



City of Grand Island

Tuesday, June 14, 2022

Council Session

Item I-1

#2022-164 - Consideration of Approving the Donation and Construction Agreement with Grow Grand Island for Kaufman Plaza

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Administrator
Meeting: June 14, 2022
Subject: Expansion of the Kaufman Plaza
Presenter(s): Jerry Janulewicz, City Administrator

Background

Amur Equipment Finance (Amur) approached Grow Grand Island, Inc. (GGI) with a vision and design for the plaza known as Kaufman Plaza in Railside, which expands the existing gathering area and creates a greenspace environment. Amur paid for and provided the design. They also proposed a partnership where they would be a 50% funder of the project to see it to fruition. The project includes extensive landscaping (grass, plants, trees, pavers, etc.) in the current parking lot area directly north of the existing plaza, excluding the alley, extending north to South Front Street. The existing mail drop box will be relocated. The existing parking spaces in the city parking lot will be relocated to the street, netting no loss of spaces. The design also calls for a permanent berm for use as a stage, a removable stage cover, solar lighting, infrastructure for electricity and potential future public restroom(s).

GGI desires to enter into a contract with the City of Grand Island to oversee the project, as well as a construction contract with the contractor selected by Amur and a partnership agreement between Amur and GGI.

Discussion

The proposed expanded plaza improvements are to be constructed on city-owned property through a contract between GGI and Empire Development LLC. This contract together with the proposed contract between the City and GGI will require GGI and its contractor to provide a payment bond, liability insurance, and meet other requirements the City requires of its contractors on City construction projects. Upon completion of the improvements, approval by the city engineer, and acceptance by the City Council, the improvements will become City property through a donation from GGI. The project is expected to cost \$685,000 of which Amur Equipment Finance, Inc. (Amur) will provide \$350,000. GGI will bring forth its recommendation for renaming the plaza in recognition of the significant financial donation from Amur.

Railside BID has proposed that it be responsible for scheduling plaza events and for maintenance of the existing and expanded the plaza. If the City Council approves the proposed plaza expansion agreement with GGI, City administration will proceed with negotiating an operation/maintenance agreement with Railside BID for City Council consideration at a subsequent meeting. Railside BID currently pays the premium cost for liability insurance coverage on the existing plaza area and schedules plaza events such as the Hear Grand Island summer concert series.

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 City Council approve by resolution the agreement with GGI for the plaza expansion project.

Sample Motion

Move to approve the resolution.

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 _____, 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 _____, 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 _____, 2022 (weather permitting) and shall end no later than _____, 2022 (the "Construction Period"). In the event that construction is not completed by _____, 2022, GGI may request an extension of time for the Construction Period for up to ___ 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 II.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.

City of Grand Island

Authorized Representative

Roger G. Steele, Mayor

Date: _____

Date: _____

ATTEST:

RaNae Edwards, City Clerk

APPROVED AS TO FORM:

Stacy Nonhof, Interim City Attorney

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (“Agreement”) serves as an agreement between **Amur Equipment Finance** (“Grantor”), located at 304 West 3rd Street in Grand Island, Nebraska 68801, AND **Grow Grand Island, Inc.**, a 501(c)3 non-profit located at PO Box 777, Grand Island, Nebraska 68802 (“Grantee”). Whereas, Grantee wishes to carry out the project described herein and Grantor wishes to grant funding and services toward said project, the parties agree as follows:

GGI Grant Terms and Conditions. Grantor shall provide Grantee with grant funding of \$350,000 (“Grant Funds”) one half or \$175,000 payable within five (5) days of execution of this Agreement and the balance or \$175,000 payable within five (5) days after certification of completion of demolition under the Construction Contract, as defined below, to be applied toward an expansion of the existing Kaufman Plaza by utilizing the adjoining parking lot to create a new space which includes 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. As the space is for public use, separate agreements are in place between Grantee and the City of Grand Island, as well as Grantee and the General Contractor.

1. **Provision of Consulting Services.** In addition to Grant Funds, Grantor shall provide one consultant to assist as needed, paid for by the Grantor, that will provide project supervision and management services.
2. **Project Oversight and Change Orders.** Grantor recognizes the contractual agreement between Grantee and the City of Grand Island, as well as the contractual agreement between Grantee and the Empire Development, LLC, (“General Contractor”) (the “Construction Contract”). In so much as these agreements have specific requirements that must be met, decisions that impact these requirements during execution of the project shall be jointly discussed but final decisions rest with the Grantee. Decisions that are not material under either or both of the contracts referred to herein shall be at the discretion of Grantor after consultation with Grantee. Grantor shall supervise and oversee that the work to be completed conforms to the Plans & Specifications, as detailed in the Construction Contract and shall provide all certifications or documentations required of the Project Engineer as set forth in the Construction Contract.
3. **Grant Fee Schedule.** Grantee will serve as the fiscal agent with responsibility to provide timely payment to General Contractor and any other contractors who provide services toward the project. Grantor shall disburse Grant Funds to Grantee upon project milestones to be established.
4. **Naming Rights.** It is understood that the Grantor shall have the right to select the name of the expanded area, as well as the original Kaufman Plaza area, and shall have the right to select the party of any other naming opportunities, such as the stage. Additionally, Grantor shall have the right to design any signage to be displayed in the area. It is understood that final approval of these rights rests with the City of Grand Island.
5. **Term and Termination.** The effective date of this Agreement shall be the date of execution, and the Agreement shall automatically terminate on December 30, 2022, unless extended in the same manner as the contract with the General Contractor. The Agreement may be terminated at any time and for any reason upon written notification. Upon Agreement termination, Grantee shall not be required to return any portion of the paid Grant Funds to Grantor, and Grantor shall have no further obligation to provide Grantee with any unpaid portion of the Grant Funds.
6. **Best Efforts.** Grantor agrees to use best efforts to ensure the timely performance and completion of the work required by General Contractor under the Construction Contract, including without limitation, the timely payment of all suppliers, subcontractors and any other person or entity performing work on the project.
7. **No Implied Agency.** Nothing in the Agreement shall be deemed to create any partnership, joint venture, joint enterprise, or agency relationship among the parties, and no party shall have the right to enter into contracts on behalf of, to legally bind, to incur debt on behalf of, or to otherwise incur any liability or obligation on behalf of, the other party hereto. Each party shall be solely responsible for its employees and contractors used to provide the Agreement.

CONSTRUCTION CONTRACT

THIS CONSTRUCTION AGREEMENT (“Agreement”) is made effective as of this _____ day of _____, 2022 (the “Effective Date”), by and between the GROW GRAND ISLAND, INC., a Nebraska non-profit corporation (the “GGI”) and EMPIRE DEVELOPMENT, LLC a Nebraska limited liability company (“Contractor”). GGI and Contractor are each and individually referred to as a “Party” and collectively as “Parties” to this Agreement.

WHEREAS, the GGI has contracted with the City of Grand Island, Nebraska (the “City”) to raise funds 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 (“Plaza Expansion”);

WHEREAS, the Contractor has agreed to perform the work to complete the Plaza Expansion, as more particularly defined hereunder (the “Project”) for the fee and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. The Project. The Project shall be completed in strict conformance with the Plans and Specifications as detailed on Exhibit A, attached and incorporated herein by this reference (the “Plans & Specifications”). Any material change to the Plans & Specifications shall only be adopted pursuant to a signed written agreement between the Parties. By way of description and not limiting the work required to complete the Project pursuant to the Plans & Specifications, the Project shall include the following work:

- 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. Compliance 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. The scheduling and supervision of all work;
- e. 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 GGI, delivery to GGI of all project construction documents, records, as-builts, and manuals; and
- i. The design and construction of the Plaza Expansion shall be in compliance with, as applicable, ADA Standards for Accessible Design, and as amended, and implementing regulation, and building, electric, plumbing, and life safety codes adopted by

the City of Grand Island Agreement, is described on Exhibit A, attached and incorporated herein by this reference.

2. Project Price and Payment Terms. The total cost of the Project shall be \$_____ (the "Contract Price"), payable in monthly draws based on a percentage of completion including the cost of any materials delivered to and located at the work site, less a retainage of ten percent (10%). Percentage of completion shall be certified by an engineer/architect mutually acceptable to the Parties (the "Project Engineer"). Final payment, including retainage shall be payable within thirty (30) days after acceptance of the Project by GGI and the City.

3. Design & Construction; Time of Construction. The Plans & Specifications are subject to review and approval by the City Engineer, which review and approval shall not be unreasonably delayed. The City Engineer shall also timely review and approve all construction documents and final selections of building materials prior to construction.

The construction of the Project shall not commence prior to _____, 2022 and shall be completed no later than _____, 2022, subject to reasonable construction extensions for weather delays properly documented and approved by the Project Engineer (the "Construction Period"). Any requested extensions beyond the Construction Period must be made to GGI in writing and shall be granted or denied in GGI's sole discretion.

4. Warranty. Contractor and its agents warrant that the Project will be constructed and completed in a good and workmanlike manner, and Contractor's performance under this Agreement shall be, in strict compliance with the Plans & Specifications, the requirements of GGI under this Agreement, and in compliance with all applicable codes, standards, laws and regulations, and the Project shall be and remain free from defect and/or faulty construction and shall be and remain in sound working order for a period not less than one (1) year. If a defect or fault in construction is discovered within that time, Contractor agrees to repair and/or replace such defective or faulty portion of the Project at no cost to the GGI.

5. GGI's Right of Entry and Inspection. GGI, including its agents and the City, reserves the right to enter upon any land affected by the Project at any time for purposes of inspecting the Project. Final inspection shall be the responsibility of GGI, or such individual or entity selected by the GGI.

6. Indemnification. Contractor, on behalf of itself and its respective agents, officials, representatives, officers, directors, shareholders, employees, attorneys, successors, assigns, heirs, insureds, subsidiaries, and related companies and entities, hereby agrees to release, defend, indemnify, and hold harmless GGI, the City and both's agents, officials, representatives, officers, directors, employees, attorneys, successors, assigns, heirs, subsidiaries, and related entities, from and against any and all liability, claims, fines, settlements, damages, demands, suits or causes of action of whatsoever nature, including but not limited to reasonable attorney's fees and costs, asserted by any person, company, or

entity for any claims and/or for any expenses incurred, based on, arising out of, or related in any way, directly or indirectly, to GGI's use of Contractor's services under this Agreement. Contractor shall be responsible for any hazards created through its acts or omissions or those of its agents or employees. Contractor shall indemnify and hold GGI harmless from all construction, mechanics' and other liens arising out of or relating to the Project or real property interests being conveyed hereunder.

7. Release by Contractor; Encumbrances and Liens. Contractor, on behalf of itself and its respective agents, officials, representatives, officers, directors, shareholders, employees, attorneys, successors, assigns, heirs, subsidiaries, and related companies and entities, irrevocably and unconditionally waives, releases, acquits, and forever discharges GGI, and its respective agents, officials, representatives, officers, directors, employees, attorneys, successors, assigns, heirs, subsidiaries, and related entities, from any and all claims, demands, actions, causes of action, suits, damages, charges, liability, liquidated or unliquidated, Contractor may have or acquire that are based on, arise out of, or relate in any way either directly or indirectly to GGI's use of Contractor's services under this Agreement, including but not limited to any claim for direct damages, or any claim for any special, indirect, or consequential damages, including without limitation, damages for lost profits, loss of data or costs of procurement of substitute goods or services, or for any claim for damages or other relief of any kind whatsoever, including but not limited to attorney fees and costs.

Neither the Contractor nor anyone claiming by, through, or under the Contractor 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 property owned by the City. 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. Contractor shall provide a payment bond or bonds in a sum not less than the Contract Price with a corporate surety company and agent 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 Project or in performing This Agreement.

8. Protections Cumulative. The Parties agree that the releases, indemnifications, disclaimers of warranties or guarantees, and similar protections for the GGI contained in this Agreement are cumulative to and in addition to any other protections, relief, remedies, or other recourse available to the GGI under law.

9. Insurance. Contractor, at Contractor's sole cost and expense, shall procure and maintain all bodily injury, property damage, and liability insurance appropriate and/or required by law for the Project, with a combined single limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; and broad form peril insurance coverage of the Project in an amount not less than the Contract Price. All such insurance policies shall insure, on an occurrence basis, against liability of Contractor, its employees and

agents arising out of or in connection with, or related in any way, directly or indirectly, to the Project, all as provided for herein. GGI and the City shall be named as an additional insured on any such policy for purposes of the Project. Contractor shall provide to GGI and the City a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the execution of this Agreement. Contractor shall provide worker's compensation insurance coverage and shall require all subcontractors to provide such coverage under the Nebraska Worker's Compensation Act.

10. Assignment. Neither Party's interests under this Agreement may be assigned to a third-party without the prior written consent of the other Party, such consent to not be unreasonably withheld.

11. Severability. Invalidity of any provision of this Agreement shall not render invalid any of the other provisions of this Agreement. It is the intention of the Parties that this Agreement shall constitute a binding and legally enforceable agreement.

12. Governing Law. This Agreement shall be governed by the laws of the State of Nebraska. This Agreement shall be binding upon the parties hereto, their respective legal representatives, successors and assigns.

13. No Reliance on Other Party. The parties hereto agree that in entering into this Agreement they have each relied upon their own judgment and knowledge. Each Party represents that no representations or warranties have been made by any Party hereto, other than as set forth in this Agreement, to induce the other Party to enter into this Agreement.

14. Entire Agreement. This Agreement, including attachments and exhibits hereto sets forth the entire agreement between the signatory parties and fully supersedes any and all prior agreements or understandings between these parties pertaining to this subject matter.

15. Modification. This Agreement may be modified only by written instrument signed by both Parties.

16. 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 the GGI:

Grow Grand Island, Inc.
ATTN: Tonja Brown
PO Box 777
Island, Nebraska 68802

If to Contractor:

Empire Development, LLC
ATTN: Amos Anson
4234 Arizona Ave.
P.O. Box 1665
Grand Island, NE 68802

IN WITNESS WHEREOF, the parties hereto have executed this Construction Agreement as of the date opposite their signature.

GROW GRAND ISLAND, INC.:

By: _____ Date _____

Its: _____

CONTRACTOR:

EMPIRE DEVELOPMENT, LLC

By: _____ Date _____

Its: _____

RESOLUTION 2022-164

WHEREAS, Amur Equipment Finance, Inc. (Amur) approached Grow Grand Island, Inc. (GGI) with a vision and design for the downtown plaza area in Railside, which expands the existing gathering area and creates a greenspace environment; and

WHEREAS, the expansion of the downtown plaza is to be located upon vacated Wheeler Avenue between the north one-half of Block Fifty-Six and the north one-half of Block Fifty-Seven, Original Town, now City of Grand Island; and

WHEREAS, the project includes extensive landscaping (grass, plants, trees, pavers, etc.) in the current parking lot area directly north of the existing downtown plaza area (excluding the alley) extending to South Front Street, a permanent berm for use as a stage, a removable stage cover, solar lighting, infrastructure for electricity and potential future public restroom(s); and

WHEREAS, upon completion of the improvements, approval by the city engineer, and acceptance by the City Council, the improvements will become City property through a donation from GGI; and

WHEREAS, City administration and Railside BID will develop a plaza operation/maintenance agreement to be submitted for City Council consideration at a later date.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, as follows:

1. The Donation and Construction Agreement between Grow Grand Island, Inc. and the City of Grand Island is hereby approved for the expansion of the downtown public plaza upon vacated Wheeler Avenue between the north one-half of Block Fifty-Six and the north one-half of Block Fifty-Seven, Original Town, now City of Grand Island; and
2. Grow Grand Island, its contractors and subcontractors, are hereby authorized to construct, place, and erect upon the above-described City property the improvements as contemplated by the above-mentioned construction agreement and approved by the City Engineer.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2022.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
June 10, 2022	☐ City Attorney