



City of Grand Island

Tuesday, December 20, 2022

Council Session

Item G-18

#2022-364 - Approving Amendment to Agreement with Grow Grand Island for Plaza Expansion Project

Staff Contact: Laura McAloon

Council Agenda Memo

From: Laura D. McAloon, City Attorney

Meeting: December 20, 2022

Subject: Amendments to Agreement between Grow Grand Island, Inc. and City regarding Downtown Plaza Expansion

Presenter(s): Laura D. McAloon, City Attorney

Background

On June 14, 2022, the City Council adopted Resolution No. 2022-164 authorizing the execution of a Donation and Construction Agreement Between Grow Grand Island, Inc. and the City of Grand Island For Expansion of the Downtown Public Plaza (the “Agreement”). The Agreement requires City Council approval of the final plans for the project and also requires completion of the construction by December 31, 2022. Although Grow Grand Island Inc.’s (“GGI”) contractor has been diligently working on the project, it is apparent that construction will not be completed by December 31, 2022. In addition, GGI is seeking the City Council’s final approval of the plans for the project, which now includes restrooms, landscaping and final design of the stage area.

Discussion

GGI has presented City staff with its final plans for the expansion of the Downtown Public Plaza, also known as Amur Plaza. Staff have prepared a resolution authorizing the adoption of the final plans, attached to the resolution as Exhibit A and authorizing a five month extension for completion of construction not later than June 1, 2023.

In addition, GGI and its contractor have requested an amendment to the Agreement to clarify that their compliance with the permits issued by various City Departments for the construction of the project and related utilities and installation of the landscaping will satisfy the Agreement’s requirement for “prior written approval of the City Engineer” for all aspects of the project. Staff agree with the recommended changes from GGI and also agree that their requested changes will clarify the required process for all involved Departments. The proposed resolution contains the language necessary to amend the Agreement. The City Engineer will still be required to review and approve the improvements prior to the City Council’s acceptance of the project and improvements as complete, in addition to the required approvals from City Departments that have issued permits for the project.

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 staff recommend adoption of the resolution approving the final plans for the project, extending the construction completion date and amending contract language to clarify the approval process.

Sample Motion

Move to approve Resolution 2022-365 approving the final plans for the Downtown/Amur Plaza project, extending the construction completion date to June 1, 2023 and amending contract language to clarify the approval process.

RESOLUTION 2022-364

WHEREAS, pursuant to the authority granted by the Grand Island City Council, the City of Grand Island, NE (“CITY”) and Grow Grand Island, Inc. (“GGI”) entered into a “Donation And Construction Agreement Between Grow Grand Island, Inc. and The City Of Grand Island For Expansion Of The Downtown Public Plaza” (the “Agreement”) on June 30, 2022; and

WHEREAS, it is necessary to amend the Agreement to reflect City Council’s approval of the final planned improvements by GGI to the CITY’s Downtown Public Plaza through the adoption of an updated Exhibit A to the Agreement; and

WHEREAS, it is also necessary to amend the Agreement to reflect recommended changes to the process and procedures for obtaining the approval of the construction plans and specifications and the building materials in order to reflect the City’s current permitting process and departmental responsibilities.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the following amendments to the Agreement are and shall be approved as set forth herein (deletions shown in ~~strike through~~; additions shown in underline).

Section I.B. CONSTRUCTION is amended as follows:

1. The plans and specification for the Plaza Expansion must receive ~~the prior written approval of the City Engineer and~~ the written approval of the applicable City Engineer is required departments, which approval may be reflected by the issuance of required City permits 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 and/or permitted by the CITY. Any material deviations from the design drawings depicted in Exhibit A 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~~ June 1, 2024 (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 as his sole discretion.~~

...

Approved as to Form	☐ _____
December 16, 2022	☐ City Attorney

Section II. D. ACCEPTANCE OF IMPROVEMENTS is amended as follows:

1. Upon completion of the Plaza Expansion, such improvements shall be reviewed by the applicable City departments and the City Engineer and, if approved, and upon receipt of the GGI's professional Engineer/Architect certification of completion of the Plaza Expansion with the plans and specifications approved by the CITY, it shall be recommended to the City Council for acceptance by the City Administrator or designee. Acceptance of ownership of these Improvements shall be subject to the verification by the CITY that the project has been completed in compliance with all permits issued by the CITY, 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.

BE IT FURTHER RESOLVED, that the attached plans depicting a stage, landscaping, public restrooms and public parking, attached hereto as Exhibit A and incorporated herein by reference, are hereby adopted and approved as the final plan for improvements to be constructed by Grow Grand Island on the City's property designated as the Downtown Public Plaza.

BE IT FURTHER RESOLVED that the amendments set forth above shall be effective upon the final date of execution of a fully signed amendment to the Agreement by the CITY and GGI in the form set forth as Exhibit B to this resolution.

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Adopted by the City Council of the City of Grand Island, Nebraska on December 20, 2022.

Roger G. Steele, Mayor

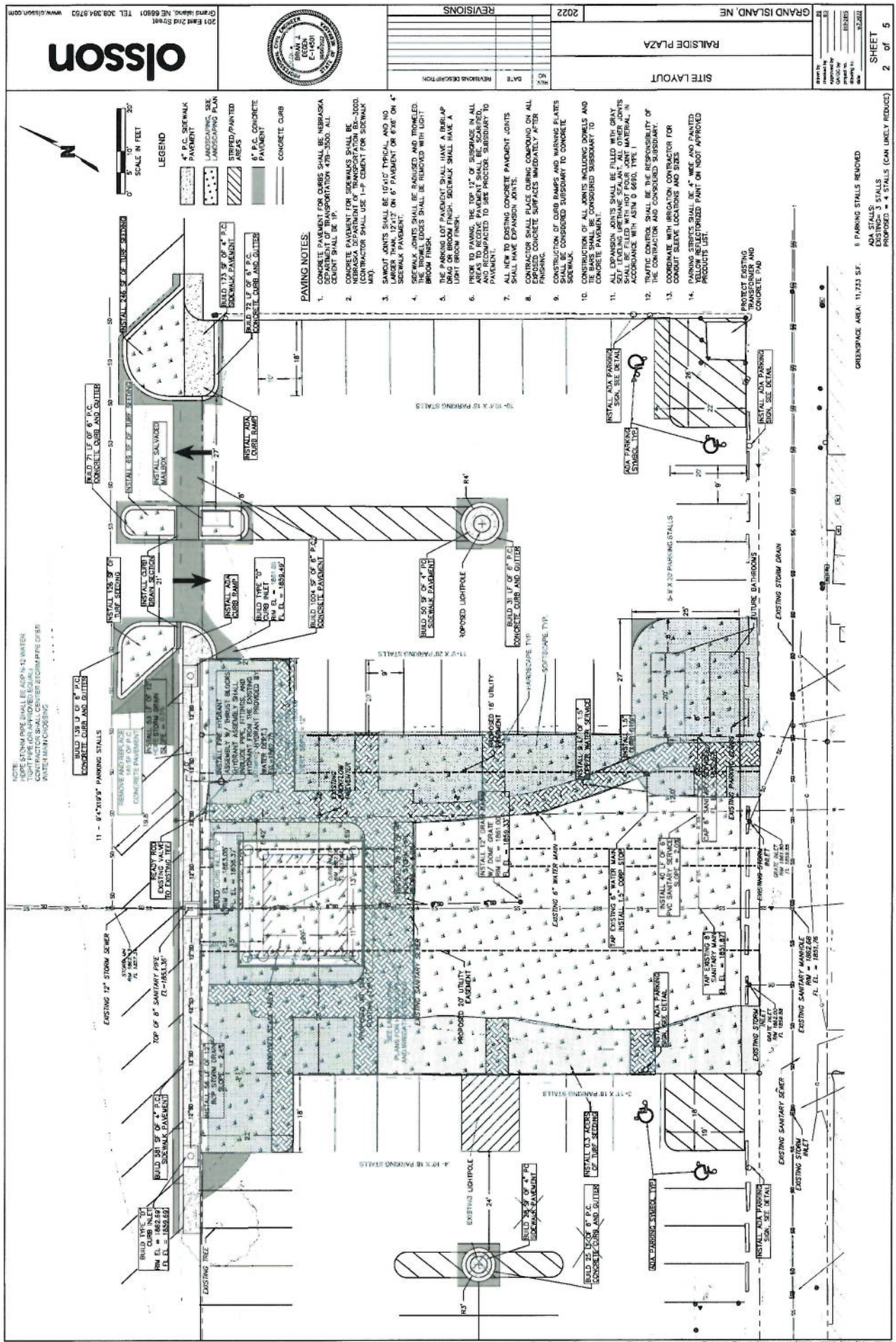
Attest:

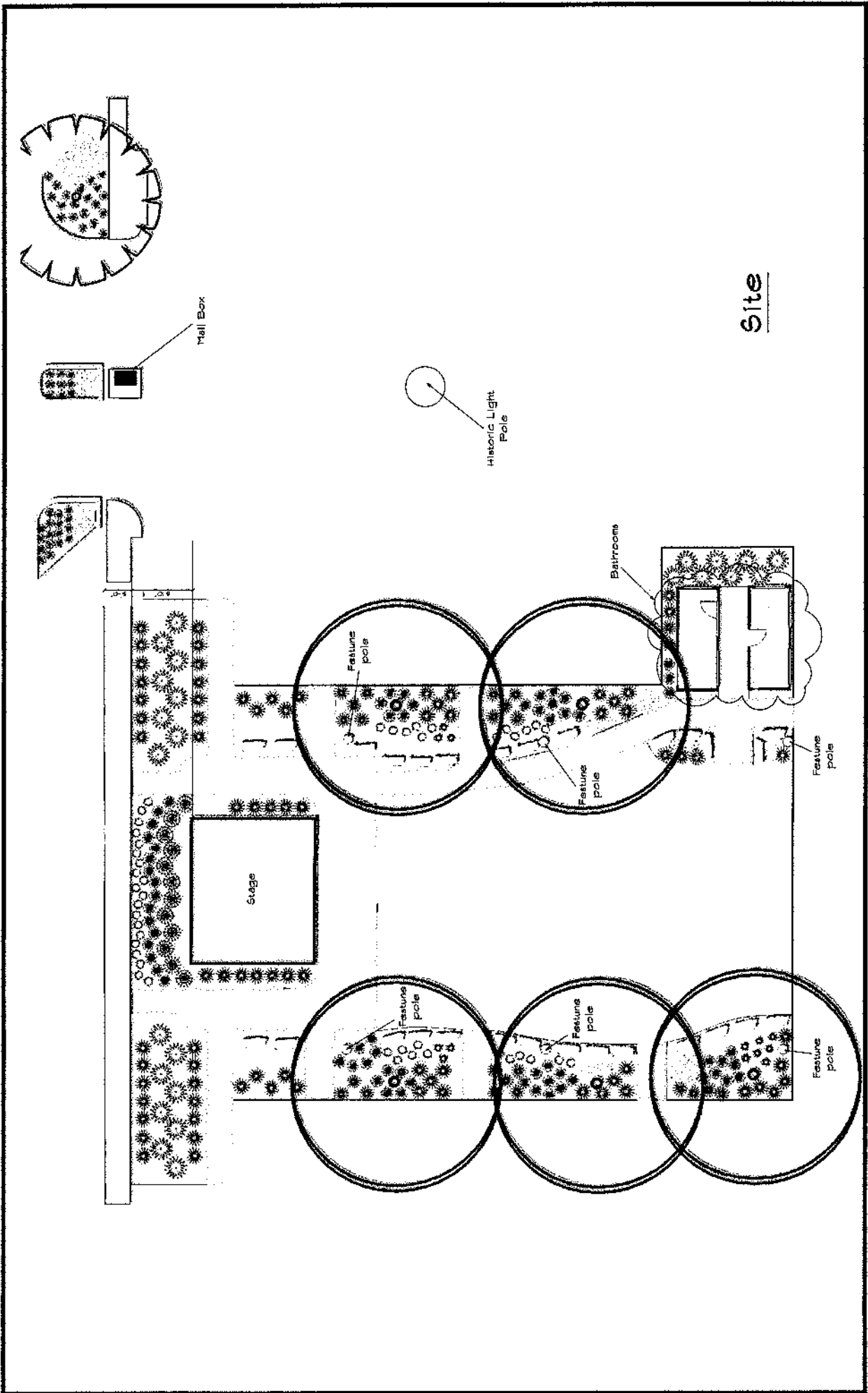
RaNae Edwards, City Clerk

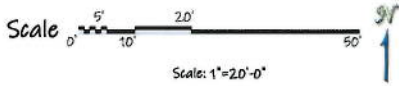
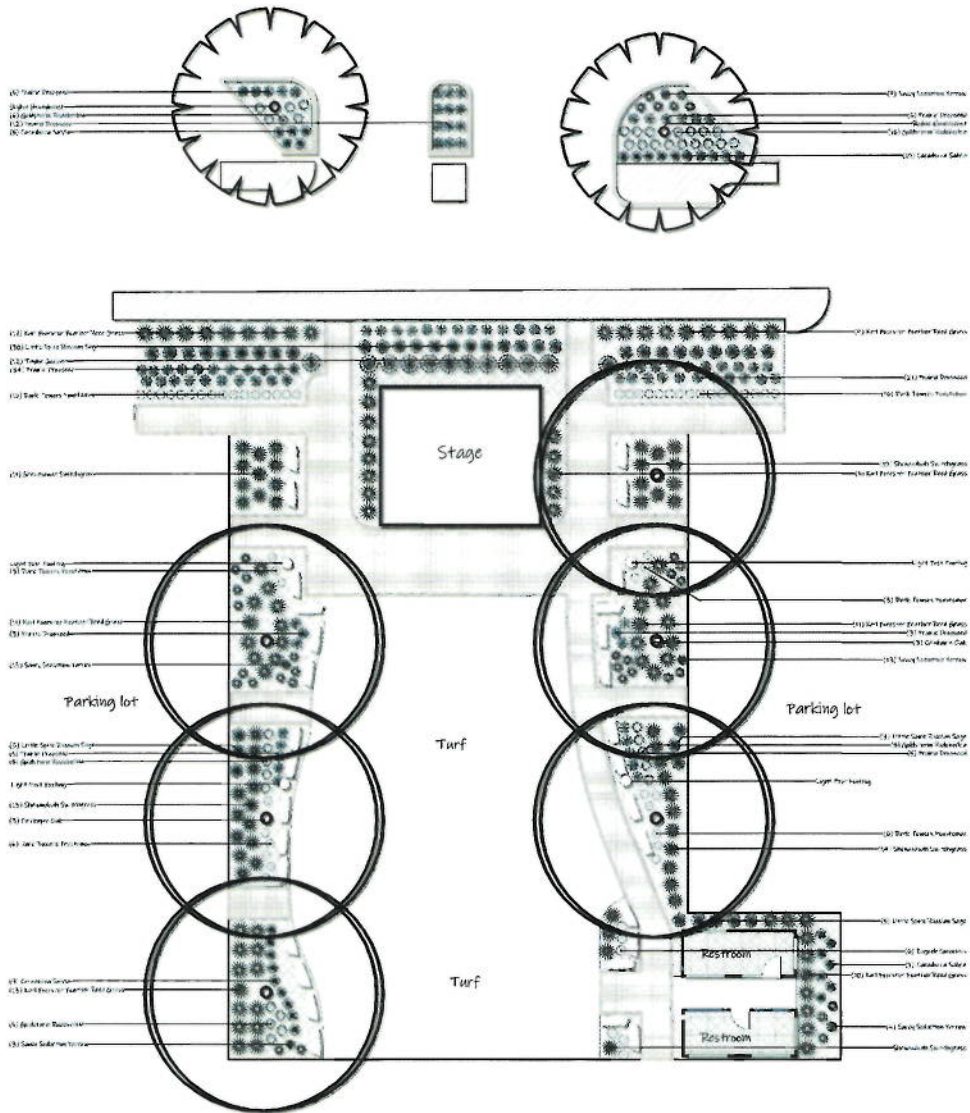
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EXHIBIT A

**FINAL PLANS FOR IMPROVEMENTS TO THE DOWNTOWN PUBLIC PLAZA
(Site Plan and Landscaping Plan attached)**

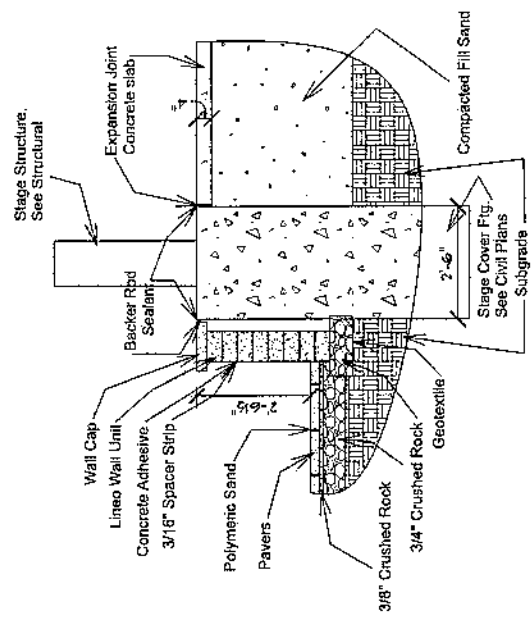
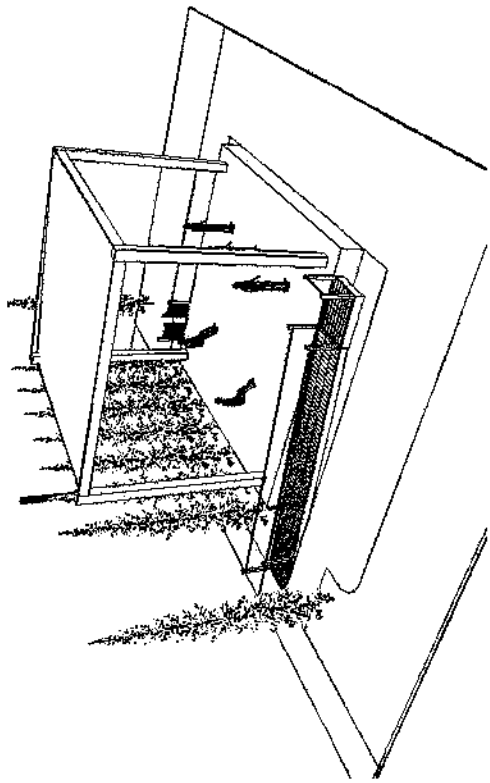




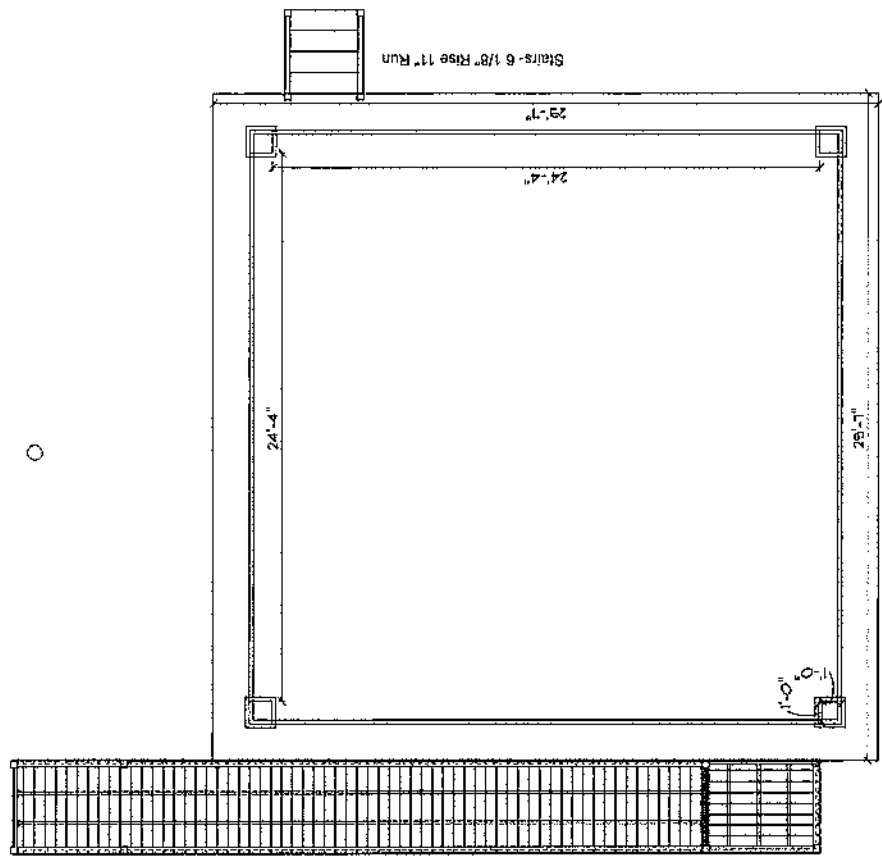


Callout	Qty	Common Name	Botanical Name	Plant Code	Plant Code	Plant Code	Plant Code
1	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
2	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
3	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
4	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
5	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
6	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
7	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
8	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
9	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
10	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
11	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
12	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
13	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
14	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
15	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
16	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
17	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
18	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
19	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant
20	10	Black Olive	Elaeagnus angustifolia	64	1" Plant	1" Plant	1" Plant

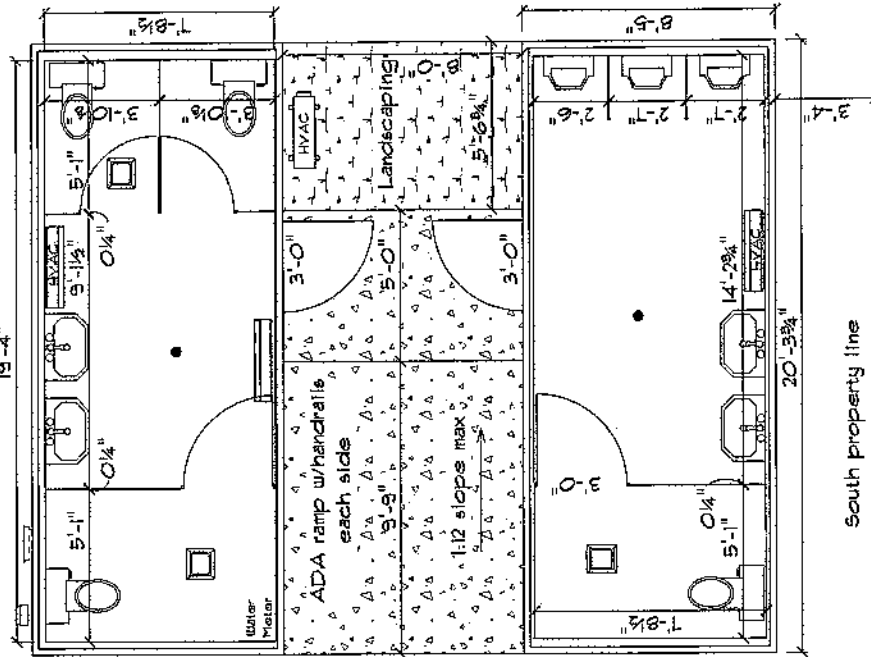
Plantings



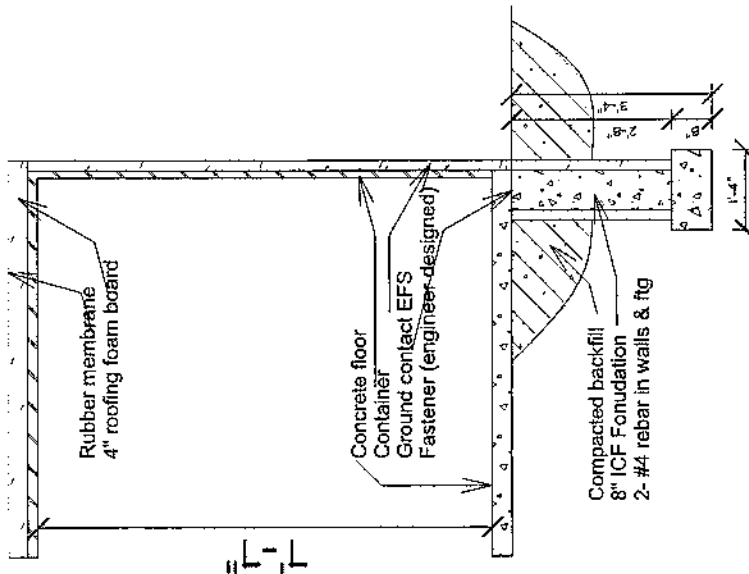
Cross Section
SCALE: 3/16" = 1'-0"



STAGE
SCALE: 3/16" = 1'-0"



Bathrooms
SCALE: 1/4" = 1'-0"



Cross Section
SCALE: 1/2" = 1'-0"

**EXHIBIT B
FORM OF AMENDMENT**

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

This First Amendment to the June 30, 2022 Donation and Construction Agreement between the City of Grand Island and Grow Grand Island, Inc. ("Agreement"), is made and entered into this ___ day of December, 2022 by and between the City of Grand Island, Nebraska (the "CITY") and GROW GRAND ISLAND, INC. a Nebraska not for profit corporation ("GGI").

Section I.B. CONSTRUCTION is amended as follows (deletions shown in ~~strikethrough~~; additions shown in underline):

1. The plans and specification for the Plaza Expansion must receive ~~the prior written approval of the City Engineer and~~ the written approval of the applicable City Engineer is required departments, which approval may be reflected by the issuance of required City permits 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 and/or permitted by the CITY. Any material deviations from the design drawings depicted in Exhibit A.
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~~ June 1, 2024 (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 Administer may grant such exception as his sole discretion.~~

...

Section II. D. ACCEPTANCE OF IMPROVEMENTS is amended as follows:

1. Upon completion of the Plaza Expansion, such improvements shall be reviewed by the applicable City departments ~~Engineer~~ and, if approved, and upon receipt of the GGI's professional Engineer/Architect certification of completion of the Plaza Expansion with the plans and specifications approved by the CITY, it shall be recommended to the City Council for acceptance by the City Administrator or designee. Acceptance of ownership of these Improvements shall be subject to the verification by the CITY that the project

has been completed in compliance with all permits issued by the CITY, 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.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment To Donation And Construction Agreement Between Grow Grand Island, Inc. And The City Of Grand Island For Expansion Of The Downtown Public Plaza by having their signatures affixed below.

<p>GROW GRAND ISLAND, INC</p> <hr/> <p>Authorized Representative</p> <p>Date: _____</p>	<p>CITY OF GRAND ISLAND, NE</p> <hr/> <p>Roger G. Steele, Mayor</p> <p>Date: _____</p> <p>ATTEST:</p> <hr/> <p>RaNae Edwards, City Clerk</p> <p>APPROVED AS TO FORM:</p> <hr/> <p>Laura D. McAloon, City Attorney</p>
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