

DONATION AND CONSTRUCTION AGREEMENT BETWEEN GROW  
GRAND ISLAND, INC. AND THE CITY OF GRAND ISLAND FOR  
EXPANSION OF THE DOWNTOWN PUBLIC PLAZA

This Donation and Construction Agreement, hereinafter "Agreement", made and entered into this \_\_\_ day of June 2022 by and between the City of Grand Island, Nebraska, (the "CITY") and the GROW GRAND ISLAND, INC., a Nebraska not for profit corporation ("GGI").

WHEREAS, the CITY desires to expand the downtown plaza area located at vacated Wheeler Avenue between South Front Street and the alley between South Front Street and Third Street (the "Plaza Expansion"); and

WHEREAS, GGI is engaged in a private fundraising effort, and is willing to contract for the construction of the Plaza Expansion, such improvements and location as described herein and as shown on the attached Exhibit A, estimated to be in the amount of not greater than \$685,000 (the "Funds") and which plans and specifications must be approved by the City Council in order to be put into effect Plaza Expansion; and

WHEREAS, GGI, along with other donors to GGI's fundraising program, desire to make a charitable contribution for the benefit of the residents of Grand Island, of the Plaza Expansion to the City of Grand Island; and

WHEREAS, the CITY is desirous of accepting such donation.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements hereinafter set forth, the parties agree as follows:

I. GGI'S RESPONSIBILITIES

A. PLAZA EXPANSION FUNDING

1. GGI shall raise the Funds to cover the costs of design and construction of the Plaza Expansion, such amount including sufficient funds to provide for unforeseen construction conditions, and unexpected costs regarding utilities, soil, permit requirements, and the like.

B. CONSTRUCTION

1. The plans and specifications for the Plaza Expansion must receive the prior written approval of the City Engineer and the written approval of the City Engineer is required for all construction documents and final selections of building materials prior to construction. GGI agrees that the Plaza Expansion shall be completed in strict adherence to the design as approved by the CITY. Any material deviations from the design drawings shall be permitted only with the prior written approval of the CITY.
2. At no cost to the CITY, GGI shall be responsible for and to fund the construction of the Plaza Expansion to be constructed during such times during the construction period as mutually agreed to by the CITY and GGI. Construction shall not begin until GGI has received or has binding commitments for the Funds. The construction

period shall begin no later than July 5, 2022 (weather permitting) and shall end no later than December 31, 2022 (the "Construction Period"). In the event that construction is not completed by December 31, 2022, GGI may request an extension of time for the Construction Period for up to 6 additional months, and City Administrator may grant such exception at his sole discretion.

3. GGI and GGI's General Contractor shall be responsible for all elements of the Plaza Expansion, to include:
  - a. site survey, tree protection, site preparation and demolition, grading, concrete, lighting, signage, site furnishings, installation of stage, stage cover, restroom infrastructure and parking lot modifications;
  - b. the provision of all materials, equipment, and labor required;
  - c. comply with Grand Island Public Works General Plans and Specifications sections: 4.05 through 4.17, 7.01 through 7.13, 7.15, and 8.03 through 8.05;
  - d. Provide the City with a certificate of insurance verifying the General Contractor's compliance with the insurance coverage requirement prior to the beginning of any work on site;
  - e. The scheduling and supervision of all work;
  - f. The timely payment of all fees, costs, charges, and expenses associated with the work, including all required permit fees;
  - g. Site security in a manner that is reasonable under the circumstances during entire construction of the Plaza Expansion;
  - h. Upon acceptance of the Plaza Expansion by the CITY, deliver to the CITY all project construction documents, records, as-builts, and manuals;
  - i. Allow the CITY Engineer or designee access to conduct any inspection he or she deems necessary; and
  - j. The design and construction of the Plaza Expansion shall be in compliance with, as applicable, ADA Standards for Accessible Design, as amended, and implementing regulation, and building, electric, plumbing, and life safety codes adopted by the City of Grand Island.

## II. CITY'S RIGHTS AND RESPONSIBILITIES

### A. FUNDRAISING

1. The CITY reserves the right for prior review and approval of any City of Grand Island name or logo to be used on any fund raising items or promotional or advertising materials. GGI agrees not to alter in any manner the names or logos approved by the City Administrator.

### B. APPROVALS AND REVIEWS

1. The CITY shall provide a timely review of all exhibits, plans and other documents requiring feedback to allow the project to move forward efficiently.

### C. SITE ACCESS

1. The CITY agrees to provide all reasonably necessary access to those portions of CITY owned property abutting the construction site.
2. The CITY and GGI shall mutually agree to the date and time for a groundbreaking ceremony.

### D. ACCEPTANCE OF IMPROVEMENTS

1. Upon completion of the Plaza Expansion, such improvements shall be reviewed by

the City Engineer and, if approved, and upon receipt of the GGI's professional Engineer/Architect certification of completion of the Plaza Expansion in substantial compliance with the plans and specifications approved by the CITY, it shall be recommended to the City Council for acceptance. Acceptance of ownership of these Improvements shall be subject to the verification by the CITY that the project has been completed in compliance with this Agreement and subject to receipt by the CITY Engineer of as built plans and other required documents. Such acceptance shall occur by resolution of the City Council.

2. Upon acceptance by resolution of the City Council, the Plaza Expansion shall immediately become the property of the CITY and the GGI forfeits all rights to such Plaza Expansion. It is expressly agreed and understood that nothing in this Agreement shall be construed as empowering the GGI to encumber, mortgage or pledge any interest in the site or improvements thereon in any manner whatsoever.
3. Following CITY Council acceptance of the Plaza Expansion, the CITY and GGI shall mutually agree to a date and time for a ribbon cutting ceremony.

#### E. NAMING OF PUBLIC PLAZA

1. Upon the acceptance of the Plaza Expansion by the City Council, the existing public plaza and plaza expansion may be named for a period of 20 years to honor a significant donor of project funds. The proposed name shall be nominated by GGI and approved by the City Council. Signage indicating the Public Plaza name will be displayed at the plaza. Such signage location and wording must receive the approval of the GGI and City Administrator prior to installation. GGI shall pay all costs of such sign and all costs of other GGI recognition signs. Naming recognition is subject to future change/reconsideration by the CITY in the event that the recognition becomes damaging to the CITY's reputation, or contradictory to applicable law, as determined by the CITY.
2. GGI shall have the right to install a GGI recognition plaque on the Public Plaza site with the location, wording, size, and design subject to approval of the City Administrator, and the costs of such sign will be paid by GGI.

#### F. MAINTENANCE OF IMPROVEMENTS

1. The CITY shall maintain the Plaza Expansion after acceptance by the CITY Council consistent with how it maintains other similar improvements in the CITY. GGI understands that maintenance, repairs, and replacement of the Plaza Expansion are at the CITY's sole discretion and are subject to funding approved by the City Council. CITY may contract with the Railside Business Improvement District or other entity to perform routine and customary cleaning, maintenance, and landscaping care of the Plaza and responsibility for scheduling public events at the Plaza.

#### G. OPERATION OF THE PUBLIC PLAZA AS A PUBLIC PLAZA

1. GGI understands that the CITY, individually or in consultation with the Railside Business Improvement District, will establish the rules, hours of operation and may program events at its discretion and will enforce such rules and CITY ordinances as determined by the CITY to be in the best interests of the CITY.

### III. ENCUMBRANCES AND LIENS

Neither GGI nor anyone claiming by, through, or under GGI shall have the right to file or place any mechanic's lien or any other lien of any kind or character whatsoever upon the Plaza Expansion, the underlying real property, or any CITY property. Notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any materials, service, or labor for any improvements, alterations, repairs, or any part thereof shall at any time be or become entitled to any lien thereon. The GGI covenants and agrees to require the General Contractor to provide a payment bond or bonds in a sum not less than the contract price with a corporate surety company and agent selected by such person, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the erecting, furnishing, or repairing of the improvement or in performing the contract.

### IV. INDEMNIFICATION.

Upon acceptance of ownership of the Plaza Expansion by the City Council of the City, the CITY shall accept liability for the Plaza Expansion to the same extent as with other CITY owned facilities in accordance with Nebraska law and shall hold the GGI, its officers, directors, employees and agents harmless with respect to any such liability, except for liability arising from negligent construction or design of the Plaza Expansion.

### V. TERM

This Agreement shall be considered to be fulfilled upon completion of the construction and City Council acceptance of the Plaza Expansion, subject to the continuing requirements pursuant to sections I.E. and IV of this Agreement. This Agreement will terminate in the event that construction of the Plaza Expansion is not completed by the dates designated by the Construction Period. GGI shall have the right to terminate this Agreement at any time before the start of construction.

### VII. NOTICES

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to be an adequate and sufficient notice if given in writing and service is made either by (i) personal delivery, in which case the service shall be deemed received the date of such personal delivery; or (ii) U. S. Mail, return receipt requested, in which case the notice shall be deemed to have been received as shown in such return receipt, to the following address:

If to GGI:

Grow Grand Island, Inc.  
PO Box 777  
Grand Island, Nebraska 68802

If to the CITY:

City Clerk  
City of Grand Island, Nebraska  
100 East First Street  
Grand Island, Nebraska 68801

with a copy to:  
Legal Department  
City of Grand Island, Nebraska  
100 East First Street  
Grand Island, Nebraska 68801

#### VIII. CHOICE OF LAW & VENUE

This Agreement shall be governed by the laws of Nebraska. The venue for all litigation or other disputes relative to this Agreement shall be the District Court of Hall County, Nebraska.

#### IX. CAPTIONS

Section headings are for reference only and shall not be used to interpret this Agreement.

#### X. SEVERABILITY

If any provision hereof is found to be invalid or unenforceable, such finding shall not affect the validity of any other provision hereof; and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties.

#### XI. NO WAIVER

Any failure to enforce any right or to require performance of any provision of this Agreement shall not be considered a waiver of such right or performance.

#### XII. ENTIRE AGREEMENT

This Agreement, including the attached and incorporated exhibits, contains the entire agreement between the parties, and supersedes all other oral or written provisions.

#### XIII. MODIFICATIONS AND AMENDMENTS

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by authorized representatives of each of the parties hereto.

#### XIV. BINDING EFFECT

The provisions, covenants, and conditions in this Agreement shall inure to and bind the parties, their legal heirs, representatives, successors, and assigns.

If City transfers ownership of the Artwork, all rights and obligations of City under this Agreement shall be transferred to the successor owner of the Artwork, and said successor owner shall be bound by this Agreement.

#### XV. POWER TO EXECUTE AGREEMENT.

Each individual executing this agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the agreement on behalf of such party and that this agreement is binding on such party in accordance with its terms.

Each party may by written notice to the other specify a different address for subsequent notice purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by having

their signatures affixed below.

Grow Grand Island, Inc.

Jenja Brown

Authorized Representative

Date: 6/30/2022

City of Grand Island

Roger G. Steele

Roger G. Steele, Mayor

Date: 6/30/2022

ATTEST:

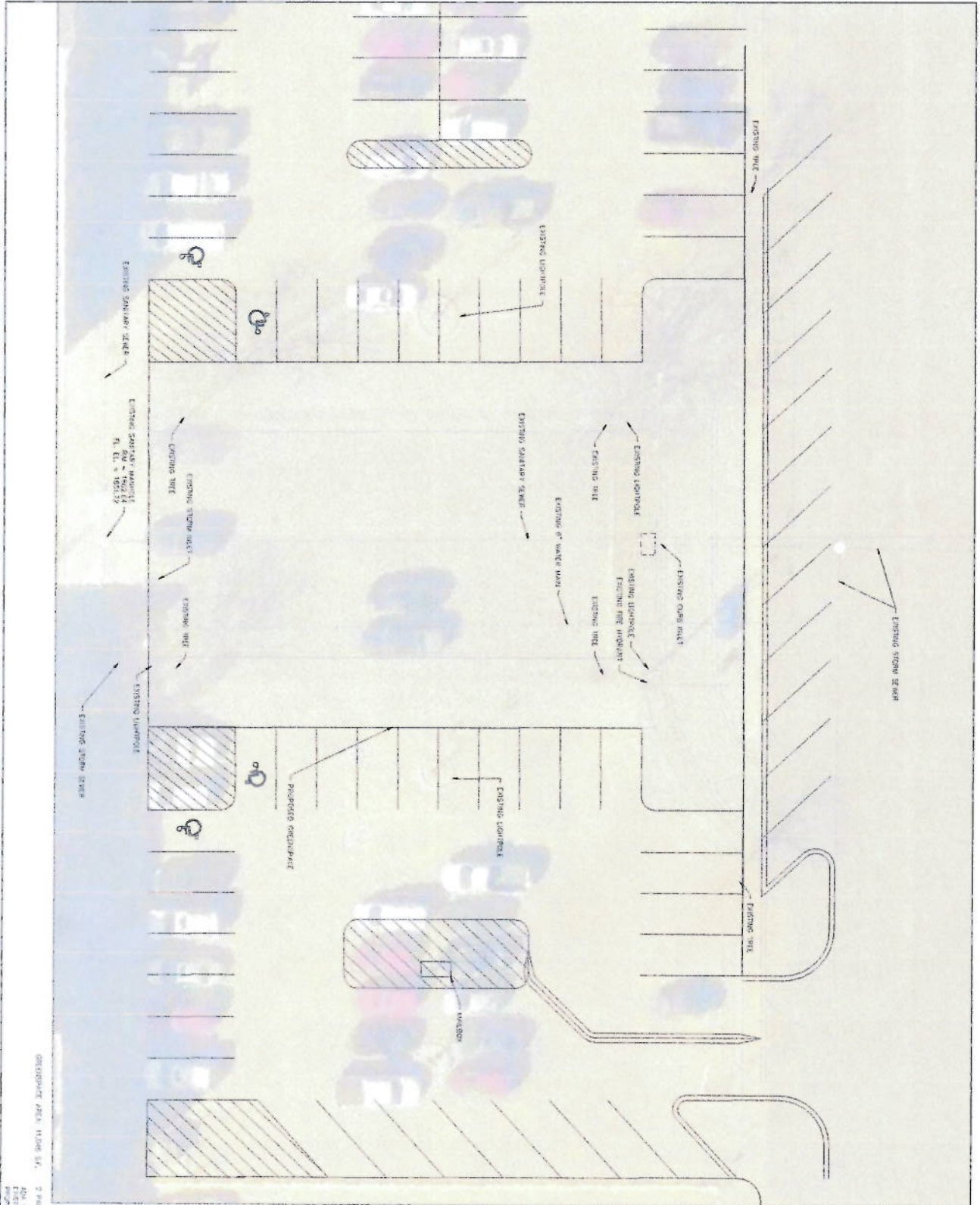
RaNae Edwards

RaNae Edwards, City Clerk

APPROVED AS TO FORM:

Stacy Nonhof

Stacy Nonhof, Interim City Attorney



ORIGINATOR: AREA: N100 S.W. 2 PARCELS STREETS AND/OR  
 FOR: STREETS  
 PROJECT: 4 STREETS (CONCEPT) PROJECT

# Exhibit A



SHEET 5 OF 5	LAYOUT 5 RAILSIDE PLAZA CONCEPT 2019		GRAND ISLAND, NEBRASKA	2019	REVISIONS	<p>201 East 2nd Street                  Grand Island, NE 68801 TEL: 308.384.8720 www.olsson.com</p>
	GRAND ISLAND, NEBRASKA					