLK 1;S 14' LT10 BLK1(328 S WARD)	\$500.00	\$150.00	\$650.00
119	WAVERLY 416	MICHAEL A HEADY SR	007411310070000 RIVERVIEW ADD LOT 13 BLK 5	\$500.00	\$150.00	\$650.00
120	WEBSTER ST S 414	JEFFREY MINELLA	007417310028000 WILLIAMS PARK ADD LOT 31 (414 S WEBSTER)	\$125.00	\$150.00	\$275.00
			TOTAL ASSESSED FEES	\$37,500.00		
				37,315.00		

removed tract # 75

FILED

2021 DEC 15 AM 10:50

CITY CLERK
OTTUMWA, IOWA

CITY OF OTTUMWA

Staff Summary

**** ACTION ITEM ****

Council Meeting of : Dec 21, 2021

Philip Rath

Prepared By

Administration

Department

Department Head



City Administrator Approval

AGENDA TITLE: Resolution No. 219-2021 - a resolution authorizing participation in the national opioid settlement

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution 219-2021

DISCUSSION:

Earlier this year the Mayor Lazio and I were contacted about participating with the State regarding the national settlement with the three largest pharmaceutical distributors. By passing the resolution and signing the attached Memorandum Of Understanding (MOU), the City agrees to its share of any settlement agreement the State of Iowa is able to achieve. An alternative would be to attempt to file a stand alone case against these same companies. A stand alone case would be at the expense of the City and does not offer a guarantee that we would receive any additional compensation. I recommend participating with the State on this matter.

Source of Funds: N/A

Budgeted Item:

Budget Amendment Needed:

RESOLUTION NO. 219-2021

RESOLUTION AUTHORIZING PARTICIPATION IN
NATIONAL OPIOID SETTLEMENTS

WHEREAS, the Iowa Attorney General has signed onto two proposed nationwide settlement agreements to resolve all opioid litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors, McKesson, Cardinal Health and AmerisourceBergen, and one manufacturer, Janssen Pharmaceuticals, Inc., and its parent company Johnson & Johnson.

WHEREAS, cities and counties may participate in the settlements by executing Participation Agreements in the two cases. The Participation Agreements must be submitted by January 2, 2022.

WHEREAS, a Memorandum of Understanding regarding allocation of settlement funds among the State, counties and eligible cities must also be approved and submitted to the Attorney General's office.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, STATE OF IOWA:


Section 1. The City Council authorizes the City's participation in the national opioid settlements referenced above. The Mayor and City Clerk are authorized to sign any documents and take appropriate action related to this participation.

Section 2. The City Council further approves the Memorandum of Understanding with the Iowa Attorney General regarding allocation of settlement funds among the State, counties and eligible cities. The Mayor and City Clerk are authorized to sign any documents and take appropriate action related to the Memorandum of Understanding.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, STATE OF IOWA, this 21st day of December, 2021.



Mayor

ATTEST:


City Clerk



IOWA OPIOID ALLOCATION
MEMORANDUM OF UNDERSTANDING

A. Definitions

As used in this Memorandum of Understanding (“MOU” or “Agreement”):

1. “Local Government” shall mean all Iowa Counties (regardless of population) and cities, villages, and towns located within the geographic boundaries of the State of Iowa with a population exceeding 10,000.¹
2. “Opioid Funds” shall mean monetary amounts obtained through a Settlement as defined in this MOU, including amounts obtained under Sections IV and V of the Distributor Master Settlement Agreement and Sections V and VI of the J&J Master Settlement Agreement. Separate amounts allocated to the State as restitution pursuant to Sections IX of the Distributor Master Settlement Agreement and Sections X of the J&J Master Settlement Agreement and amounts for reimbursement of attorneys’ fees and costs as set forth in Sections X of the Distributor Master Settlement Agreement and Section XI of the J&J Master Settlement Agreement and from similar state specific or private attorneys’ fees funds created by other Settlements are not “Opioid Funds.” For avoidance of doubt, payments to the Iowa Backstop Fund will be paid out of Opioid Funds as more specifically set forth in Section D of this MOU.
3. “Opioid Related Expenditure” shall mean an expenditure consistent with the categories enumerated in Exhibit E to the Distributor Master Settlement Agreement and the J&J Master Settlement Agreement found at <https://nationalopioidsettlement.com/> and attached hereto as Exhibit 1.
4. “Parties” shall mean the State of Iowa and Participating Local Governments.
5. “Pharmaceutical Supply Chain Participant” shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution or dispensing of an opioid analgesic, including but not limited to those persons or entities identified as Defendants in the matter captioned *In re: Opioid Litigation*, MDL 2804 pending in the United States District Court for the Northern District of Ohio.
6. “Participating Local Government” is any Local Government that agrees to be bound by a Settlement by Participation Agreement necessary to effectuate that Settlement or other similar document.
7. “Settlement” shall mean the negotiated resolution of legal or equitable claims regarding opioids against a Pharmaceutical Supply Chain Participant when that resolution has been

¹ The population figures contained in this MOU shall be derived from the published U.S. Census Bureau’s population estimates for July 1, 2019, released May 2020 as set for in the Distributor Master Settlement Agreement and the J&J Master Settlement Agreement.

jointly entered into by the Parties. For avoidance of doubt, a Settlement shall not include (i) any negotiated resolution of legal or equitable claims between the State and a Supply Chain Participant that is unrelated to the claims at issue in the matter captioned *In re: Opioid Litigation*, MDL 2804 pending in the United States District Court for the Northern District of Ohio or (ii) any negotiated resolution of legal or equitable claims between the State and a Supply Chain Participant that requires the Parties to allocate settlement proceeds in a specific manner or using specified allocation percentages inconsistent with this MOU

8. "Master Settlement Agreement" shall mean the agreements documenting a Settlement. For the purposes of this MOU the Distributor Master Settlement Agreement and the J&J Master Settlement Agreement found at <https://nationalopioidsettlement.com/> are Master Settlement Agreements under the meaning of this MOU.
9. "State" shall mean the State of Iowa.

B. Allocation of the Opioid Settlement Proceeds

1. Opioid Funds shall be allocated as follows: (i) 50% to the Iowa Abatement Fund ("Iowa Abatement Share") and (ii) 50% to Participating Local Governments, less fees and costs allocated to the Iowa Backstop Fund as set forth in Section D ("LG Abatement Share").
2. The Participating Local Governments may elect to use a Settlement Administrator ("Settlement Administrator") to receive and distribute Opioid Funds allocated to the LG Abatement Share pursuant to this MOU.
3. Opioid Funds shall not be considered funds of the Iowa Abatement Fund or any Local Government unless and until such time as an allocation is made to the Iowa Abatement Fund or any Participating Local Government pursuant to this Section.
4. The LG Abatement Share shall be distributed in direct payments to the Counties that are Participating Local Governments according to the National Negotiation Class Formula, in the amounts set forth on Exhibit 2 ("Direct Distribution Amount").
5. A County may elect to forego its Direct Distribution Amount by notifying the Settlement Administrator in writing of its decision. If a County makes an election to forego its Direct Distribution Amount, that amount reverts to the LG Abatement Share unless the County specifically designates that its share should revert to the Iowa Abatement Share.
6. Except as provided herein, nothing shall prohibit a County from sub-allocating any portion of its Direct Distribution Amount to the Iowa Abatement Fund or to a City that is a Participating Local Government within its jurisdiction provided, however, that the Iowa Abatement Fund or City must expend any such sub-allocation only on an Opioid Related Expenditure.

7. If a County sub-allocates Opioid Funds to a City within its jurisdiction, such suballocation shall be made according to an agreement between the County and the City requiring the use of the suballocated funds for an Opioid Related Expenditure and further providing that a use of funds inconsistent with an Opioid Related Expenditure shall make the funds subject to recoupment and otherwise disqualify the City from a future sub-allocation.
8. Except as provided herein, 100% of the Iowa Abatement Share and the LG Abatement Share, regardless of allocation, shall be utilized only for Opioid Related Expenditures incurred after the Effective Date of this MOU. The list of approved Opioid Related Expenditures are set forth in Exhibit 1 to this MOU . The Parties agree that at least 75% of the Iowa Abatement Share and the LG Abatement Share shall be utilized for only the “Core Strategies” listed in Schedule A of Exhibit 1 to this MOU.
9. The Parties may use up to 2.5% of the Iowa Abatement Share and the LG Abatement Share for administrative costs for Opioid Related Expenditures.

C. Compliance Reporting and Accountability

1. Every Participating Local Government that receives a Direct Distribution Amount shall create a separate fund on its financial books and records that is designated for the receipt and expenditure of the entity’s Direct Distribution Amount, called the “LG Abatement Fund.” Funds in an LG Abatement Fund shall not be commingled with any other money or funds of the Participating Local Government. A Participating Local Government may invest LG Abatement Fund funds consistent with the investment of other funds of a Participating Local Government.
2. Funds in a LG Abatement Fund may be expended by a Participating Local Government only for Opioid Related Expenditures. For avoidance of doubt, funds in a LG Abatement Fund may not be expended for costs, disbursements or payments made or incurred prior to the Settlement.
3. Each LG Abatement Fund shall be subject to audit in a manner consistent with Code of Iowa §§331.402(2)(i) and 11.6. Any such audit shall be a financial and performance audit to ensure that the LG Abatement Fund disbursements are consistent with the terms of this MOU. If any such audit reveals an expenditure inconsistent with the terms of this MOU, the Participating Local Government shall immediately redirect the funds associated with the inconsistent expenditure to an Opioid Related Expenditure.
4. Reporting
 - a. Each Participating Local Government that receives a Direct Distribution Amount must prepare and file a public annual report describing the expenditure of its Direct Distribution Amount. The report shall include, though is not limited to, a

narrative description of the funded programs; the dollar amount provided; and progress and/or outcomes of funded programs. Participating Local Governments may work together to prepare and file joint reports if they so choose.

- b. A Participating Local Government taking a suballocation of some amount of its Direct Distribution Amount pursuant to Section B(7) is responsible for including the expenditure of those funds and outcomes from those expenditures in the annual report required by Section C(4)(a), above.
 - c. The State may utilize the reports in order to report to the public on the use and effectiveness of the Opioid Funds in addressing the opioid crisis in Iowa.
5. Two or more Participating Local Governments may combine their respective Direct Distribution Amounts.
 6. Nothing shall prohibit Participating Local Governments from acting alone or together pursuant to Paragraph 5 or from entering into an agreement(s) relating to the securitization of Opioid Funds (and any allocation thereof) that are scheduled under a Settlement to be paid at a future date.
 7. Pursuant to Section B of this MOU the Iowa Abatement Fund and all Participating Local Governments shall use 100% of the Iowa Abatement Share and the LG Abatement Share for Opioid Related Expenditures.

D. Payment of Counsel and Opioid Litigation Expenses

1. Sixty-six of the Participating Local Governments (“Litigating Local Governments”) have contracted with outside counsel (“Counsel”) for representation in litigation against certain Pharmaceutical Supply Chain Participants and Counsel has been representing some of those entities since 2018. The Litigating Local Governments are set forth on Exhibit 2. In consideration for Counsel’s representation, each of the Litigating Local Governments entered into a contract with its Counsel for a 25% contingency fee applied to each Litigating Local Government’s recovery.
2. The Distributor Master Settlement Agreement and the J&J Master Settlement Agreement provide for the payment of attorneys’ fees and legal expenses owed by States and Participating Local Governments to outside counsel retained for litigation against the Defendants in those agreements. To effectuate this, the Court in the MDL Litigation has established a fund to compensate attorneys for services rendered and expenses incurred that have benefitted plaintiffs generally in the litigation (the “National Attorney Fee Fund”).
3. Counsel for the Litigating Local Governments intends to make application to the National Attorney Fee Fund. Because there is still uncertainty regarding what Counsel will recover as compensation for the large volume of work done and the large out of pocket expense of the Litigation, and whereas the Litigating Local Governments desire

to fairly compensate Counsel for the work done on behalf of Litigating Local Governments, the Parties agree that the Participating Local Governments will create an Iowa attorneys' fees and costs fund (the "Iowa Backstop Fund") to compensate Counsel only in the event Counsel does not recover from the National Attorney Fee Fund an amount equal to 15 % of the LG Abatement Share attributable to the Litigating Local Governments, less any amounts a Litigating Local Government suballocates to one or more Cities within its jurisdiction ("Net Direct Distribution Amount"). For the avoidance of doubt, collectively, Counsel are limited to being paid, at most, and assuming adequate funds are available under the National Attorney Fee Fund and the Iowa Backstop Fund, attorneys' fees totaling fifteen percent (15%) of the total Net Direct Distribution Amount for all Litigating Local Governments.

4. Counsel must first seek recovery at the National Attorney Fee Fund before applying to the Iowa Backstop Fund and may not recover from the Iowa Backstop Fund any amounts recovered at the National Attorney Fee Fund.
5. Counsel can seek payment from the Iowa Backstop Fund only for the difference between what they have collected from the National Attorney Fee Fund and the amount to which they are entitled under Paragraph D(3), above.
6. If Counsel receives fees/costs for common benefit work from the National Attorney Fee Fund, when determining "amounts recovered" for purposes of this Section D, those fees/costs received from the National Attorney Fee Fund for common benefit work will be allocated proportionately across all of their local governmental clients based on the Negotiation Class Model to allocate the appropriate portion to Iowa Litigating Local Governments.
7. The Iowa Backstop Fund shall be funded as follows: from the Opioid Funds Allocated to Participating Local Governments pursuant to this MOU, the Settlement Administrator shall deposit in the Iowa Backstop Fund an amount equal to 15% of the total Net Direct Distribution Amount for all Litigating Local Governments and distribute the remainder of the funds allocated to Participating Local Governments as set forth in Section B above. No funds from the Iowa Abatement Share shall be used to pay attorneys' fees and no funds from the Iowa Abatement Share shall be paid to the Iowa Backstop Fund.
8. Any funds remaining in the Iowa Backstop Fund in excess of the amounts needed to cover the deficiency in attorneys' fees as provided in this Section shall revert back to the LG Abatement Share and shall be allocated to the Participating Local Governments as provided in Section B.
9. The Settlement Administrator shall be responsible for receiving requests for and allocating payments to Counsel from the Iowa Backstop Fund. Counsel seeking payment from the Iowa Backstop Fund shall provide all documents and information required and/or sought by the Settlement Administrator.

10. The Settlement Administrator is authorized to provide information regarding requests for and payment from the Iowa Backstop Fund to the Attorney General, upon request.
11. The Iowa Backstop Fund will not be funded by proceeds from any resolution in the matter of *In re Purdue Pharma L.P., et. al.*, Docket No. 19-23649 in the Bankruptcy Court for the Southern District of New York.

E. Minimum Participation

1. This Agreement shall become effective at the time when Litigating Local Governments comprising 95% of the total Litigating Local Government population and Local Governments comprising 80% of the total population of eligible Primary Subdivisions as defined and described in in the Settlement Agreements with a population over 30,000 people sign this MOU (“MOU Effective Date”).
2. For avoidance of doubt, a list of the Litigating Local Governments and eligible Primary Subdivisions with a population over 30,000 people whose participation is required to achieve the MOU Effective Dates as set forth above is attached hereto as Exhibit 3.

F. Other Terms

1. The Parties agree to make such amendments as necessary to implement the intent of this agreement. After this Agreement becomes effective, amendments may only be made to this Agreement if approved in writing by the Attorney General and at least 51% of the Participating Local Governments.
2. This Agreement shall be governed by and construed under the laws of the State of Iowa using Iowa law. Any action related to the provisions of this Agreement, except as otherwise provided in the Master Settlement Agreements or Future Resolutions, must be adjudicated by the Iowa state courts of Polk County in the State of Iowa.
3. This Agreement does not supersede or alter the terms of the Master Settlement Agreements except to the extent those terms allow for a State-Subdivision Agreement to do so.
4. If any part of this Agreement is declared invalid or becomes inoperative for any reason, such invalidity or failure shall not affect the validity and enforceability of any other provision.
5. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. A signature transmitted by facsimile or electronic image shall be deemed an original signature for purposes of executing this Agreement.

6. Each person signing this Agreement represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the named governmental entity, and that all necessary.

IN WITNESS WHEREOF, the parties hereby execute this MOU as of the date set forth below.

ON BEHALF OF THE STATE OF IOWA:

_____ Date: _____
Attorney General Thomas J. Miller

ON BEHALF OF THE LOCAL GOVERNMENTS:

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Adair County
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Adams County
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Allamakee County
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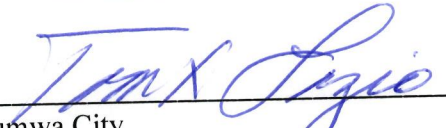
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Wright County
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CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Dec 21, 2021

Administration
Department

Barbara Codjoe
Prepared By
Barbara Codjoe
Department Head

Rlp Rth
City Administrator Approval

AGENDA TITLE: Resolution #220-2021 - Approve Workplace Violence and Threats Prevention Policy

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt resolution #220-2021

DISCUSSION: At the request of council, we have worked to develop a new policy titled Workplace Violence and Threats Prevention. This policy expands upon our current article 28 in our Personnel Policies and Procedures.

We have consulted with insurance companies, pulled available comparative data, completed employee surveys and consulted with our attorneys.

Source of Funds: N/A

Budgeted Item: Budget Amendment Needed:

RESOLUTION NO. 220-2021

RESOLUTION APPROVE WORKPLACE VIOLENCE AND THREATS PREVENTION POLICY

WHEREAS, the City of Ottumwa, Iowa had approved a revised Personnel Policies and Procedures manual on June 2, 2020, which incorporated the current Violence in the Workplace policy as part of the document' and;

WHEREAS, staff for the City of Ottumwa has reviewed the current policies regarding Violence in the Workplace and determined the current policy does not meet the short and long term care for employees and operational needs for the employer, and;

WHEREAS, staff has drafted a Workplace Violence and Threats Prevention Policy to meet the needs of both employee and employer and finds that approval of said policies and procedures, as revised, would be in the best interest of the City and the employees of the City, and;

WHEREAS, the City Council of the City of Ottumwa, Iowa desires to approve the new Workplace Violence and Threats Prevention Policy in accordance with the Municipal Code of the City of Ottumwa, sections 2-144 and 2-145

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ottumwa, Iowa, that the current Violence in the Workplace policy as part of the Personnel Policies and Procedures approved on June 2, 2020 and any supplements thereafter are hereby repealed and that the attached Workplace Violence and Threats Prevention Policy are hereby adopted in their place with an effective date of October 20, 2021.

BE IT FURTHER RESOLVED, by the Ottumwa City Council of the City of Ottumwa, Iowa, that the Mayor and City Clerk are hereby authorized and directed to execute said resolution.

PASSED, ADOPTED and APPROVED this 21st day of December 2021.

CITY OF OTTUMWA, IOWA



Tom X. Lazio, Mayor

ATTEST:



Christina Reinhard, City Clerk



PURPOSE

The City is committed to providing a safe workplace for its employees and a safe environment for the citizens of the community, and has a zero tolerance policy toward any intimidating, threatening or violent behavior at the workplace. This policy applies to any form of violence occurring on the worksite, or involving City employees engaged in the performance of their work duties whether on or off the worksite. Violence occurring at other locations involving City employees will come under this policy if it adversely affects the interests of the City. Supervisors will work to the extent reasonably possible to ensure that employees are free from intimidating, threatening and violent behavior while at work.

POLICY

Patrons and employees may carry a concealed weapon while performing his or her job duties so long as that employee can legally carry a concealed weapon ("eligible employee"). It is the responsibility of the employee to understand state and federal laws and to know whether he or she can legally carry a concealed weapon. An eligible employee may carry a concealed weapon on city owned property unless prohibited by federal or state law. An eligible employee must comply with all requirements of the law and this policy when carrying a concealed weapon. The employee must always keep the weapon completely concealed, except for those instances where necessary for self-defense or transferring to locked storage. Weapons must always be in the immediate control of the eligible employee in a holster or in locked storage, and the employee cannot leave his or her weapon unattended in or on his or her workstation or in a purse, bag, desk, filing cabinet, or other storage container left behind at the employee's office.

Patrons and employees who carry unauthorized, concealed or unconcealed weapons or display intimidating, threatening and/or violent behavior will be held accountable under City policy and work rules, as well as local, state and federal law. An employee who harasses, threatens, attempts to or inflicts bodily harm to co-workers, representatives of other agencies, or members of the public is in violation of this policy. An employee who violates this policy will be subject to serious disciplinary action up to and including termination of employment. They may also be subject to possible criminal prosecution. All City managers and employees are responsible for committing to and becoming involved in the prevention of workplace violence and promotion of a safe work environment.

Workplace violence is defined for purposes of this policy as any direct, conditional or implied threat, intentional act or other conduct that reasonably arouses fear, hostility, intimidation or the apprehension of bodily harm in its target or witnesses, regardless of the location of such acts. It includes: any intentional or wrongful physical contact with a person without his or her consent that entails some injury; threats or intimidations that imply or express an intent to inflict physical or emotional harm; actions that a reasonable person would perceive as a threat to personal safety or property; Words or actions which cause a person to avoid social contact or to do or refrain from doing an act, including supervisory discipline, by inducing fear; Intimidating, stalking or coercing fellow employees in such a way that affects the interest of the City. Threatening behaviors can be non-verbal, verbal, or written in any correspondence (such as mail, texts, e-mail, etc.).

Workplace violence includes vandalism or the destruction of property at the worksite belonging to an employee, citizen, vendor or the City. The City property includes all items owned or leased by the City. Weapons include any item that, in the manner it is used or intended to be used is likely to produce death, physical injury or property damage.

(A) Responsibilities and Reporting Procedures

- a. **Employer Responsibilities:** The City will work with employees to provide a safe workplace while recognizing that employees in addition to patrons may desire to carry concealed weapons in a non-threatening manner.
- b. **Employee Responsibilities:** Employees play a role in ensuring a safe workplace for their self and their coworkers. The following are responsibilities of the employee to aid in this effort.
 - i. All City employees have a responsibility to notify their immediate supervisor, or in the absence of their supervisor, another supervisor, of any intimidating or threatening behavior that they witness, receive or have been told that another person has witnessed or received. The notified supervisor shall make a determination whether to contact the police department.
 - ii. Employees shall cooperate fully with all appropriate individuals in the investigation and prosecution of criminal acts, this policy, and the pursuit of any civil remedies in order to create and maintain a violence-free workplace. Employees are expected to participate in training and education programs relevant to a violence-free workplace when requested.
 - iii. Employees who desire the option to carry a concealed weapon in the workplace shall meet and maintain the following criteria:
 1. Employee shall have a valid Iowa Non-Professional CCW permit.
 2. Valid Iowa Non-Professional CCW permit to carry shall be verified by the Chief of Police (or their designee) initially and prior to carrying under this policy, annually, and at any time according to Iowa State Law. Employee must carry their permit at all times.
 3. Employee must take and pass a training course provided by a certified firearms instructor that follows recognized law enforcement qualification standards prior to allowing carrying or possessing and weapon on City property (mace, Taser, firearm/s) and at least annually thereafter. Additional training such as "Shoot/Don't Shoot" must be completed periodically or in combination with weapons qualification training. Training records must be current and kept on file with Human Resources.
 4. All weapons to be carried, ammunition, and accessories (holsters, laser sights, etc.) must meet minimum safety standards that are at least equal to local law enforcement policies.
 5. Weapons "carried" shall be completely concealed at all times and not to be withdrawn for any reason other than to remove and secure them as directed by the policy or in use of self-defense, and only then as a last resort..
 6. If employee is to enter a posted or other "firearm/weapons free zone" and is not authorized to carry in that zone, weapons shall be secured in a location with high degree of theft prevention strategies (lock boxes, safes, or racks w/ electronic or other means of security).
 7. Employees who possess a concealed weapon in the workplace without complying with these requirements may be subject to discipline up to and including termination.

- c. Management Responsibilities:**

 - i. All supervisors have a responsibility to review this policy with new employees and periodically review this policy with all employees within their department. Additionally, they are responsible for maintaining a working environment that is as safe as possible for City employees.
 - ii. If a supervisor receives information that indicates a potential for a threatening or violent situation, it is the supervisor's responsibility to immediately notify the police department and/or the City Administrator. Once the situation is under control, Human Resources (or designee) shall interview all persons involved, including witnesses, to obtain an accurate account of the incident. Human Resources is required to maintain a written record that documents the incident. Corrective action will be taken to remedy violations of this policy when warranted, up to and including termination.
 - iii. Any manager or supervisor who fails to properly act upon employee complaints or on personal conduct in violation of this policy shall be subject to disciplinary action up to and including termination.
 - iv. Periodic employee surveys will be conducted for ideas on the potential for violence, holes in security and other risk factors.

- (B) Retaliation:**

 - a. Retaliation against any employee for filing a complaint of workplace violence, or for assisting, testifying, or participating in the investigation of such a complaint, is illegal and is prohibited by this City and by federal statutes.
 - b. Retaliation is a form of employee misconduct. Any evidence of retaliation shall be considered a separate violation of this policy and shall be handled by the same complaint procedures established for workplace violence complaints. Employees who witness, receive, or are made aware of retaliatory behavior should notify their supervisor.
 - c. Supervisors and city administration should monitor for retaliatory behavior. Failure to address retaliation could lead to discipline.

- (C) Restraining Orders:**

Individuals who apply for and obtain an injunction or restraining order must provide, as soon as possible, to their manager and/or the Director of Human Resources:

 - i. A copy of the petition and declaration used to seek the order.
 - ii. A copy of any temporary protective restraining order and/or
 - iii. A copy of a protective restraining order that is made permanent.

- (D) Violence Prevention:**

 - a. **Training:** The City will develop and conduct workplace violence prevention training programs on a bi-annual basis.
 - b. **Worksite Analysis:** To the extent possible the City will assess the work environment for signs of potential violence or workplace hazards and implement preventative measures when needed. Formal assessments may include, but are not limited to: analysis of the physical jobsite, operations and procedures for existing or potential hazards for violence, the City's vulnerability to violence and a determination of appropriate preventive actions, a review of discipline, medical, safety, worker's compensation, and insurance records (including OSHA 300 logs and police reports) to identify incidents of threats or violence, trends pertaining to

particular areas, units, jobs, activities or times, the frequency and severity of incidents, and the establishment of a baseline for measuring improvement.

OTHER DEFINITIONS

- (A) **Weapon:** The statutory definition of “dangerous weapon” is contained in Section 702.7 and “offensive weapon” is contained in Section 724.1, Iowa Code, which states: “a dangerous weapon is any instrument or device designed primarily for use in inflicting death or injury upon a human being...”
- (B) **Workplace/Worksite:** Any location where employees are carrying out their job duties or are contacted for reasons related to their job duties.

EMPLOYEE	
Name	Telephone Number: Work: Home:
Work Office Address (street, city, state, zip)	Employee Classification
Manager's Name	Telephone Number
INCIDENT	
Name of Assaulter/Threatener:	Are they an employee? <i>Yes No</i>
Date of Assault/Threat:	Location:
Assault/Threat was from: Personal Confrontation Telephone Conversation Other Please Explain:	
Were there witnesses? <i>Y N</i> If yes, how many? _____. Provide information below and attach their statements. Determine if witnesses prefer to remain anonymous due to the concern of retaliation by the aggressor.	
WITNESSES <i>(If additional witnesses, provide information on attached sheet of paper.)</i>	
Witness 1 – Name	Telephone Number Work: Home:
Address (street, city, state, zip)	Witness Role (employee, customer)
Witness 2 – Name	Telephone Number: Work: Home:
Address (street, city, state, zip)	Witness Role (employee, customer)
IF ASSAULTED , answer the following questions:	
1. What started the assault?	
2. What did the person say when you were assaulted?	
3. What was used to hit/strike/injure you?	
4. What injuries did you sustain? Was medical treatment necessary?	
5. How did the assault end?	
6. How did you leave the assault site?	

IF THREATENED , answer the following questions:		
1. As closely as possible, what were the exact words used?		
2. Was the person in a position to carry out the threat immediately?		
3. How serious do you believe the threat was, and why?		
EMPLOYEE RELATED ACTIONS (<i>Employee must complete</i>)		
1. What actions did the employee take? (<i>i.e. filed worker's compensation, obtained medical treatment, used sick leave, vacation, etc.</i>)		
2. What specific actions from the City/Village does the employee request related to assault/threat? If none, so indicate.		
LAW ENFORCEMENT INFORMATION (<i>Attach copy of police report when possible</i>)		
Law Enforcement Agency Contacted Name of Person/Officer	Date Contacted	Telephone Number
Was a written report completed? <i>YES NO</i>		
What action was taken/promised?		
MANAGER ACTIONS		
Directions given to employee (<i>i.e. go home, go to hospital, etc.</i>)		
Manager Recommendations: Prosecution Restraining Order Letter to Threatener Other (<i>specify</i>):		
NOTIFICATION DATES		
Date report was received:	Was employee notified of chosen action? <i>YES NO</i>	Was the Safety Officer notified of the incident? <i>YES NO</i>
Was management notified? <i>YES NO</i>	Was the EAP Officer notified? <i>YES NO</i>	Was the employee/management notified of other options that can be pursued personally? <i>YES NO</i>

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Dec 21, 2021

Administration
Department

Barbara Codjoe
Prepared By
Barbara Codjoe
Department Head



City Administrator Approval

AGENDA TITLE: Resolution #221-2021 - Approve updated Personnel Policies

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt resolution #221-2021

DISCUSSION: Please see attached.

Source of Funds: N/A

Budgeted Item: Budget Amendment Needed:

RESOLUTION NO. 221-2021

RESOLUTION APPROVE UPDATED PERSONNEL POLICIES AND PROCEDURES

WHEREAS, the City of Ottumwa, Iowa had approved a revised Personnel Policies and Procedures manual on June 2, 2020, which incorporated the current practices regarding longevity pay, and Violence in the Workplace as part of the document' and;

WHEREAS, staff for the City of Ottumwa has reviewed the current policies regarding longevity pay, and Violence in the Workplace and determined the current policy does not meet the short and long term care for employees and operational needs for the employer, and;

WHEREAS, staff has drafted and revised the Personnel Policies and Procedures to meet the needs of both employee and employer and finds that approval of said policies and procedures, as revised, would be in the best interest of the City and the employees of the City, and;

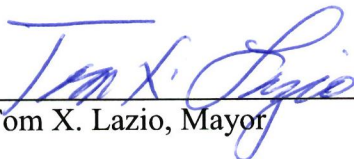
WHEREAS, the City Council of the City of Ottumwa, Iowa desires to approve the new Personnel Policies and Procedures containing reference to longevity pay, and Violence in the Workplace in accordance with the Municipal Code of the City of Ottumwa, sections 2-144 and 2-145

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ottumwa, Iowa, that the current Personnel Policies and Procedures approved on June 2, 2020 and any supplements thereafter are hereby repealed and that the attached Personnel Policies and Procedures are hereby adopted in their place with an effective date of December 21st, 2021.

BE IT FURTHER RESOLVED, by the Ottumwa City Council of the City of Ottumwa, Iowa, that the Mayor and City Clerk are hereby authorized and directed to execute said resolution.

PASSED, ADOPTED and APPROVED this 21st day of December 2021.

CITY OF OTTUMWA, IOWA



Tom X. Lazio, Mayor

ATTEST:



Christina Reinhard, City Clerk



1) Update Longevity policy - Current policy states that only full time employees get a longevity rate. Collective bargaining agreements stipulate part-time employees on a prorated basis. We propose a change to allow all full and part-time regular employees the same longevity rate. This will affect nine (9) employees and cost the city \$0.92 per hour worked on the regular rate.

2) 2nd update to Longevity Policy - Current policy states that the city will pay employees a longevity rate of \$25 per month. After further review, Fair Labor Standards Act states that all remuneration for employment paid to the employee is considered the regular rate. This total rate would then be figured into an employee's rate for overtime, vacation, sick, etc..

We will add language to our personnel policy showing that we will base longevity on \$25 per month for every 5 year payment taking into consideration the number of hours different departments work per year (police, fire, etc.). The library already has a set rate as per their collective bargaining agreement that will be placed in the policy as well.

3) Update Violence in the Workplace - Article 28 -

We will replace the wording in the current personnel policy with the following which references our new Workplace Violence and Threats Prevention Policy:

"The City of Ottumwa does not tolerate violence in any form or the threat or perception of violence by or against any employee while performing his or her official duties, or due to the employee's official duties, wherever those duties are performed. Additionally, the City of Ottumwa recognizes an individual's right to bear arms in accordance with state and federal laws afforded by the Second Amendment of the United States Constitution and the State of Iowa. The City is not liable for any wrongful or negligent act or omission related to actions of persons or employees who carry a concealed weapon.

Unless specific job duties require it, the ability to carry a concealed weapon is not within the scope of employment and is not a condition of employment. Nothing in this policy should be interpreted to require or encourage any employee who lawfully possesses a weapon to use it in defense of others.

An employee in violation of this policy will be subject to discipline up to and including termination of employment.

For additional information regarding the City of Ottumwa's expectations of its employees who wish to carry a concealed weapon while engaged in the duties of their employment, please reference the Workplace Violence and Threats Prevention Policy."

LONGEVITY PAY:

The City will pay full-time and part-time regular employees a longevity rate based on \$25.00 per month for each five years of continuous service. Library employees will be paid a per hour rate set by their collective bargaining agreement. As per the Fair Labor Standards Act, this will be paid as an hourly rate and applied to the base compensation rate to determine an employee’s regular rate of pay to calculate for overtime, holiday, incentive, funeral, military, sick (casual and dependent), comp time payment and vacation pay.

Years of Service	Monthly Amount	Yearly Amount	2080 Hours	2184 Hours	2912 Hours	Library
			Per hour	Per hour	Per hour	Per hour
5	\$ 25.00	\$ 300.00	\$ 0.14	\$ 0.14	\$ 0.10	\$ 0.15
10	\$ 50.00	\$ 600.00	\$ 0.29	\$ 0.27	\$ 0.21	\$ 0.30
15	\$ 75.00	\$ 900.00	\$ 0.43	\$ 0.41	\$ 0.31	\$ 0.45
20	\$ 100.00	\$ 1,200.00	\$ 0.58	\$ 0.55	\$ 0.41	\$ 0.60
25	\$ 125.00	\$ 1,500.00	\$ 0.72	\$ 0.69	\$ 0.52	\$ 0.75
30	\$ 150.00	\$ 1,800.00	\$ 0.87	\$ 0.82	\$ 0.62	\$ 0.90
35	\$ 175.00	\$ 2,100.00	\$ 1.01	\$ 0.96	\$ 0.72	\$ 1.05
40	\$ 200.00	\$ 2,400.00	\$ 1.15	\$ 1.10	\$ 0.82	\$ 1.20

**for reference only – differences may be minimal due to rounding*

FLEX SPENDING PLAN:

The City currently has a Flex Spending Plan being administered by Advantage Administrators. This plan allows an employee to set aside dollars each year as a deduction to pay for qualified health and dependent care expenses. These dollars are deducted from the employee’s wages before any income or social security taxes are paid. By using this tax savings plan, the employee will not only notice an increase in take home pay, but the employee will have access to a reimbursement account throughout the year to pay qualified expenses. This is on a calendar year basis. Employees are notified in November of each year for signup for the next calendar year. A failure to sign up during this open enrollment period will result in the inability to utilize this plan for that year. The IRS sets the maximum amount of money that can be placed in this plan annually. The sum of \$500 can be carried over into the next year and participants may have until January 31 of the next calendar year to submit claims. An employee must consider carefully how much is needed annually. Any amount over \$500 will be forfeited.

See Human Resources for further information regarding this Plan.

RETIREMENT PLANS:

Step Three. If the grievance is not settled in Step Two, the grievant may submit the grievance to the Personnel Officer and the City Administrator within seven (7) working days of the receipt of the Department Head's written answer or the grievance is waived.

The City Administrator shall give a written answer to the aggrieved employee within ten (10) working days after the grievance is presented.

All completed copies of the grievance shall be forwarded to Human Resources and placed in the employee's personnel file.

A Civil Service employee shall request a hearing before the Civil Service Commission according to Chapter 400, Code of Iowa, if applicable. The Civil Service Commission shall decide whether or not the grievance is within the scope of the Commission's responsibilities prior to agreeing to hear the grievance.

ARTICLE 27 – EMPLOYEE PRIVACY

Employees have a reasonable expectation that offices, desks, lockers, file cabinets, etc. that are assigned to them will not be exposed to indiscriminate examination by other employees. However, the City does retain the right to enter an employee's office, desk, file cabinets, etc. for work related purposes.

No employee shall enter another employee's office, desk, file cabinet, locker, or similar "private" area, unless:

1. Authorized by the person who has control of the office or equipment;
2. Necessary for the proper conduct of City business;
3. Authorized by a Supervisor/Department Head for the purpose of investigating employee misconduct;
4. Part of an inspection; or
5. In response to an emergency situation.

Employees are cautioned that personal items may be inadvertently observed during the above situations. If an employee is concerned that this may happen, personal items should be stored elsewhere.

ARTICLE 28 – VIOLENCE IN THE WORKPLACE

The City of Ottumwa does not tolerate violence in any form or the threat or perception of violence by or against any employee while performing his or her official duties, or due to the employee's official duties, wherever those duties are performed. Additionally, the City of Ottumwa recognizes an individual's right to bear arms in accordance with state and federal laws afforded by the Second Amendment of the United States Constitution and the State of Iowa. The

City is not liable for any wrongful or negligent act or omission related to actions of persons or employees who carry a concealed weapon.

Unless specific job duties require it, the ability to carry a concealed weapon is not within the scope of employment and is not a condition of employment. Nothing in this policy should be interpreted to require or encourage any employee who lawfully possesses a weapon to use it in defense of others.

An employee in violation of this policy will be subject to discipline up to and including termination of employment.

For additional information regarding the City of Ottumwa's expectations of its employees who wish to carry a concealed weapon while engaged in the duties of their employment, please reference the Workplace Violence and Threats Prevention Policy.

ARTICLE 29 – DRESS CODE

CITY HALL EMPLOYEES:

Business Attire Policy: Business Casual Dress Code:

The City of Ottumwa expects its City Hall employees to dress appropriately in business casual attire. Because our work environment serves customers, professional business casual attire is essential. Customers make decisions about the quality of our services to the community based on their interaction with you. Employees must be neat, clean and well-groomed with proper hygiene.

Consequently, business casual attire includes suits, dress pants, capris, jackets, shirts, skirts and dresses that, while not formal, are appropriate for a business environment. Examples of appropriate business attire include a polo shirt with pressed khaki pants, a sweater and shirt with corduroy pants, and a jacket, sweater, and skirt and leggings as part of a dressy ensemble and with a top that covers the rear end. Jeans, t-shirts, shorts, short skirts, tube tops, tank tops with shoulder strap width of 3 inches or less, and spaghetti straps (unless covered by a jacket), halter tops, low-cut blouses or sweaters, low cut shirts, blouses and sweaters, spandex or Lycra, clothing that is tight and suggestive, sweatpants, workout gym clothing, swim wear, and footwear such as flip flops are not appropriate for business casual attire. Open toed dress sandals for women are appropriate unless as directed by the Department Head due to the need to perform field inspections or work responsibilities outside of the office.

CITY OF OTTUMWA

Staff Summary

**** ACTION ITEM ****

2021 DEC 16 PM 4:21

Council Meeting of: December 21, 2021

Engineering Department
Department

Alicia Bankson
Prepared By
Larry Seals
Department Head

[Signature]
City Administrator Approval

AGENDA TITLE: Resolution #222-2021. Approving Supplemental Agreement No. 3 between the City of Ottumwa and Garden & Associates, LTD for additional Professional Engineering Services for construction surveying for the Woodland Avenue Reconstruction Project.

****Public hearing required if this box is checked. ****

****The Proof of Publication for each Public Hearing must be attached to this Staff Summary. If the Proof of Publication is not attached, the item will not be placed on the agenda.****

RECOMMENDATION: Pass and adopt Resolution #222-2021.

DISCUSSION: The City of Ottumwa entered into a Professional Services Agreement with Garden & Associates on November 5, 2019 for design and bid phase services including preliminary site survey for design purposes for the Woodland Avenue Reconstruction Project.

Supplemental Agreement No 3 consist of additional professional services for construction staking for cross country sanitary, storm sewer and pavement layout.

The estimated cost for the Agreement is \$61,042.92 based on a standard hourly rate. This will increase the contract by \$5,042.92.

Base Design		\$30,000.00
Extended Design Limits	No 1	\$10,000.00
Construction Staking	No 2	\$16,000.00
Construction Staking	No 3	\$ 5,042.92
Total Engineering		\$61,042.92 Professional Contracts

Base Bid Construction \$857,279.65

Funding:

Engineer's Opinion of Cost:	\$928,883
OWW	\$179,812.50 – Pavement Replacement
RU	\$356,000
LOST	Balance

Source of Funds: RU/LOST

Budgeted Item: YES

Budget Amendment Needed: YES

RESOLUTION #222-2021

A RESOLUTION APPROVING SUPPLEMENTAL AGREEMENT NO. 3 BETWEEN THE CITY OF OTTUMWA AND GARDEN & ASSOCIATES, LTD FOR THE WOODLAND AVENUE RECONSTRUCTION PROJECT.

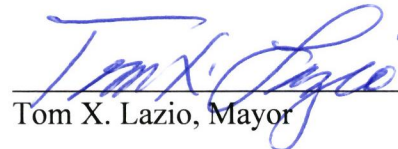
WHEREAS, A Professional Services Agreement was entered into on November 5, 2019 between the City of Ottumwa and Garden & Associates, LTD for design and bid phase services including preliminary site survey for design purposes for the Woodland Avenue Reconstruction Project., and

WHEREAS, This Resolution will approve Supplemental Agreement No. 3 for additional professional services for construction staking for cross country sanitary, storm sewer and pavement layout. This will increase the contract by \$5,042.92.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT: The said Supplemental Agreement No. 3, between the City of Ottumwa and Garden & Associates, Ltd is hereby approved and the Mayor is authorized to sign.


APPROVED, PASSED, AND ADOPTED, this 21st day of December, 2021.

CITY OF OTTUMWA, IOWA




Tom X. Lazio, Mayor

ATTEST:



Christina Reinhard, City Clerk



CITY OF OTTUMWA
Staff Summary

2021 DEC 16 PM 4:21

**** ACTION ITEM ****

Council Meeting of : Dec 21, 2021

Planning & Development
Department

Zach Simonson
Prepared By
Zach Simonson
Department Head



City Administrator Approval

AGENDA TITLE: Resolution No. 223-2021: A RESOLUTION OF NECESSITY TO ESTABLISH THE BOUNDARIES OF THE OTTUMWA NORTH MARKET STREET FAÇADE IMPROVEMENTS PROJECT AREA BY IDENTIFYING THE DISTRICT BOUND BY LOTS 10 AND 11 OF THE H.P. GRAVES SUBDIVISION AND LOT 196 OF ORIGINAL PLAT BLOCK 15 AS A BLIGHTED AREA IN THE CITY OF OTTUMWA, IOWA.

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution No. 223-2021

DISCUSSION: The CDBG CV Facade program requires that applicants are for areas within a municipality which are designated slum or blight. As part of grant administration, Area 15 Regional Planning reviewed the project area and found that the area for improvement is an area is blighted and appropriate for urban renewal. This resolution of necessity confirms that finding. It is necessary to adopt this resolution to pursue the CDBG facade application.

Source of Funds:

Budgeted Item: Budget Amendment Needed:

RESOLUTION NO. 223-2021

A RESOLUTION OF NECESSITY TO ESTABLISH THE BOUNDARIES OF THE OTTUMWA NORTH MARKET STREET FAÇADE IMPROVEMENTS PROJECT AREA BY IDENTIFYING THE DISTRICT BOUND BY LOTS 10 AND 11 OF THE H.P. GRAVES SUBDIVISION AND LOT 196 OF ORIGINAL PLAT BLOCK 15 AS A BLIGHTED AREA IN THE CITY OF OTTUMWA, IOWA.

WHEREAS, it is hereby found and declared that there exists in the City of Ottumwa a “blighted area” in the downtown district as defined in Section 403.17 (5) of the Code of Iowa, which reads as follows:

“Areas of a municipality within which the local governing body of the municipality determines that the presence of a substantial number of slum, deteriorated, or deteriorating structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; insanitary or unsafe conditions; deterioration of site or other improvements; diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or any combination of these factors; substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, or welfare in its present condition and use.”

WHEREAS, pursuant to Section 403.4 of the Code of Iowa, the City of Ottumwa shall hereby adopt this Resolution finding that one or more slum, blighted or economic development areas exist in the municipality and that the rehabilitation, conservation, redevelopment, development of the area is necessary in the interest of public health, safety, and welfare of the residents of this municipality; and

WHEREAS, the City of Ottumwa, Iowa must hereby demonstrate that the Commercial Façade Improvement Project will prevent or eliminate slums or blight and meet the national objective of the Department of Housing and Urban Development (HUD) and the Community Development Block Grant (CDBG) prior to submission of the full proposal for the Iowa Economic Development Authority’s (IEDA) CDBG COVID-19 (CV) Program, and

WHEREAS to demonstrate such adherence with the prevention/elimination of slum or blight national objective, the City of Ottumwa must further complete a building-by-building survey of the public improvement area of the project to determine what percent of the buildings meet the definition of being in poor or fair condition and what condition the public improvements are in; and

WHEREAS, Iowa Code Section 403.4 requires the city to adopt a Resolution of Necessity concerning an economic development area before any urban renewal plan or project is prepared pursuant to Iowa Code 403.5; and

WHEREAS, the proposed economic development area concerns one or more slum, blighted or economic development areas in the municipality and the rehabilitation, conservation, redevelopment, or a combination thereof, of an area which is necessary in the interest of the public health, safety, or welfare of the residents of the municipality; and

WHEREAS, a study has been conducted of the area identified in “Exhibit A” attached hereto, for the purpose of establishing the need to designate the area as being appropriate for IEDA’s CDBG-CV Program and for further commercial development and redevelopment; and

WHEREAS, that study found that a need exists to identify that area as a blighted area and an economic development area and an appropriate area for an urban renewal plan or project pursuant to Chapter 403 of the Code of Iowa; and

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT:

Section 1. The following resolution shall hereby be adopted identifying the area as a blighted area as defined in Section 403.17 (5) of the Code of Iowa and an area appropriate for the economic development as defined in Chapter 403 of the Code of Iowa, as found to exist in the City of Ottumwa within the boundaries as set out in Exhibit A.

Section 2. The area identified in Section 1 hereof is hereby declared to be the Commercial Façade Improvement Project and that the City of Ottumwa has conducted a building-by-building survey and a survey of the public improvement area of the project to determine what percent of the buildings meet the definition of being in poor or fair condition the public improvements are in.

Section 3. The following Resolution of Necessity is hereby adopted pursuant to Section 403.4 of the Code of Iowa, identifying that one or more slum, blighted or economic development areas exist and the rehabilitation, conservation, redevelopment, development or a combination thereof, of this area is necessary in the interest of the public health, safety or welfare of the residents of the City of Ottumwa, Iowa.

Section 4. It is hereby determined by this Council that upon completion of such resolution and the necessary surveys as identified above, that the complete proposal shall be presented to the IEDA for the Commercial Façade Improvement Project and its related activities.

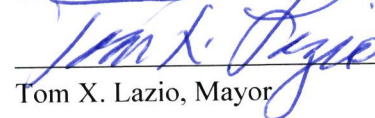
Section 5. The Resolution of Necessity is hereby adopted to facilitate growth and development in the City in accordance with the objectives of the City Council.

Section 6. This resolution shall become effective after its passage by the City Council.


Section 7. All resolutions or parts thereof in conflict herewith being the same are hereby repealed to the extent of such conflict.

APPROVED, PASSED, AND ADOPTED this 21st day of December 2021.

CITY OF OTTUMWA, IOWA


Tom X. Lazio, Mayor





ATTEST:

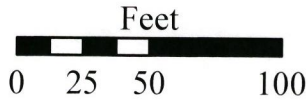

Christina Reinhard, City Clerk



2021 Ottumwa Facade Project - Slum & Blight Inventory

Legend

-  CDBG Survey Area
-  Greater Second Street H.D.
-  City of Ottumwa
-  Wapello County

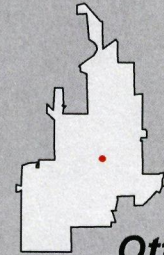


Blight Survey Rating

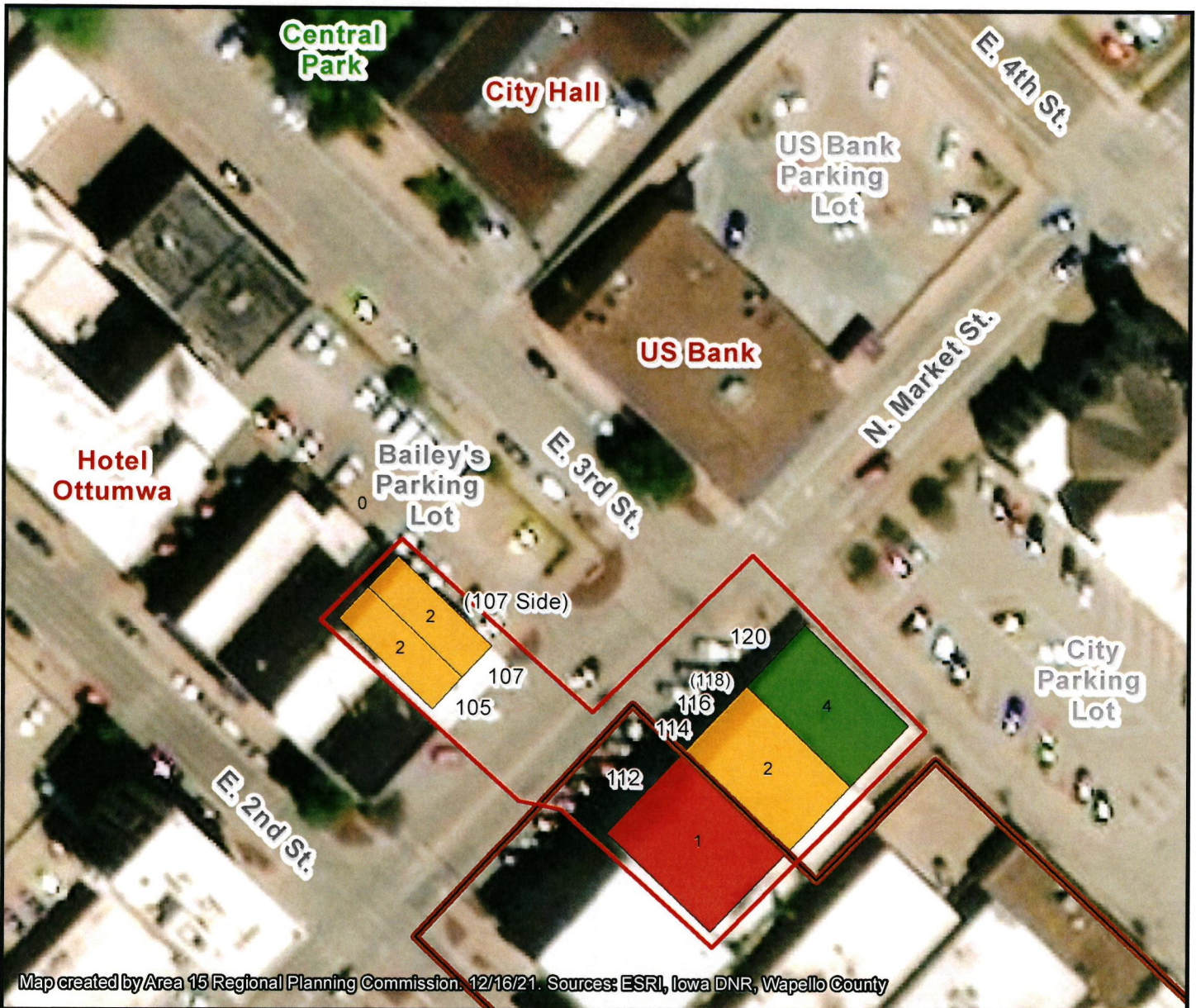
-  1 Poor [1 Parcel]
-  2 Fair [3 Parcels]
-  3 Good [0 Parcels]
-  4 Excellent [1 Parcel]

Number of Eligible Buildings: 4
 Number of Eligible Facades: 6

WAPELLO COUNTY



Ottumwa



Map created by Area 15 Regional Planning Commission, 12/16/21. Sources: ESRI, Iowa DNR, Wapello County

Notes:

- The side facade on the 107 N. Market St. parcel is highly visible from N. Market St. & E. Third St.
- The 116 N. Market St. parcel includes 3 addresses: 114/116/118. The 114 & 116 addresses are commercial storefronts; 118 is the entry to the upper-level apartments.

CITY OF OTTUMWA
Staff Summary

FILED
2021 DEC 16 PM 4:21
CITY CLERK

**** ACTION ITEM ****

Council Meeting of : Dec 21, 2021

City Clerk _____
Department

Christina Reinhard
Prepared By
Christina Reinhard
Department Head



City Administrator Approval

AGENDA TITLE: Ordinance No. 3188-2021, affirming the City of Ottumwa's Precinct Boundaries as contained within Chapter 12, Article II, Precincts of the Municipal Code of the City of Ottumwa, Iowa, after the 2020 Census.

Public hearing required if this box is checked.

RECOMMENDATION: Pass the first consideration of Ordinance No.3188-2021.
Waive the second and third considerations and pass and adopt Ordinance No. 3188-2021.

DISCUSSION: Reprecincting takes place after every federal census. Any proposed changes must be reviewed and approved in order to submit to the County Auditor and the Secretary of State. The Code of Iowa sets the maximum population of a precinct at 3,500 with each precinct being contained wholly within an existing legislative district. A city containing more than one precinct shall be divided into election precincts that best serve the convenience of the voters while promoting electoral efficiency. Each city with a population over 3,500 must file the following information with the Secretary of State even if the city does not make any changes to its

Source of Funds: N/A

Budgeted Item: Budget Amendment Needed: No

precinct ward boundaries: Precinct Maps as GIS shapefile or block equivalency file, City Reprecincting Worksheet, Certification of the population of each precinct, Ordinance describing precinct boundaries, and any Agreements with counties (if any). Precinct population has been calculated using data from the 2020 census and shows an increase of 506 citizens from the 2010 Census established figure of 25, 023. Iowa law requires Precinct boundaries to be certified to the state commissioner of elections within sixty days after the redistricting of congressional and legislative districts becomes law. The City of Ottumwa's Precinct boundaries are not changing; however, a new ordinance must be adopted to reflect the 2020 Census results.

ORDINANCE NO. 3188-2021

AN ORDINANCE AFFIRMING THE CITY OF OTTUMWA'S PRECINCT BOUNDARIES AFTER THE 2020 CENSUS

Be it enacted by the City Council of the City of Ottumwa, Iowa:

WHEREAS, a decennial Census was undertaken and completed by the United States Federal Census Bureau in 2020 for the City of Ottumwa, Wapello County, Iowa; and

WHEREAS, the results of the decennial Census established the population of the City of Ottumwa, Wapello County, Iowa, as 25,529 citizens; and

WHEREAS, the established Census figure for 2020 was an increase of 506 citizens from the 2010 Census established figure of 25,023; and

WHEREAS, Iowa law requires Precinct boundaries be certified to the state commissioner of elections within sixty days after the redistricting of congressional and legislative districts becomes law; and

WHEREAS, the City's Precinct boundaries are not changing, however, a new ordinance is being adopted to reflect the 2020 Census results.

THEREFORE, Chapter 12, Article II, shall be amended to wit:

SECTION 1. TEXT AMENDMENT. The City Code of the City of Ottumwa, Iowa, be and the same is hereby amended by deleting Chapter 12, Article II, Sec. 12-21 through 12-30 in full, and replacing the language as follows:

Sec. 12-21. - First precinct.

All that portion of the city bounded as follows:

Beginning at the intersection of the east city limits line and Pennsylvania Avenue; thence west along Pennsylvania Avenue to Elm Street; thence south along Elm Street to Stellar Avenue; thence west along Stellar Avenue to Ash Street; thence south along Ash Street to Locust Street; thence west along Locust Street to Cherry Street; thence south along Cherry Street to Second Street; thence west along Second Street to Birch Street; thence northwesterly along Second Street to Vine Street; thence southwesterly along Vine Street extended to the center of the Des Moines River; thence southeasterly along the center of the Des Moines River to the south city limit line; thence in an easterly direction along the south city limit line to the east city limit line; thence in a northerly direction along the east city limit line to the point of beginning; and per agreement between the City of Ottumwa and Wapello County shall also include the southeast portion of unincorporated Center Township lying north of the center line of the Des Moines River;

all of which shall constitute and be one election precinct, and the same shall be known and designated as precinct one.

Sec. 12-22. - Second precinct.

All that portion of the city bounded as follows:

Beginning at the intersection of the east city limit line and Pennsylvania Avenue; thence east along Pennsylvania Avenue to centerline of Hutchinson Avenue intersection; thence north along east city limit line to Alta Vista Avenue; thence southwesterly and west along Alta Vista Avenue to North Court Street; thence north along North Court Street to Bryan Road; thence northwesterly along Bryan Road to an unnamed private driveway; thence westerly along said unnamed private driveway to the west city limit line; thence south along the west city limit line to the northwest city limit line (Census Tract 9603, block 1035); thence west along the city limit line to Harrow's Branch; thence southerly along Harrow's Branch to the intersection of the line dividing Census Tract 9603, block 1014 and Census Tract 9602, block 2004; thence easterly along Census Tract 9602, block 2004 and block 2000 to U.S. Highway 63; thence south on U.S. Highway 63 to Woodland Avenue; thence northeasterly along Woodland Avenue to Wapello Street; thence south along Wapello Street to Albany Street; thence east along Albany Street to Hawkeye Street; thence south along Hawkeye Street to Maple Avenue; thence east along Maple Avenue to North Court Street; thence north along North Court Street to Pennsylvania Avenue; thence east along Pennsylvania Avenue to the point of beginning;

shall constitute and be one election precinct, and the same shall be known and designated as precinct two.

Sec. 12-23. - Third precinct.

All that portion of the city bounded as follows:

Beginning at the intersection of the east city limit line and Alta Vista Avenue; thence southwesterly and west along Alta Vista Avenue to North Court Street; thence north along North Court Street to Bryan Road; thence northwesterly along Bryan Road to an unnamed private driveway; thence west to the west city limit line; thence north and westerly along the northwest city limit line to Brick Plant Road; thence northeasterly to Angle Road; thence southeasterly along Angle Road to U.S. Highway 63; thence along the northerly and easterly city limit line to the point of beginning; and per agreement between the City of Ottumwa and Wapello County shall also include that part of unincorporated Center Township bound by Highland Township to the north, Dahlonga Township to the east and the corporate city limit line to the south and west to the point of beginning;

all of which shall constitute and be one election precinct, and the same shall be known and designated as precinct three.

Sec. 12-24. - Fourth precinct.

All that portion of the city bounded as follows:

Beginning at the intersection of Sixth Street and Washington Street; thence southwesterly along Washington Street to Third Street; thence southeasterly along Third Street to Market Street, thence southwesterly along Market Street extended to the center of the Des Moines River; thence northwesterly along the center of the Des Moines River to the west city limit line; thence northerly and westerly along the west city limit line to West Second Street; thence east to Forrest Avenue; thence north along Forrest Avenue to the north city limit line; thence east; thence southerly along the city limit line to the north and easterly city limit line to Harrow's Branch; thence southwesterly along Harrow's Branch to the line dividing Census Tract 9603, block 1014 and Census Tract 9602, block 2004 to the intersection of Clarence Street; thence easterly along Census Tract 9602, block 2004 and block 2000 to U.S. Highway 63; thence southerly along U.S. Highway 63 to Woodland Avenue; thence northeasterly along Woodland Avenue to Wapello Street; thence south along Wapello Street to Sixth Street; thence southeasterly along Sixth Street to the point of beginning;

shall constitute and be one election precinct, and the same shall be known and designated as precinct four.

Sec. 12-25. - Fifth precinct.

All that portion of the city bounded as follows:

Beginning at the intersection of Sixth Street and Washington Street; thence southwesterly along Washington Street to Third Street; thence southeasterly along Third Street to Market Street; thence southwesterly along Market Street extended to the center of the Des Moines River; thence southeasterly along the center of the Des Moines River to Vine Street extended; thence northeasterly along Vine Street extended to Second Street; thence southeasterly and east along Second Street to Cherry Street; thence north along Cherry Street to Locust Street; thence east along Locust Street to Ash Street; thence north along Ash Street to Steller Avenue; thence east along Steller Avenue to Elm Street; thence north along Elm Street to Pennsylvania Avenue; thence west along Pennsylvania Avenue to North Court Street; thence south along North Court Street to Maple Avenue; thence west on Maple Avenue to Hawkeye Street; thence north along Hawkeye Street to Albany Street; thence west along Albany Street to Wapello Street; thence south along Wapello Street to Sixth Street; thence southeasterly along Sixth street to the point of beginning;

shall constitute and be one election precinct, and the same shall be known and designated as precinct five.

Sec. 12-26. - Sixth precinct.

All that portion of the city bounded as follows:

Beginning at the intersection of Glenwood Avenue and Webster Street; thence north along Webster Street to Gladstone Street; thence northwesterly along Gladstone Street to Ferry Street; thence northeasterly along Ferry Street to Wapello Street Extension; thence northeasterly along Wapello Street Extension to U.S. Highway 63; thence northeasterly along U.S. Highway 63 to the center of the Des Moines River; thence southeasterly along the center of the Des Moines River to the south city limit line; thence south and west along the south city limit line to Mary Street extended; thence west along Mary Street to Madison Avenue; thence north and northwesterly along Madison Avenue to Queen Anne Avenue; thence west along Queen Anne Avenue to James Street; thence north along James Street to Ellis Avenue; thence west on Ellis Avenue to Sheridan Avenue; thence north along Sheridan Avenue to Wabash Avenue; thence west along Wabash Avenue to Moore Street; thence south along Moore Street to Wilson Street; thence west along Wilson Street to Milner Street; thence south along Milner Street to Glenwood Avenue; thence west along Glenwood Avenue to the point of beginning;

shall constitute and be one election precinct, and the same shall be known and designated as precinct six.

Sec. 12-27. - Seventh precinct.

All that portion of the city bounded as follows:

Beginning at the intersection of Wilson Street and Willard Street; thence south along Willard Street to Mary Street; thence east along Mary Street to Sheridan Avenue; thence south along Sheridan Avenue to Silk Avenue; thence east to Madison Avenue; thence south to the city limit line; thence easterly and northerly along the city limit line to Mary Street; thence west along Mary Street to Madison Avenue; thence north along Madison Avenue to Queen Anne Avenue; thence west along Queen Anne Avenue to James Street; thence north along James Street to Ellis Avenue; thence west along Ellis Avenue to Sheridan Avenue; thence north along Sheridan Avenue to Wabash Avenue; thence west along Wabash Avenue to Moore Street; thence south along Moore Street to Wilson Street; thence west along Wilson Street to the point of beginning; and per agreement between the City of Ottumwa and Wapello County shall also include the southeast portion of unincorporated Center Township lying south of the center line of the Des Moines River;

all of which shall constitute and be one election precinct, and the same shall be known and designated as precinct seven.

Sec. 12-28. - Eighth precinct.

All that portion of the city bounded as follows:

Beginning at the intersection of Mary Street and Sheridan Avenue; thence south along Sheridan Avenue to Silk Avenue; thence east to Madison Avenue; thence south to the city limit line; thence west along the south city limit line to Milner Street; thence south along Milner Street to the south city limit line; thence west along the south city limit line to the west city limit line; thence north along the west city limit line to Mary Street; thence east along Mary Street to Ferry Street; thence north along Ferry Street to Williams Street; thence east along Williams Street to Webster Street; thence north along Webster Street to Glenwood Avenue; thence east along Glenwood Avenue to Milner Street; thence north along Milner Street to Wilson Street; thence east along Wilson Street to Willard Street; thence south along Willard Street to Mary Street; thence east along Mary Street to the point of beginning;

shall constitute and be one election precinct, and the same shall be known and designated as precinct eight.

Sec. 12-29. - Ninth precinct.

All that portion of the city bounded as follows:

Beginning at the intersection of the west city limit line and Albia Road; thence east along Albia Road to Wildwood Drive; thence south along Wildwood Drive to Richmond Avenue; thence east along Richmond Avenue to Minneopa Avenue; thence south along Minneopa Avenue to Greenwood Drive; thence east along Greenwood Drive to McKinley Avenue; thence southerly along McKinley Avenue to Finley Avenue; thence east along Finley Avenue to Johnson Avenue; thence north along Johnson Avenue to Chester Avenue; thence east along Chester Avenue to Webster Street; thence south along Webster Street to Williams Street; thence west along Williams Street to Ferry Street; thence south along Ferry Street to Mary Street; thence west along Mary Street to the west city limit line; thence northerly along the west city limit line to the point of beginning;

shall constitute and be one election precinct, and the same shall be known and designated as precinct nine.

Sec. 12-30. - Tenth precinct.

All that portion of the city bounded as follows:

Beginning at the intersection of Albia Road and the west city limit line; thence northerly to U.S. Highway 34 right-of-way; thence northerly and easterly along said right-of-way along the city limit line to the center of Wildwood Drive; thence north along the city limit line to U.S. Highway 34 right-of-way, then easterly and northerly along the city limit line to the centerline of North Quincy Avenue and northerly along the city limit line to the center of the Des Moines River; thence southeasterly along the center of the Des Moines River to U.S. Highway 63; thence southwesterly along U.S. Highway 63 to Wapello Street Extension; thence southwesterly along Wapello Street Extension to Ferry Street; thence southwesterly along Ferry Street to Gladstone Street; thence southeasterly along Gladstone Street to Webster Street; thence southerly along Webster Street to Chester Avenue; thence west along Chester Avenue to Johnson Avenue; thence south along Johnson Avenue to Finley Avenue; thence west along Finley Avenue to McKinley Avenue; thence northerly along McKinley Avenue to Greenwood Drive; thence west on Greenwood Drive to Minneopa Avenue; thence north along Minneopa Avenue to Richmond Avenue; thence west along Richmond Avenue to Wildwood Drive; thence north along Wildwood Drive to Albia Road; thence west along Albia Road to the point of beginning;

shall constitute and be one election precinct, and the same shall be known and designated as precinct ten.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

First Reading:	<u>December 21, 2021</u>
Second Reading:	<u>WAIVED</u>
Third Reading:	<u>WAIVED</u>

Passed and adopted this 21 day of December, 2021.

Tom X. Lopez
Mayor

ATTEST:

Christ Reinhard
City Clerk



2021 DEC 16 PM 4:21

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Dec 21, 2021

City Clerk _____
Department

Christina Reinhard
Prepared By
Christina Reinhard
Department Head



City Administrator Approval

AGENDA TITLE: Resolution No. 225-2021, Authorize the City Clerk to certify the election precinct boundary ordinance, precinct population totals and precinct maps to the Secretary of State.

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution No. 225-2021.

DISCUSSION: Authorize the City Clerk to certify precinct boundary documents to the Secretary of State based on the population provided during the 2020 Census

Source of Funds: N/A

Budgeted Item: Budget Amendment Needed: No

RESOLUTION NO. 225-2021

**RESOLUTION AUTHORIZING FILING OF REPRECINCTING
INFORMATION WITH THE STATE COMMISSIONER OF ELECTIONS**

WHEREAS, a decennial Census was undertaken and completed by the United States Federal Census Bureau in 2020 for the City of Ottumwa, Wapello County, Iowa; and

WHEREAS, the results of the decennial Census established the population of the City of Ottumwa, Wapello County, Iowa, as 25,529 citizens; and

WHEREAS, the established Census figure for 2020 was an increase of 506 citizens from the 2010 Census established figure of 25,023; and

WHEREAS, Iowa law requires Precinct boundaries and populations be certified to the state commissioner of elections within sixty days after the redistricting of congressional and legislative districts becomes law; and

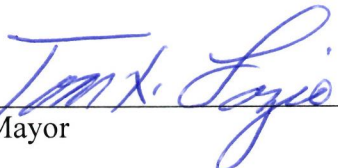
WHEREAS, agreements regarding election precincts composed partially of unincorporated territory and partially of any part of a city shall be submitted to the state commissioner as part of the certification of precinct boundaries; and

WHEREAS, the City's Precinct boundaries have not changed, however, a new ordinance has been adopted to reflect the 2020 Census results.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Ottumwa, that:

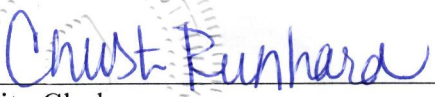
1. The City Clerk is directed and authorized to file the necessary documents with the state commissioner of elections certifying the City's precinct boundaries and populations following the 2020 Census and redistricting process.
2. The City Clerk is authorized to take any further necessary action required regarding this matter.

Approved this 21 day of December, 2021.



Mayor

Attest:



City Clerk



**State of Iowa
City Reprecincting Worksheet**

City Information

City: Ottumwa

City Population (use 2020 Census number): 25,529

Number of Precincts: 10

City Point of Contact Information for Reprecincting Process

Name: Christina Reinhard Title: City Clerk

Telephone: 641.683.0620

Email: reinhardc@ottumwa.us

Address: 105 E. Third St. Ottumwa 52536
Street Address City Zip

Precinct Ordinance and Public Hearing Information

1. Attach a copy of the ordinance describing the city precinct boundaries with this worksheet. If no changes were made to the precinct boundaries following the 2020 census, you still must submit the ordinance, and a copy of the existing precinct ordinance is sufficient.
2. Write the date on which the public hearing was held. If no changes to precinct boundaries were made, a public hearing was not required so please write N/A on the line below.

Date of public hearing(s): N/A

**State of Iowa
City Reprecincting Worksheet
Precinct Population Certification**

City: Ottumwa

If you require lines in addition to those below, make copies of the following page as needed.

Precinct Name or Number	Population of Incorporated Portion	Population of Unincorporated Portion (only if have joint city/county agreement)	Total Population
1	2613		2613
2	2592		2592
3	2877		2877
4	2550		2550
5	2548		2548
6	2589		2589
7	2390		2390
8	2486		2486
9	2297		2297
10	2587		2587
City Total Population	25529		25529

*I hereby certify that this is a complete and correct list of all precincts in this city of
Ottumwa and that the population data included is correct.*

Signed:  Date: 12-28-2021
Authorized City Representative

Print Name: Christina Reinhard, City Clerk

**State of Iowa
City Reprecincting Worksheet – Ward Population Certification**

City: _____

Ideal Ward Population

Divide the population of the city by the number of wards.

$$\frac{\text{City Population}}{\text{\# of Wards}} = \text{Ideal Ward Population}$$

[§§42.4(1)(a), 372.13(7)(b)]

Maximum Allowable Variation

Multiply the Ideal Ward Population by 0.10.

$$\text{Ideal Population} \times 0.10 = \text{Maximum Allowable Variation}$$

[IAC 721—21.32(372)]

Ward Variations

- Enter the population for each ward on the chart below.
- Compare each ward population with the Ideal District Population. Subtract the smaller population number of the two from the larger population number. List the difference in the Variation column.

Important Note: Where the deviation from the Ideal Ward Population is absolutely necessary, the Maximum Allowable Variation between wards is ten percent (10%). Plans with variations exceeding that limit must include a justification that the deviation is necessary to comply with the other legal requirements set forth in §372.13(7) and are highly likely to be rejected by the Secretary of State.

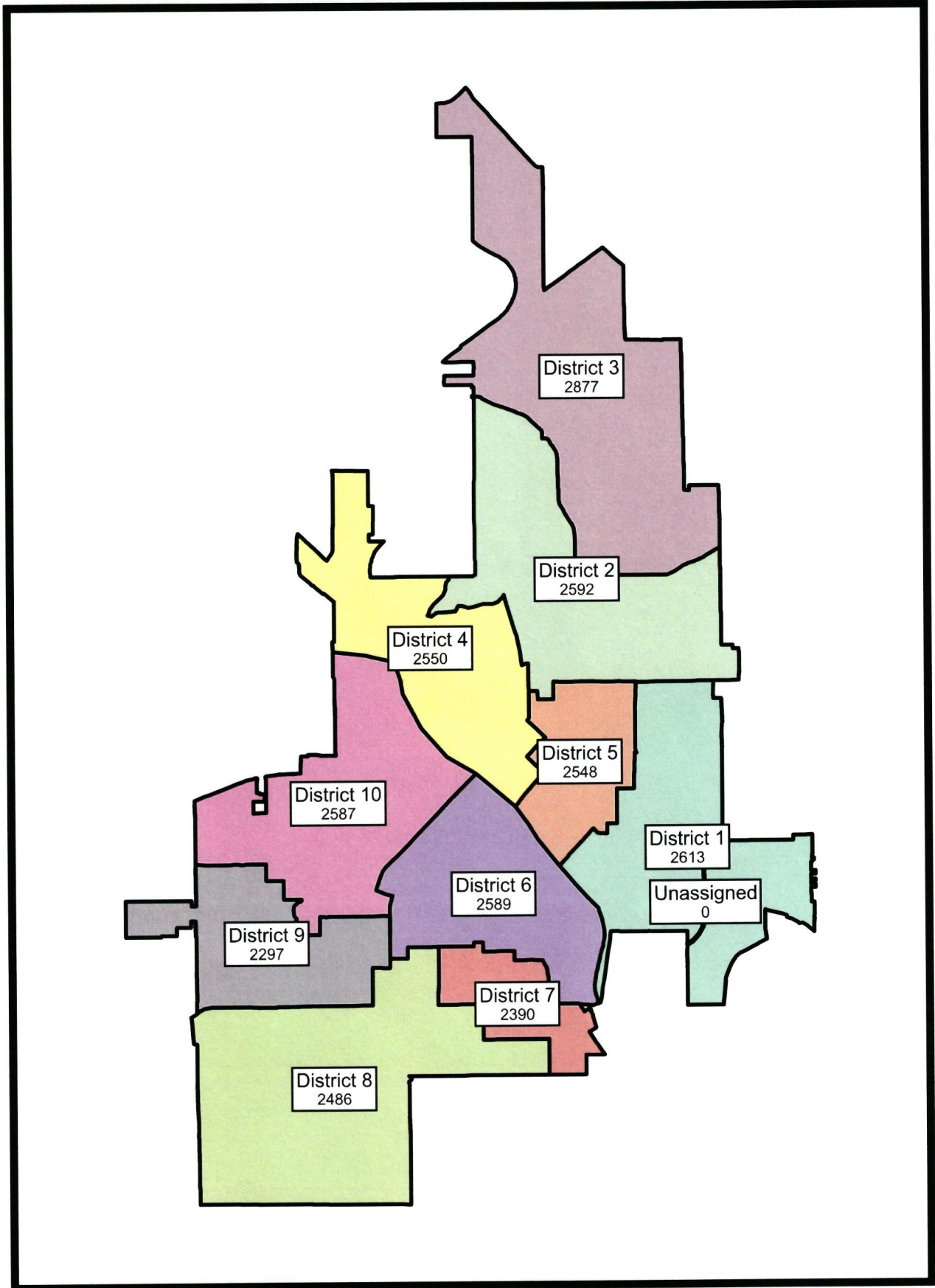
- Total the populations of all wards. The total must equal the census population for your city.
- Total the variations for all wards to determine the overall variation.

Ward	Population	Variation
1		
2		
3		
4		
5		
6		
7		
8		
	= total population	= overall variation

I hereby certify that this is a complete and correct list of the wards in this city of _____ and that the population data included is correct.

Signed: _____ Date: _____
Authorized City Representative

Print Name: _____



The undersigned hereby requests a Closed Session of the Ottumwa City Council on December 21, 2021, pursuant to Code of Iowa §21.5(1)(i) "to evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injuring to that individual's reputation and that individual requests a closed session."

Signature: Philip Rath

Name (printed): Philip Rath

Date: 12/17/2021

2021 DEC 17 PM 1:39