



# City of Grand Island

Tuesday, March 28, 2023

Council Session

## Item G-11

**#2023-79 - Approving Maintenance and Usage Agreement between  
Railside BID and City of Grand Island Regarding the Downtown  
Public Plaza**

**Staff Contact: Brian Schultz**

# **Council Agenda Memo**

**From:** Patrick Brown, Finance Director  
**Meeting:** March 28, 2023  
**Subject:** Approving Railside Use Agreement for the Plaza  
**Presenter(s):** Brian Schultz, Assistant Finance Director

## **Background**

On May 25, 2021 a presentation to council was provided on Amur Equipment Finance partnering with local groups to contribute towards a plaza expansion project. On May 24, 2022 City Council agreed to re-acquire the property after previously vacating the road right of way. On June 14, 2022 the City entered into an agreement with Grow Grand Island to oversee the construction of an overhaul to the previously discussed expansion project.

## **Discussion**

With the construction of the plaza expansion nearing its end and the its useful life about to begin the City and Railside BID would like to enter into a formal use agreement for the Railside BID to oversee all aspects of operating, rental, etc. The attached agreement has been reviewed by the City's legal department, Admin, Finance and the Railside BID board.

## **Alternatives**

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

1. Approve the Railside Use Agreement for the Plaza.
2. Postpone the issue to a future meeting.
3. Take no action.

## **Recommendation**

City Administration recommends that the Council approve the Railside Use Agreement for the Plaza.

## **Sample Motion**

Move to approve the Railside Use Agreement for the Plaza.

MAINTENANCE AND USAGE AGREEMENT BETWEEN  
RAILSIDE BUSINESS IMPROVEMENT DISTRICT AND THE  
CITY OF GRAND ISLAND REGARDING THE DOWNTOWN  
PUBLIC PLAZA

This Maintenance and Usage Agreement, hereinafter "Agreement", made and entered into this \_\_\_ day of March, 2023 by and between the City of Grand Island, Nebraska, (the "CITY") and the RAILSIDE BUSINESS IMPROVEMENT DISTRICT, Grand Island, Nebraska, ("Railside").

WHEREAS, the downtown plaza area is located at vacated Wheeler Avenue between South Front Street and the alley between South Front Street and Third Street (the "Plaza"); and

WHEREAS, Railside wishes to control rental usage of the Plaza; and

WHEREAS, City, desires to have Railside be responsible for maintenance and rental arrangement of the Plaza.

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

I. RAILSIDE'S RESPONSIBILITIES

A. RESERVATIONS

1. Railside shall provide an online reservation system and be responsible for all rental agreements for Plaza usage when a reservation request has been submitted on Railside's online reservation form.
2. Rentals shall be on a "first come, first served" basis, as determined by the submittal of an online reservation request.
3. The Plaza may be rented for private or public uses.

B. RENTAL RATES

1. Rental rates for the Plaza shall be approved by the City Council and published on the website for Railside and the City.
2. Damage deposits in the amount of 50% of the rental fee are required, and collected not later than 10 days prior to the start of the rental period, or the submittal of an online reservation, whichever date is later.

C. RENTAL CONTRACTS

1. Railside shall be responsible for execution and enforcement of all Plaza rental contracts.
2. Railside shall be responsible for the collection of all deposits and rental fees.
3. Railside shall be responsible for obtaining a certificate of liability insurance

for all rentals which name the City as an additional insured..

4. Railside shall be responsible for ensuring all proper permits for sale or consumption of liquor for events are obtained.

#### D. USE OF PLAZA

1. Railside shall be responsible for ensuring that all renters/users of the Plaza have proper authorization/licensing for the playing of any music. Railside shall indemnify and hold harmless the City for any playing or use of music not properly licensed/authorized or in violation of such license.
2. Railside shall ensure that vehicles are properly parked and do not drive on the Plaza.
3. Railside shall ensure all alleys, sidewalks, passageways, entrances/exits or other common spaces are not obstructed so as to prevent emergency vehicles/personnel from using them during use of the Plaza.
4. Railside shall ensure all City Parks and Recreation Rules are followed. A list of rules and prohibited items/activities shall be given to all renters with the signed contract.
5. Railside shall ensure that food vendors follow all applicable rules and regulations, for operation of the vending activity including but not limited to, leaving drippings or substances on the Plaza that may damage the surface or kill grass and not dumping grease down any street drain or in any dumpster/trash can.
6. Railside shall ensure that tents are not staked into the ground or concrete nor tied off to benches, trees, light poles or other Plaza fixtures.
7. Railside shall be responsible for ensuring that there is proper event security and shall not rely solely on the Grand Island Police Department for security. In addition, if alcohol is present, Railside will require the renters/users of the Plaza to retain security by a licensed security company or off-duty police officer for the entire event and a reasonable time before and after the event.
8. Railside shall provide the City a full list of rental rules and regulations for approval and shall provide the City advance notice of any proposed rule changes for City approval prior to implementation. City shall not unreasonably withhold approval of rule changes.

#### E. RESTROOMS

1. Railside shall be responsible the maintenance and upkeep of Plaza restrooms, to include but not be limited to, emptying the trash, cleaning and stocking of toilet paper and paper towels.
2. Railside shall ensure that restrooms are kept in a safe and sanitary condition.
3. Railside shall determine the hours when restrooms are open.
4. Railside shall provide City a key to restrooms.
5. City reserves the right to inspect the condition of the bathrooms at any time.

F. LANDSCAPING AND STAGE

1. Railside shall be responsible for all landscaping and landscaping maintenance of the Plaza.
2. Railside shall be responsible for all maintenance and upkeep of the stage.
3. Railside shall be responsible for insurance of all structures in the Plaza, including but not limited to, the stage and restrooms.

II. CITY'S RIGHTS AND RESPONSIBILITIES

A. APPROVALS AND REVIEWS

1. The City shall be consulted on and approve in a timely manner any drafts or proposed changes to the rules and regulations for use of the Plaza.
2. The City shall inspect the Plaza and restrooms as time and staffing permits. Any issues shall be reported by the City to the Executive Director for Railside for correction.

III. TERM AND TERMINATION AGREEMENT

The initial term of this agreement shall be for two (2) years and may be renewed at the sole discretion of the City for one or more additional 2 year terms after the expiration of the initial term. Notice of the City's intent to renew shall be provided to Railside no later than 90 days prior to the expiration of a term. Either may terminate this agreement upon 90 days written notice to the other party.

IV. INDEMNIFICATION.

Railside shall indemnify and hold the City harmless with respect to any liability arising from the rental of the Plaza by the Railside, except for liability arising from the negligence of the City.

V. 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 RAILSIDE:

Railside Business Improvement District  
201 West 3<sup>rd</sup> St., Ste. 2  
Grand Island, Nebraska 68801

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

VI. 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.

VII. CAPTIONS

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

VIII. 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.

IX. 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.

X. 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.

XI. 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.

XII. BINDING EFFECT

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

XIII. 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.

Railside Business Improvement District

City of Grand Island

\_\_\_\_\_  
Board President

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Stacy R. Nonhof, Assistant City Attorney

RESOLUTION 2023-79

WHEREAS, the plaza downtown needs a formal use agreement for maintenance and operations; and

WHEREAS, the City of Grand Island and the Railside BID would like to enter into such an agreement; and

WHEREAS, the attached agreement known as the Railside Use Agreement for the Plaza accomplishes that goal.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Railside Use Agreement for the Plaza hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, March 28, 2023.

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

Attest:

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

Approved as to Form	☐ _____
March 24, 2023	☐ City Attorney