



# City of Grand Island

Tuesday, October 8, 2019

Council Session

## Item E-1

### **Public Hearing on Acquisition of 3505 West Old Potash Highway (Reece Construction Co., Inc.)**

*Council action will take place under Consent Agenda item G-6.*

Staff Contact: John Collins, P.E. - Public Works Director

# **Council Agenda Memo**

**From:** Keith Kurz PE, Assistant Public Works Director

**Meeting:** October 8, 2019

**Subject:** Public Hearing on Acquisition of 3505 West Old Potash Highway (Reece Construction Co., Inc.)

**Presenter(s):** John Collins PE, Public Works Director

## **Background**

Public Works Engineering staff have established a master plan for the Old Potash Highway corridor from approximately North Road to Webb Road, including intersections to the north and south of Old Potash Highway. The interaction between the various traffic features is complex, making a master plan necessary to ensure that the individual components will function together and address various safety issues. This plan includes widening and reconfiguring Old Potash Highway, signal and geometric improvements at each intersection, access management throughout the corridor, and improvements to the north and south of the Old Potash Highway corridor. Improvements are needed to allow the corridor to safely handle the ever increasing traffic in this area.

To accommodate the widening of Old Potash Highway property acquisition is necessary. The existing driveway that serves 3505 West Old Potash Highway is too close to the intersection of Old Potash Highway and US Highway 281, and the proposed improvements will not allow for this driveway to remain and still provide a safe roadway.

Nebraska State Statutes stipulate that the acquisition of property requires a public hearing to be conducted with the acquisition approved by the City Council.

## **Discussion**

Engineering staff of the Public Works Department and the Legal Department have worked with the property owner of 3505 West Old Potash Highway, Reece Construction Co., Inc., who has agreed to a purchase price of \$696,000.00 for the City's acquisition. This purchase will allow for the geometric improvements at the intersection of US Highway 281 and Old Potash Highway.

The current business located at 3505 West Old Potash Highway will remain in place until late 2020. The City plans to pay relocation expenses to the affected business upon them vacating the property, and will attempt to salvage the land at a later date.

## **Alternatives**

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

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council conduct a Public Hearing and approve acquisition of 3505 West Old Potash Highway.

## **Sample Motion**

Move to approve.

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into by and between the **CITY OF GRAND ISLAND, NEBRASKA, a body corporate and politic and a political subdivision of the State of Nebraska**, herein referred to as "Purchaser", and **REECE CONSTRUCTION CO., INC., a Kansas corporation**, herein referred to as "Seller" with reference to a certain parcel of land located in the City of Grand Island, County of Hall, and State of Nebraska, more fully described as:

See attached Exhibit "A".

In consideration of the mutual covenants herein set forth, the parties agree as follows:

1. **AGREEMENT TO SELL AND PURCHASE:** Seller covenants and agrees to sell, and Purchaser covenants and agrees to purchase the above described property, herein referred to as the "Property", together with all improvements situated thereon together with any and all rights, titles, powers, privileges, easements, licenses, rights-of-way, oil, gas or mineral rights and interests appurtenant to and which benefit the Property and the improvements and the purchase and conveyance contemplated herein will be contingent on and subject to the terms, covenants, conditions and contingencies herein.

2. **PERMITTED ENCUMBRANCES:** The sale of the Property is subject to the following encumbrances (herein referred to as the "Permitted Encumbrances"): building and zoning laws, county and municipal ordinances, state and federal regulations, easements, covenants and restrictions of record accepted in writing by Purchaser.

3. **CONTINGENCIES OF PURCHASER:** Provisions to the contrary herein notwithstanding, performance by the Purchaser is contingent upon satisfaction of all of the following conditions:

- (A) Purchaser obtaining, in accordance with the provisions of Section 8 herein, at Purchaser's cost and expense, current boundary surveys of the Property, which disclose conditions satisfactory to Purchaser.

- (B) Purchaser inspecting the environmental condition of the Property prior to the Closing Date, including the right to conduct environmental, habitat, wetlands and archeological assessments and other studies on the Property, and finding the results of those studies acceptable. If Purchaser's inspection discloses conditions of Property, which, in Purchaser's sole discretion, are unacceptable to Purchaser, Purchaser may terminate this Purchase Agreement.
- (C) Purchaser inspecting the Property prior to closing, including the right to conduct engineering and mechanical studies of the Property, and finding its condition, structure, amenities and systems acceptable. If Purchaser's inspection discloses conditions of the Property which are unacceptable to Purchaser, Purchaser may terminate this Purchase Agreement.
- (D) Purchaser and Seller entering into the post-closing occupancy agreement substantially in the form of that attached to this Agreement as Exhibit B (the "Post Closing Occupancy Agreement").

The Contingencies enumerated above are for Purchaser's benefit only, and the non-occurrence of a state of facts sufficient to satisfy any of the Contingencies above may not be used or pleaded by Seller as a defense to the enforceability of this Agreement.

4. **CONTINGENCIES OF SELLER.** Provisions to the contrary herein notwithstanding, performance by Seller is contingent upon satisfaction of all of the following conditions:

- (A) Purchaser and Seller entering into the post-closing occupancy agreement substantially in the form of that attached to this Agreement as Exhibit C (the "Post Closing Occupancy Agreement").

The Contingencies enumerated above are for Seller's benefit only, and the non-occurrence of a state of facts sufficient to satisfy any of the Contingencies above may not be used or pleaded by Purchaser as a defense to the enforceability of this Agreement.

5. **FAILURE OF CONTINGENCIES:** The expiration of the contingencies listed in Section 3 and 4 shall be Thirty (30) days after last execution of this Agreement or in the event the Thirtieth (30<sup>th</sup>) day falls on a weekend or holiday the next business day thereafter (the "**Contingency Period**"). In the event any of the contingencies and conditions have not been met or in Purchaser's or Seller's opinion will not be met by the expiration of the Contingency Period or extensions thereof, Purchaser and Seller shall have the right and option to waive any

contingency or condition, or Purchaser or Seller may declare this Agreement terminated. If Purchaser or Seller exercises its option to declare this Agreement terminated, or if this Agreement otherwise becomes terminated, Purchaser and Seller shall have no further obligation or liability under this Agreement. In addition, Seller and Purchaser shall each be solely responsible for and shall hold the other harmless for any expenses, costs, damages, claims, lawsuits and judgments, including and not limited to expenses and attorneys fees, incurred by each of them respectively as a result of this Agreement.

Alternatively, in the event any of the contingencies have not been satisfied or waived by Purchaser and Seller as of the scheduled expiration of the Contingency Period, Purchaser shall have the right to extend the Contingency Period and Closing Date for one (1) thirty (30) day period upon notice to the other party of its intent to so extend no later than the then expiration of the Contingency Period.

6. **DUE DILIGENCE:** Within fourteen (14) days following the date of last execution of this Agreement, Seller shall deliver to Purchaser true, correct and complete copies of the items concerning the Property listed below, to the extent they exist and are in Seller's possession (the "**Due Diligence Items**"):

- (A) Any prior title evidence, such as a current abstract or title policy.
- (B) The most recent survey of the Property in Seller's possession.
- (C) The written results, if any of environmental site assessments, engineering reports, soil boring test samples or other inspections done at or on the Property.
- (D) All permits issued by governmental authorities for the Property.
- (E) Copies of all crop or billboard leases, if applicable.
- (F) Copies of all current maintenance service agreements, if any, relating to the Property.
- (G) All warranties covering the Property and its improvements.

7. **SELLER'S WARRANTIES:** Seller states, warrants, guarantees and represents as follows:

- (A) Seller has and will have on the Closing Date good and marketable fee title to the Property, subject only to the Permitted Encumbrances.
- (B) Seller has and will have on the Closing Date full right and authority to convey the Property, and in regard thereto to execute this Agreement and to execute and deliver all documents required of Seller for the consummation of this Agreement.
- (C) The persons signing this Agreement on behalf of Seller are duly authorized to do so and their signatures bind Seller in accordance with the terms of this Agreement.
- (D) The Property shall be free of tenancies and bill boards on the Closing Date other than the occupancy by the Seller under the Post Closing Occupancy Agreement and the occupancy pursuant to that certain lease between Waitt Outdoor, LLC and Seller dated October 29, 2002, lease #229.
- (E) No person, firm, corporation or entity has any option, right of first refusal or similar right to acquire the Property, or any part thereof, from Seller.
- (F) That Seller is not a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control; that Seller is not listed in the annex to, and is not otherwise subject to the provisions of, Executive Order No. 13224 (the “Executive Order”); and that Seller is not acting on behalf of any Person or entity that is listed in the annex to, or is otherwise subject to the provisions of the Executive Order.
- (G) Seller has received no notice of, nor has Seller any knowledge of, any violations of any federal, state, county or municipal laws, ordinances, orders, regulations or requirements affecting the Property.
- (H) Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code ("IRC"), i.e., Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the IRC and Income Tax Regulations).
- (I) To the best of Seller's knowledge the Property has not at any time been used as a waste dump, nor has it been used for the manufacture, treatment, storage or disposal of hazardous waste, hazardous substances, PCBs, pollutants, contaminants or materials of like import that cause a present or future hazard to the ground water or other parts of the environment, or would cause the Purchaser any liability to any person or persons, natural or corporate, or any governmental body.

- (J) To the best of Seller's knowledge there has not been at any time a release of petroleum products from underground or above-ground petroleum storage tanks and related piping located on the Property. "Release" means any other than minor spillage in the normal course of business, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank or any overfilling of a tank into ground water, surface water, surface soils, or subsurface soils.

The representations and warranties contained in this section shall be true and correct on the Closing Date and shall survive the Closing and continue in full force and effect notwithstanding the Closing and consummation of the transaction contemplated herein, and the obligation of the Purchaser to close this transaction is expressly conditioned upon said representations.

8. **SURVEYS:** Purchaser, at Purchaser's sole cost and expense, shall obtain its own boundary survey (the "**Survey**").

9. **COMPLIANCE WITH MUNICIPAL OR STATE REGULATIONS:** All violations of law, ordinances or orders of state, county and municipal agencies affecting the Property at the date hereof shall be cured by Seller before the Closing Date, and all notices and warnings of such violation shall be complied with by Seller before that time, and the Property shall be conveyed free of all such notices and warnings. Seller hereby authorizes Purchaser to make and/or have made searches for such violations.

10. **PURCHASE PRICE:** The consideration due from Purchaser to Seller for the Property shall be SIX HUNDRED NINETY-SIX THOUSAND AND NO/100 DOLLARS (\$696,000.00) cash upon closing (the "**Purchase Price**").

11. **REAL ESTATE TAXES, ASSESSMENTS AND TRANSFER FEES:** Seller will be responsible for 2018 taxes and assessments levied against the Property which become due prior to the Closing Date. Real estate taxes levied or to be levied in 2019 shall be pro-rated between Buyer and seller on the date of closing based upon the most recent tax levy rate.

Purchaser shall be responsible for payment of deed recording fees and deed stamps due any governmental agency resulting from the transfer of the Property by Seller to Purchaser.

12. **EVIDENCE OF TITLE:** Purchaser shall obtain a commitment for title insurance in the amount of the Purchase Price set out herein, naming the Purchaser as the insured, as its interest may appear (the "**Commitment**"), written by Grand Island Abstract, Escrow & Title Co., 704 W. 3<sup>rd</sup> Street, Grand Island, Nebraska 68801 (the "**Title Company**").

Within seven (7) days of approval of this Agreement by Purchaser's City Council Purchaser shall advise Seller in writing of any objections it has to the state of title to the Property shown in the Commitment. Seller shall have Thirty (30) days from the date of Purchaser's notice of such objections to make a good faith effort to cure such objections and to furnish a later report showing the objections cured or removed. If such objections cannot be cured within thirty (30) days after the date of Purchaser's notice of such objection, Purchaser may; (i) declare this Agreement null and void and neither party shall have any further obligation or liability under this agreement, (ii) at its election, take the title as it then is (with a right to deduct from the Purchase Price for liens or encumbrances of a definite or ascertainable amount), (iii) maintain its objections to the items uncured and extend Seller's time to cure; or (iv) attempt to cure itself. Purchaser retains the right to update title, object to any new items and have the same remedies mentioned above through the Closing Date.

All costs relating to the issuance of the title policy, including, but not limited to, title search and examination fees, policy premiums and the cost for any required endorsements shall be paid for by Purchaser

13. **POSSESSION:** Subject to the Post Closing Occupancy Agreement, legal possession of the Property shall be delivered to Purchaser on the Closing Date, except as herein provided. On the Closing Date the Property shall be free of trash, debris and refuse free. Purchaser or its agent shall be permitted upon the Property prior to Closing for soil testing, environmental and/or inspections, surveying or other investigations or functions relating to its purchase of the Property. Purchaser agrees to indemnify and hold Seller harmless from any and all loss, claim, action, demand or liability which may arise against the Seller or the Property by virtue of any of Purchaser's actions pursuant to this Agreement. Upon completion of Purchaser's investigations and tests, Purchaser shall restore the Property as reasonably possible to the same condition as it existed before Purchaser's entry upon the Property.

14. **CLOSINGS:** Unless otherwise agreed to by the parties, this transaction shall be closed at the offices of the Title Company insuring the Property. The "**Closing**" of the transaction contemplated hereby shall be held on September \_\_\_\_, 2019, ("**Closing Date**"). Closing may be held prior to such time upon mutual agreement of the parties. Closing costs and escrow fees, if any, charged by the Title Company to close the transaction, shall be paid by Purchaser.

Seller acknowledges that Purchaser may be providing funds by way of a check, and that the Title Company may require said check to clear its bank in order for the funds to become available for disbursement. In the event an extension is warranted for delays in Closing or disbursement caused by Title Company, the Closing Date will be automatically extended without having to amend this Agreement, said extension to be one business day after said delay in Closing

or disbursement caused by the Title Company has been resolved. Possession of the Property shall be delivered simultaneously with the disbursement of Seller's net proceeds.

At Closing, Seller shall deliver or cause to be delivered to Purchaser each of the following items:

- (A) A Warranty Deed, in recordable form, duly executed and acknowledged by Seller, conveying title to the Property to Purchaser, free and clear of all liens, taxes, restrictions, tenancies, occupancies and encumbrances of every kind and description except:
  - 1) Permitted Encumbrances specified in Section 2 herein;
  - 2) General real estate taxes and assessments which are a lien but which are not due and payable on the Closing Date, and special assessments caused by Purchaser's activities or improvements;
- (B) Such evidence or documents as may be reasonably required by the Purchaser or the Title Company evidencing the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of Seller in connection with the sale of the Property;
- (C) A certification in a form to be provided or approved by the Purchaser, signed by Seller under penalties of perjury, containing the following:
  - 1) Seller's U.S. Taxpayer Identification Number;
  - 2) The home address of Seller (or the business address of Seller if Seller is not an individual); and,
  - 3) A statement that Seller is not a foreign person within the meaning of Section 1445 of the IRC i.e., Seller is not a nonresident alien, foreign corporation,

foreign partnership, foreign trust or foreign estate (as those terms are defined in the IRC and Income Tax Regulations).

In the event that Seller fails to deliver such Certification at Closing or Seller delivers such Certification but the Purchaser has actual knowledge that such Certification is false or the Purchaser receives notice that the Certification is false from any agent of the Purchaser or Seller, the Purchaser shall be entitled to withhold from the Purchase Price a sum equal to ten percent (10%) of the total amount which otherwise would have been realized by Seller from such sale, which sum will be paid by the Purchaser to the United States Treasury pursuant to the requirements of Section 1445 of the IRC and the regulations promulgated thereunder.

- (D) An affidavit of title warranting that no outstanding mechanic's lien rights exist, that the Property is not subject to any unrecorded interest or encumbrances, adverse claims, possession or occupancies and is not subject to any leases, oral or written, and that all assessments, utility charges and taxes have been paid to the Closing Date, other than those disclosed and accepted herein.
- (E) Closing Prorations:
  - (i) All adjustments shall be made as of midnight of the day prior to the Closing Date and shall be in accordance with the customs in respect of title closing recommended by the Title Company;
- (F) Post-Closing Occupancy Agreement.
- (G) All additional documents and instruments as in the reasonable opinion of the Purchaser's counsel or the Title Company are necessary to the proper consummation of this transaction.

Unless explicitly stated in this Agreement to the contrary, Purchaser or the Title Company shall be responsible for all costs related to the production and delivery of the required closing documents. Seller and Purchaser shall exchange draft copies of all proposed closing documents at least five (5) business days prior to the scheduled Closing Date. If such documents are not received in a timely manner either party may extend the Closing Date accordingly.

15. **REAL ESTATE BROKERS AND BROKERAGE COMMISSION:** Seller and Purchaser each hereby represent and warrant to the other that this Purchase and Sale Agreement is made and entered into as a result of direct negotiations between parties hereto without the aid or assistance in any fashion of any broker or other agent and each of the parties hereby represents and warrants to the other that they have entered into no agreement or made any undertaking of any kind or character whatsoever as a result of which any claim could properly be brought against the other for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction. Each party hereby agrees to indemnify and hold the other harmless as a result of any misrepresentation or breach of the warranty contained in this section.

16. **SURVIVAL OF COVENANTS:** Any representation, warranty, covenant or agreement herein of either party to this Agreement whether to be performed before or after the Closing Date shall not be deemed to be merged into or waived by the instruments of closing, but shall expressly survive the Closing and shall be binding upon the party obligated thereby.

17. **PARTIAL INVALIDITY:** If any provisions or portions of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision, or portion thereof, to any other persons or circumstances shall be valid and enforceable to the fullest extent permitted by law.

18. **NOTICE:** Any notice, demand, request or other communication which may or shall be given or served by Seller to or on the Purchaser, or by the Purchaser to or on Seller, shall be deemed to have been given or served on the date the same is deposited in the United States Mail, standard, registered or certified, return receipt requested, postage prepaid, sent by electronic transmission or given to a nationally recognized overnight courier service for next business day delivery and addressed as follows:

If to Seller:	Reece Construction Co., Inc. P. O. Box 3227 Salina, KS 67402
If to the Purchaser:	City of Grand Island Attn: Public Works Director 100 East First Street Grand Island, Nebraska 68801

The above addresses may be changed at any time by the parties by notice given in the manner provided above.

Seller and Purchaser agree that electronically reproduced signatures such as by facsimile transmission or email are valid for execution or amendment of this Agreement and that electronic transmission/facsimile is an authorized form of notice as that term is used in this Agreement.

19. **AGREEMENT BINDING:** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

20. **CHOICE OF LAWS AND SUBMISSION TO JURISDICTION:** This Agreement shall be deemed to have been made in Hall County, Nebraska, and shall be construed in accordance with the laws of the State of Nebraska. All actions or proceedings relating, directly or indirectly, to this Agreement, whether sounding in contract or tort, shall be litigated in a court of competent jurisdiction for Hall County, Nebraska. All parties to this Agreement hereby subject themselves to the jurisdiction of the District Court of Hall County Nebraska.

21. **HEADINGS:** The section titles are for convenience only and do not define, limit or construe the contents of such paragraphs.

22. **DATE:** This Agreement shall be dated and effective and binding as of the date of the last execution.

23. **CONSTRUCTION:** Both parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

24. **CASUALTY:** If prior to the Closing Date the Property or any portion thereof, shall be damaged or destroyed by reason of fire, storm, accident or other casualty, then Seller shall immediately give notice thereof to Purchaser. Upon receipt of such notice Purchaser, at Purchaser's option, shall have the right to:

- (A) Terminate this Agreement as to such portion of the Property damaged by the casualty, whereupon the Purchase Price shall be reduced accordingly; or
- (B) Terminate as to the entire Property, whereupon the Earnest Money shall be paid to Purchaser and all parties shall thereupon be relieved of all further liability hereunder.

If Purchaser does not exercise its right to terminate then Purchaser shall be entitled to all of the insurance proceeds which would have been due Seller and Seller will credit Purchase at Closing with an amount equal to the deductible under the applicable insurance policy.

25. **OPERATION OF THE PREMISES:** During the period between the date hereof and the Closing Date, Seller shall:

- (A) Comply with the material terms, conditions, and provisions of all liens, leases, mortgages, agreements, insurance policies and other contractual arrangements relating to the Property, make all payments due thereunder and suffer no default therein;
- (B) Without written approval of Purchaser, neither negotiate nor enter into any new contract nor modify any existing contract affecting the use or operation of the Property which cannot be terminated without charge, cost, penalty or premium on or before the Closing Date;
- (C) Not, without Purchaser's prior written consent, enter into, amend or terminate any lease, nor institute any proceeding at law or in equity to enforce any lease;
- (D) Not return to any tenants, directly or indirectly, any security deposits except as required by lease, upon the termination of occupancy; and
- (E) Not market the Property to third parties

26. **COUNTERPARTS; MODIFICATION:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The electronic transmission of any signed original counterpart of this Agreement shall be deemed to be the delivery of an original counterpart of this Agreement. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

27. **ENTIRE AGREEMENT:** This Agreement, including the exhibits hereto, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No covenant, representation, or condition not expressed in this Agreement

shall be binding upon the parties hereto or shall affect or be effective to interpret, change, or restrict the provisions of this Agreement.

**[Signature to Appear on Following Page(s)]**

IN WITNESS WHEREOF, the parties hereto have executed this instrument.

EXECUTED ON:

This 22 day of August, 2019

SELLER:

REECE CONSTRUCTION CO., INC.

By: Marjell Forst

EXECUTED ON:

This \_\_\_\_ day of \_\_\_\_\_, 2019

PURCHASER:

CITY OF GRAND ISLAND

By: \_\_\_\_\_  
Roger G. Steele, Mayor

THIS INSTRUMENT DRAFTED BY:

Jerom E. Janulewicz  
City Administrator-Special Attorney  
City of Grand Island  
PO Box 1968  
Grand Island, Nebraska 68802

## Exhibit A

A tract of land comprising a part of the Northwest Quarter of the Northeast Quarter (NW1/4NE1/4) of Section Twenty-four (24), Township Eleven (11) North, Range Ten (10) West of the 6th P.M., Hall County, Nebraska, described as follows: Beginning at a point on the North line of said Section Twenty-four (24), said point being One Thousand Seventy-three and Four Tenths (1,073.4) feet East of the Northwest Corner of said Northeast Quarter (NE1/4); thence Southerly parallel to the West line of said Northeast Quarter (NE1/4) a distance of Six Hundred Eighty-six and Four Tenths (686.4) feet; thence Westerly parallel to the North line of said Section Twenty-four (24) a distance of Four Hundred (400.0) feet; thence Southerly parallel to the West line of said Northeast Quarter (NE1/4) a distance of Six Hundred Forty-four and Five Tenths (644.5) feet to the South line of said Northwest Quarter of the Northeast Quarter (NW1/4NE1/4); thence Easterly along and upon said South line of the Northwest Quarter of the Northeast Quarter (NW1/4NE1/4) a distance of Seventy-two and Seven Tenths (72.7) feet to the intersection with the Northerly highway right-of-way line; thence Northeasterly along and upon said Northerly highway right-of-way line a distance of Four Hundred Sixty-four and Seven Tenths (464.7) feet; thence Northeasterly along and upon the Westerly highway right-of-way line a distance of One Thousand Ninety-four and Four Tenths (1,094.4) feet to the North line of said Section Twenty-four (24); thence Westerly along and upon the North line of Section Twenty-four (24) a distance of One Hundred Fifty-four and Five Tenths (154.5) feet to the place of beginning, together with a permanent easement and right-of-way extending West Forty (40.0) feet wide, abutting the West side of the above described real estate as the South end of the West line, as more particularly described in the Easement recorded May 21, 1968 in Book 17, Page 423, in the office of the Register of Deeds for Hall County, Nebraska, in which the grantors reserved for themselves, their heirs, executors, administrators, assigns, legal representatives and successors the right at any time to use the roadway or any graded, paved or improved road or street built, maintained or constructed on, over and across the Forty (40) foot width of real estate for any lawful use or purpose.

## POST CLOSING OCCUPANCY AGREEMENT

This Post-Closing Agreement ("Agreement") entered into by and between **Reece Construction Co., Inc.** hereinafter referred to as ("Seller"), and **City of Grand Island.** hereinafter referred to as ("Purchaser").

### RECITALS

WHEREAS, on \_\_\_\_\_, 20\_\_ ("Closing Date") the parties completed the sale of land located at 3505 West Old Potash Highway, Grand Island, NE (the "Property") according to the terms of the Purchase and Sale Agreement between Seller and Purchaser effectively dated \_\_\_\_\_, 20\_\_, ("Purchase Agreement").

WHEREAS, as of the Closing Date, Seller needs additional time after the Closing Date to allow for the construction of a new commercial building and to fully remove all personal property and themselves from the Property.

WHEREAS, in exchange for Purchaser's willingness to allow Seller to stay at the Property post-closing, the parties now desire to enter into this Agreement subject to the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties hereto, Seller and Purchaser hereby agree as follows:

1. Recitals. The Recitals hereinabove are true and correct and incorporated herein.
2. Capitalized Terms. All capitalized terms used herein and not otherwise defined herein shall have the same meaning ascribed thereto in the Purchase Agreement.
3. Post-Occupancy. The Seller shall have the right to remain at the Property until September 1, 2020 under the following conditions:
  - a) Seller shall be responsible for any and all costs of continuing occupancy including all real estate taxes (pro-rated to the date Seller vacates the property), utilities, or other costs of any nature. Seller shall maintain through the term of this Agreement, liability insurance, at-risk insurance and personal property insurance.

- b) Purchaser shall have no obligation to repair and maintain the premises prior to and during Seller's occupancy and Seller shall maintain the premises at current levels.
- c) Seller shall remove all personal property by the date specified herein. On the date Seller vacates the Property, the Property shall be free of refuse, trash and debris and the Improvements shall be in a "broom clean" condition
- d) In the event Seller fails to vacate the premises on or before the date set forth herein, Purchaser shall be entitled to payment for any costs or damages including attorney fees relating to the removal of Seller, its tenants and Seller's and tenant's property as required under this Agreement.
- e) At the completion of this Agreement, Seller shall turn over, to Purchaser, all keys, garage door openers, security codes, and all other items that allow access to the premises.

4. Damages. If Seller fails to complete their obligations under this Agreement, Purchaser shall be allowed to collect actual damages, including attorney's fees, incurred in rectifying such failure from Seller.

5. Indemnity. Seller shall indemnify, defend and hold harmless Purchaser from and against any and all judgments, actions, liens, loss, damages, penalties, fines, liabilities, expenses and claims in connection with any activity performed under this Agreement by or at the instance of Seller.

6. Facsimile. Any facsimile, electronic, telecopy or other reproduction of this Agreement may be executed by the parties and shall be considered valid, binding and effective for all purposes. At the request of any party, the parties hereto agree to execute an original of this Agreement as well as any facsimile, email, electronic, telecopy or other reproduction hereof.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, all of which together shall constitute one instrument.

8. Effective Date. This Agreement shall become effective as of the date of final execution.

**[Signatures to Appear on Following Pages]**

IN WITNESS WHEREOF, the party hereto has executed this instrument.

EXECUTED ON:

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_

SELLER: Reece Construction Co., Inc.

By: Marjorie Post  
Name:

Its: Executive Vice-President

EXECUTED ON:

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_

PURCHASER: City of Grand Island

By: \_\_\_\_\_  
Name: Roger G. Steele  
Its: Mayor



PROPERTY ACQUISITION COUNCIL EXHIBIT