



# City of Grand Island

Tuesday, October 24, 2017

Council Session

## Item G-14

**#2017-299 - Approving Land Lease Agreement with USA Outdoors II, LLC for Roadside Advertising Sign**

Staff Contact: Jerry Janulewicz

# **Council Agenda Memo**

**From:** Jerry Janulewicz, City Attorney

**Meeting:** October 24, 2017

**Subject:** Lease Agreement for Billboard with USA Outdoors II, LLC

**Presenter(s):** Jerry Janulewicz, City Attorney

## **Background**

The Utilities Department owns property at 2410-2412 S. Webb Road which was purchased in the 1960's to allow the construction of power lines to serve the original Case New Holland facility. Included with this property were to advertising billboards which have had land leases with the Utilities Department to allow for the use of the property.

One of the signs was owned by Tri-City Sign Company, which, in 2014, entered into a five-year lease agreement with the City. Tri-City sold this sign and assigned its lease to USA Outdoors II, LLC. However, the documentation for this transaction failed to correctly identify the purchaser by its correct name as shown by the records of the Nebraska Secretary of State. USA Outdoors II, LLC provided documentation to the City legal department to confirm it is the true and correct owner of the sign and assignee of the lease agreement between the City and Tri-City Signs.

In order to eliminate any confusion over the identity of the City's lessee, USA Outdoors II, LLC is requesting that the City approve a new lease with it for their sign.

## **Discussion**

City's legal department prepared a new lease agreement for approval by the Lessee and consideration and approval by Council. The new lease, if approved by council, contains the same lease termination date and rental rate as the original lease. Additionally, it clarifies the lease is a non-exclusive lease as the other sign on this property is owned by another company.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Move to deny

### **Recommendation**

City Administration recommends that the approve the lease agreement between the City of Grand Island and USA Outdoors II, LLC.

### **Sample Motion**

Move to approve the lease agreement between the City of Grand Island and USA Outdoors II, LLC.

## Land Lease

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This Land Lease made and executed this 25th day of November, 2014, by and between the City of Grand Island, hereinafter referred to as "Lessor," and Tri-City Sign Company, hereinafter referred to as "Lessee."

WITNESSETH:

WHEREAS, Lessee is the owner of a roadside advertising sign at 2410 S. Webb Road, Grand Island, Nebraska; and

WHEREAS, Lessee is desirous of leasing the right to maintain such sign upon the real estate owned by the Lessor for the term and upon the conditions hereinafter set forth; and

WHEREAS, Lessor is willing to lease unto the Lessee the right to maintain a roadside advertising sign upon the terms hereinafter set forth it is agreed:

1. Description of Real Estate. For the term hereinafter specified and upon performance of all conditions hereinafter set forth, Lessor hereby leases unto the Lessee the right to maintain, repair and replace one roadside advertising sign upon the real estate described as:

The southerly boundary of the southerly 40 feet of that portion of the NE ¼ of the NE ¼, of Section 25-11-10 which lies east of the right-of-way of U.S. Highway 281 and west of the right-of-way of Webb Road, Hall County, Nebraska.

Said sign shall not be increased in height or width without consent of the owner of the property.

2. Term. The term of this lease shall commence December 1, 2014, and shall end on November 30, 2019.
3. Rent. As rent for the right to maintain a roadside advertising sign upon the Lessor's real estate as above described, Lessee shall pay to the Lessor the sum of One Thousand Two Hundred Dollars and no cents (\$1,200.00) per year, receipt of the first such payment being hereby acknowledged by the Lessor, and the balance of such lease payments being due and payable in advance of the 1<sup>st</sup> day of December each year during the term of this lease. The Lessee shall also maintain a current electric service account for the electric meter located at this address.
4. Assignability. This Land Lease may be freely assigned by the Lessee to such parties as it may determine from time to time so long as all rent to the date of such assignment shall have been paid and all other provisions herein set forth to be performed by the Lessee shall be fully performed.

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5. Preservation of Real Estate. Lessee shall during the term of this Land Lease, take reasonable care to enter upon the real estate in such a manner for the purpose of maintaining, repairing or replacing the roadside advertising sign that Lessor's real estate, crops and improvements located thereon are not damaged, and in the event it shall become necessary to enter upon the real estate in such a fashion as to cause damage to such real estate, crops or improvements, Lessee shall be obligated to place such real estate in the condition as it was in prior to such entry.
6. Privity of Estate and Contract. Any subsequent assignee of the rights afforded to the Lessee under this Land Lease shall be deemed as though such Assignee shall have personally executed this Land Lease with the Lessor and upon notice of such Assignment being given in writing to the Lessor, the Assignor shall be deemed to have been released from any further obligations and rights in respect to this Land Lease.
7. Compliance with Law. Lessee shall comply with all requirements of federal, state, and local law in connection with the placement and maintenance of the roadside advertising sign to be placed upon the real estate hereby leased.
8. Default. In the event of any default of the Lessee in the performance of the requirements of this Lease or in the payment of the rent herein provided, the Lessor may cause the roadside advertising sign herein to be placed upon the real estate to be immediately removed at the cost and expense of the Lessee.
9. Binding Effect. This Land Lease shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors, legal representatives and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Land Lease on the date first noted above and in the event any party hereto shall be a duly formed corporation or partnership, the execution hereof by its officer or representative has been duly authorized.

Attest:

Rae Edwards  
City Clerk

THE CITY OF GRAND ISLAND, NEBRASKA,  
A Municipal Corporation,

By Chuck Haase (Lessor)  
Chuck Haase, Council President

TRI-CITY SIGN COMPANY

By \_\_\_\_\_ (Lessee)  
It's \_\_\_\_\_

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## BILL OF SALE

On this 23 day of December, 2014, TIM MARCHESE, on behalf of TSM Leasing, a Nebraska Company, ("SELLER") does hereby sell to USA Outdoor III, LLC ("BUYER") the following described personal property:

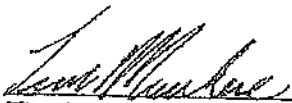
One (1) 14'x40' single-face billboard, including but not limited to the structure, panels, lighting and advertising vinyl currently posted on said billboard, located on the southerly boundary of the southerly 40 feet of that portion of the NE1/4 of the NE1/4, of Section 25-11-10 which lies east of the right-of-way of U.S. Highway 281 and west of the right-of-way of Webb Road, Hall County, Nebraska.

for the sum of Twelve Thousand Seven Hundred Fifty (\$12,750.00).

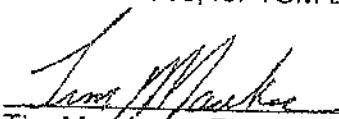
SELLERS release all right, title and interest in said personal property to BUYER as of this date. SELLER represents that it has marketable title to the asset being sold and that all items are free and clear of all liens and encumbrances.

SELLER further represents that the written land lease dated November 25, 2014, by and between THE CITY OF GRAND ISLAND and TRI CITY SIGN COMPANY passes directly onto BUYER to have said billboard on property described above. Tim Marchese, President of Tri City Sign Company hereby gives authority for the Land Lease transfer.

SELLER agrees to provide a current City and Department of Roads permit so BUYER can notify both entities. SELLER further agrees to remove trees and provide a longer read-time of visibility within (30) days of the execution of this document.



Tim Marchese, for TSM Leasing



Tim Marchese, President of Tri City Sign Company, Inc.

This sign was personal  
Purchase by R. Hiltbrand and  
should be in Outdoor III!  
7-28-15

Return to:  
Rick L. Ediger  
SIMMONS OLSEN LAW FIRM, P.C.  
1502 Second Avenue  
Scottsbluff, NE 69361

### BILL OF SALE AND ASSIGNMENT

On December 23, 2014, Tim Marchese, on behalf of TSM Leasing, a Nebraska Company (the "Seller"), sold to USA Outdoor II, LLC (the "Buyer") the following described personal property (the "Billboard"):


One 14'x40' single-face billboard, including but not limited to the structure, panels, lighting and advertising vinyl currently posted on said billboard located on the southerly boundary of the southerly 40 feet of that portion of the NE¼ of the NE¼, of Section 25-11-10 which lies east of the right-of-way of U.S. Highway 281 and west of the right-of-way of Webb Road, Hall County, Nebraska.

However, a Bill of Sale was given to USA Outdoor III, LLC, in error. USA Outdoor III, LLC transfers all right, title and interest in the Billboard to the Buyer. All the consideration for the Billboard was furnished by Russell G. Hilliard, individually ("Hilliard"), as the sole Member of the Buyer. At the time of the purchase, Hilliard directed that the Billboard be transferred to the Buyer. The purpose of this Bill of Sale is to correct the mistake made in the original Bill of Sale so it is clear that title belongs in the Buyer.

This Bill of Sale also constitutes an assignment of the Lease where the Billboard is located, which is a land lease dated November 25, 2014, with the City of Grand Island, Nebraska. USA Outdoor III, LLC assigns all of its right, title and interest in the Lease to the Buyer.

Dated: September 21, 2017

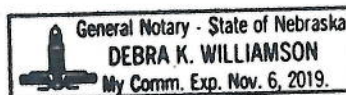
USA Outdoor III, LLC

By:   
Russell G. Hilliard, Member

State of Nebraska, Scotts Bluff County: ss.

This Bill of Sale and Assignment was acknowledged before me on September 21, 2017, by Russell G. Hilliard, as Member of USA Outdoor III, LLC.

Debra K. Williamson  
Notary Public



# AFFIDAVIT

Rick L. Ediger, being first sworn, states as follows:

1. I am the attorney for USA Outdoors II, LLC, and USA Outdoors III, LLC. (the "Companies"), and as their attorney was involved in the formation of the Companies in Nebraska.
2. I am aware that the names USA Outdoor II, LLC and USA Outdoor III, LLC (the "Alternate Names") have been used by the Companies from time to time in connection with agreements entered into by the Companies.
3. To the best of my knowledge, and in particular with respect to transactions in Nebraska: (i) the names USA Outdoors II, LLC and USA Outdoor II, LLC refer to one and the same company, and (ii) the names USA Outdoors III, LLC and USA Outdoor III, LLC refer to one and the same company.



Rick L. Ediger

Subscribed and sworn to before me on October 10, 2017.

  
Notary Public



## LAND LEASE

This Land Lease by and between the City of Grand Island, Nebraska, a municipal corporation (hereinafter "City") and USA Outdoors II LLC, a Nebraska limited liability company (hereinafter "Lessee"), this \_\_\_\_ day of October 2017.

Whereas, the City of Grand Island and Tri-City Sign Company (hereinafter "Tri-City") entered into a Land Lease agreement (hereinafter the "Lease") wherein City leased to Tri-City the right to maintain, repair and replace one roadside advertising sign upon the real estate owned by City; and

Whereas, Tri-City and TSM Leasing erected and maintained a roadside advertising sign upon the leased land; and

Whereas, subsequent to approval and execution of the Lease, Tri-City and TSM Leasing conveyed and assigned to USA Outdoor III, LLC their interests in and to the roadside advertising sign and the Lease; and

Whereas, USA Outdoor III, LLC conveyed to and assigned to Lessee its interest in and to the roadside sign and the Lease; and

WHEREAS, Lessee desires to enter into a replacement lease with City having lease terms substantially the same as the Lease between City and Tri-City;

### WITNESSETH:

In consideration of the mutual promises and covenants contained herein, City and Lessee hereby agree as follows:

1. **Leased Property and Purpose.** For the term hereinafter specified and upon performance of all conditions hereinafter set forth, City hereby leases unto the Lessee a non-exclusive right to maintain, repair and replace one (1) roadside advertising sign upon the following described real estate:

The southerly boundary of the southerly 40 feet of that portion of the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of Section Twenty-Five (25), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M., which lies east of the right-of way of U.S. Highway 281 and east of the right of way of Webb Road, Hall County, Nebraska.

2. **Sign Alteration.** The dimensions of the sign as of the date hereof shall not be altered by increased height or width without prior consent of the City.
3. **Lease Term.** The term of this lease shall commence upon the date this Lease Agreement is approved by the City Council of the City and shall end on November 30, 2019.
4. **Termination of Prior Lease.** Upon approval and execution of this Land Lease by the City and Lessee, the Land Lease agreement dated November 25, 2014 by and between the City and Tri-City shall be terminated without further action required.
5. **Rent.** As rent for the right to maintain a roadside advertising sign upon the City's real estate above-described, Lessee shall pay to the Lessor the sum of One Thousand Two Hundred Dollars and No cents (\$1,200.00) per year payable for the annual terms beginning December 1, 2017 and ending November 30, 2018 and beginning December 1, 2018 and ending November 30,

2019. The City acknowledges receipt of rent for the term ending November 30, 2017 in the amount of One Thousand Two Hundred Dollars and No cents (\$1,200.00).

6. Electric Service. For electric service for the sign, Lessee shall be solely responsible for all metered electric service and shall maintain timely payment for said service when due.
7. Assignment. Upon prior notice to City, this Land Lease may be freely assigned by the Lessee to such parties as it may determine from time to time so long as all rent to the date of such assignment shall have been paid and all other provisions set forth herein to be performed by the Lessee shall be fully performed. Prior to any such assignment, Lessee shall provide to City the name and address of any such assignee.
8. Preservation of Real Estate. Lessee shall during the term of this Land Lease take reasonable care to enter upon the real estate in such a manner for the propose of maintaining, repairing or replacing the roadside advertising sign that City's real estate, crops and improvements located thereon are not damaged, and in the event is shall become necessary to enter upon the real estate in such a fashion as to cause damage to such real estate, crops or improvements, Lessee shall be obligated to place such real estate in the condition as it was in prior to such entry.
9. Privity of Estate and Contract. Any subsequent assignee of the rights afforded to the Lessee under this Land Lease shall be deemed as though such Assignee shall have personally executed this Land Lease with the Lessor and upon notice of such Assignment being given in writing to the Lessor, the Assignor shall be deemed to have been released from any further obligations and rights in respect to this Land Lease.
10. Compliance with Law. Lessee shall comply with all requirement of federal, state, and local law in connection with the placement and maintenance of the roadside advertising sign placed upon the real estate hereby leased.
11. Default. In the event of any default of the Lessee in the performance of the requirements of this Lease or in the payment of the rent herein provided, the Lessor may cause this roadside advertising sign placed upon the real estate to be immediately removed at the cost and expense of the Lessee.
12. Binding Effect. This Land Lease shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors, legal representatives and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Land Lease on the dates set forth below.

The City of Grand Island, Nebraska  
A Municipal corporation

Date \_\_\_\_\_, 2017.

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

Jeremy L. Jensen, Mayor

[attest]

\_\_\_\_\_  
RaNae Edwards, City Clerk

USA Outdoors II, LLC  
A Nebraska Limited Liability Company

Date Oct 11, 2017.

By:   
Russell G. Hilliard, Member

RESOLUTION 2017-299

WHEREAS, the City of Grand Island and Tri-City Sign Companies were parties to a five year land lease agreement for placement of an advertising billboard approved by the City Council on November 25, 2014; and

WHEREAS, Tri-City Sign Company sold its sign and assigned the land lease agreement to USA Outdoors II, LLC; and

WHEREAS, USA Outdoors II, LLC is requesting approval of a new lease agreement having substantially the same terms as the land lease agreement between the City and Tri-City Sign Company.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the land lease agreement between the City of Grand Island and USA Outdoors II, LLC, should be and hereby is approved.

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Adopted by the City Council of the City of Grand Island, Nebraska, October 24, 2017.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
October 20, 2017	☐ City Attorney