COMMUNITY DEVELOPMENT AGENCY MEETING  
August 13, 2019, 7:00 P.M.  
City Council Chambers 400 East Military, Fremont NE

1. Meeting called to order
2. Roll call
3. Public Hearing and Resolution 2019-006 approving the Redevelopment agreement and associated subdivision agreement for the Fountain Springs 55+ Apartment Redevelopment Project and authorizing the issuance of tax increment financing indebtedness (staff report)
4. Adjournment

CITY COUNCIL MEETING  
August 13, 2019  
City Council Chambers 400 East Military, Fremont NE  
REGULAR MEETING – 7:00 P.M.  
AMENDED AGENDA

REGULAR MEETING:  
1. Meeting called to order
2. Roll call
3. Mayor comments  
(There will be no discussion from the Council or the public regarding comments made by the Mayor. Should anyone have questions regarding the comments, please contact the Mayor after the meeting)

PUBLIC HEARINGS:  

4. Resolution 2019-117 for amendment to the 23rd and Bell redevelopment plan for Fountain Springs Apartment Properties generally located at the northwest corner of 29th Street and Yager, and south of 32nd Street (staff report)

5. Resolution 2019-119 approving the Redevelopment agreement and associated subdivision agreement for the Fountain Springs 55+ Apartment Redevelopment Project and authorizing the issuance of tax increment financing indebtedness (staff report)

CONSENT AGENDA: All items in the consent agenda are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member or a citizen so requests, in which event the item will be removed from the consent agenda and considered separately.

6. Motion to approve July 31, 2019 through August 13, 2019 claims and authorize checks to be drawn on the proper accounts (staff report)
8. Dispense with and approve July 30, 2019 City Council and Meeting Minutes and August 6, 2019 Study Session Minutes
9. Motion to promote Zachary Klein and Brian Monaghan to Fire Lieutenant per recommendation of the Mayor (staff report)
10. Motion to appoint James Bazer and Zachary Toole as Firefighter/EMTs per recommendation of the Mayor (staff report)
11. Motion to approve the recommendation of the Mayor to appoint Tom Adamson to a term on Library Board ending August 2022, to replace Lori Dahl (staff report)
12. Motion to approve excavation/asphalt/concrete license application for Mike Grefe Excavating (staff report)
13. Consideration of Firefighter Muscular Dystrophy Association donation collection request (staff report)

UNFINISHED BUSINESS: requires individual associated action

14. Ordinance 5496 approving request by Anew Development, LLC. for Voluntary Annexation of Lot 2, Fountain Springs 4th Subdivision located at the northwest corner of 29th Street and Yager – Fountain Spring Adult Apartment Properties (final reading) (staff report)
15. Resolution 2019-095 approving regarding a request by Stephen Dodd for a Conditional Use Permit to expand a nonstandard use to allow two houses on a single nonstandard lot to be split into two nonstandard lots located at 315 E. Linden Ave., and 1250 N. D Street (staff report)
16. Ordinance 5497 amending Ordinance 5270 correcting the legal description of the approve planned unit development on property generally located at 1615 E. Military Ave. (second reading) (staff report)
17. Ordinance 5498 to amend Section 5-902, Storage of Dismantled, Wrecked, Junked and Inoperable Motor Vehicle (second reading) (staff report)

NEW BUSINESS: requires individual associated action

18. Resolution 2019-158 of the City Council of the City of Fremont, Nebraska approving execution of the Short Term Disability Advice To Pay Agreement with Lincoln Financial (staff report)
19. Resolution 2019-159 to renew and extend a two-year insurance coverage commitment with the League Association of Risk Management (staff report)
20. Resolution 2019-160 granting the Mayor authorization to execute a five year lease agreement with Pitney Bowes, the library mail system (staff report)
21. Resolution 2019-161 of the City Council of the City of Fremont, Nebraska authorizing Staff to execute a contract with Burns McDonnell for the Horizontal Well – Phase II Study (staff report)
22. Resolution 2019-162 to authorize approval of Change Order #1 with Utility Safety & Design, Inc. for gas extension inspections at Gallery 23 East (staff report)
23. Resolution 2019-163 of the City Council of the City of Fremont, Nebraska to authorize reimbursement for the pavement in Diers 6th Addition (staff report)
24. **Resolution 2019-164** to affirm the emergency declaration for the replacement of the storm sewer main under Bell Street in the general location of 20th Street and authorize staff to issue purchase orders and sign required documents for the expenditures (staff report)

25. **Council Member Yerger Item – Ordinance 5499 to amend Fremont Municipal Code Section 2-106**

*Agenda for Meetings (report)*

26. **Adjournment**

Agenda posted at the Municipal Building on August 9, 2019 and online at www.fremontne.gov. Agenda distributed to the Mayor and City Council on August 9, 2019. This meeting is preceded by publicized notice in the Fremont Tribune and the agenda, including notice of study session, is displayed in the Municipal Building and is open to the public. The official current copy is available at City Hall, 400 East Military, City Clerk’s Office. The City Council reserves the right to go into Executive Session at any time. A copy of the Open Meeting Law is posted in the City Council Chambers for review by the public. The City of Fremont reserves the right to adjust the order of items on this agenda.

§2-109 Audience / Participant; Rules of Conduct.

The following rules are established for audience members and participants at a Council meeting:

1. At the discretion of the presiding officer, any person may address the Council, on any agenda item; however, questions to City officials or staff, other speakers, or members of the audience are not permitted and will not be answered.
2. Any person wishing to address the Council shall first state their name and address.
3. Remarks shall be limited to five minutes unless extended or limited by the Presiding Officer or majority vote of the Council.
4. No person will be permitted to address the Council more than once during discussion of a particular agenda item. Rebuttal comments are not permitted.
5. Repetitive or cumulative remarks may be limited or excluded by the Presiding Officer or majority vote of the Council.
6. Profanity or raised voice is not permitted.
7. Applause, booing, or other indications of support or displeasure with a speaker are not permitted.
8. Any person violating these rules may be removed from the Council Chambers.

The following additional rules are established and applicable for public participants at an Open Public Comment Period or Study Session meeting:

9. At the direction of the presiding officer, Open Public Comment Period Speaker Topics will be limited to those not covered by a published agenda for any Study Session, or any regular City Council meeting.
10. A priority to speak at Open Public Comment Periods and Study Session shall be given to those speakers who reside within the City limits, or within the ETJ (Extra-Territorial Jurisdiction – a two (2) mile radius of the City limits) of Fremont, and then, as time allows, to those who do not.
11. Member of the public wishing to speak at a Study Session will be required to limit their comments to those that are directly related to the Publically Noticed Study Session agenda topic(s).
12. Written letters addressed to the City Council will be accepted, as will comment cards that will be made available and collected from those who attend Open Public Comment Period and Study Session meetings who do not wish to speak publically, but have an issue or concern that they believe the Council should be made aware of.
To: Community Redevelopment Agency

From: Jennifer Dam, Planning Director

Date: August 13, 2019

Subject: Approval of Redevelopment Agreement with Fremont Enterprises, LLC.

Recommendation: Approval of the Redevelopment Agreement for the Fountain Springs 55+ Apartments Redevelopment Plan

Background:

This matter involves the approval of a Redevelopment Agreement proposed for execution by the City of Fremont (“CDA”) and Fremont Enterprises, LLC (“FE”).

A. Project. The project involves the construction of a 216 apartment units in a 9 building complex for individuals aged 55 and over, garages, parking lots, 110 garage stalls, an office, a community room or clubhouse community room, a gazebo, trail and sidewalk extensions, bicycle parking, storm water facilities and all infrastructure and other improvements necessary to support the project. The project is anticipated to be constructed in 3 phases. This facility will enable the Redeveloper to add housing primarily for those aged 55 and over which strongly needed in the City of Fremont.

B. Tax Increment Financing. The Redevelopment Agreement involves the use of tax increment financing to pay for those eligible expenditures under the Nebraska Community Development Law. It is projected that the new facility, based upon comparable properties, will have an estimated assessed valuation of nearly nineteen million six hundred sixty thousand dollars ($19,660,000). The incremental taxes from such development can be captured by the CDA for a period not to exceed fifteen (15) years for each phase of the project. The Redevelopment Agreement authorizes the CDA to issue a Tax Increment Financing in three Notes in the amounts of $866,034; $1,776,033 and $1,307,033 (totaling $3,949,100) which will be repaid by the incremental taxes from the project. The Note is not the general obligation of the CDA nor the City of Fremont, Nebraska. The Redeveloper is responsible for any shortfalls. The tax increment financing is intended to reimburse the Redeveloper for those eligible expenditures which, according to the Redevelopment Agreement, include site acquisition cost, site preparation cost, utility cost, design expenses and landscaping.

C. Approval. The Redevelopment Agreement is consistent with the Redevelopment Plan adopted by the City Council of the City of Fremont on July 29, 2014, pursuant to Resolution No. 2014-137, and the Amendment to Plan approved on August 13, 2019, pursuant to Resolution No. 2019-117.

Fiscal Impact: A $9,660,000 project will be constructed. Taxes in the amount of approximately $3,939,100 will be diverted to the project until the improvement expenses are paid, or for a period of fifteen years, whichever comes first. Additionally, infrastructure improvements serving the project and improvements to streets will be constructed by the developer.
REDEVELOPMENT CONTRACT

(THE FOUNTAIN SPRINGS REDEVELOPMENT PROJECT)

This Redevelopment Contract (“Redevelopment Contract”) is made and entered into as of the 13th day of August, 2019, by and between the Mayor and City Council of the City of Fremont, Nebraska, as the governing body of the Community Development Agency of the City of Fremont, Nebraska (the “City” and Fremont Enterprises, LLC, a Nebraska limited liability company (“Redeveloper”). The City and/or Redeveloper may be referred to hereinafter as the “Party” or collectively as the “Parties”.

WITNESSETH:

WHEREAS, the Mayor and Council of the City adopted and approved a plan entitled “Amendment to the General Redevelopment Plan for the 23rd and Bell Area (Fountain Springs Apartments Redevelopment Project)”, as may be amended or supplemented (the “Plan”), for the real estate described on Exhibit “A” hereto attached and by such reference incorporated herein (the “Redevelopment Project Area”), which is located in the City of Fremont, Nebraska, and which the Mayor and Council of the City previously declared blighted and substandard or otherwise eligible for redevelopment; and

WHEREAS, the City has encouraged and induced Redeveloper to engage in certain development activities and construct improvements in the Redevelopment Project Area and it is not economically feasible for Redeveloper to incur the substantial investment necessary for such redevelopment of the Redevelopment Project Area without the assistance of tax-increment financing ("TIF") provided by the City to Redeveloper in this Redevelopment Contract; and

WHEREAS, pursuant to the Plan, Redeveloper is undertaking the phased construction of a 9-building apartment complex consisting of approximately 216 market rate residential units primarily for residents age 55 and over, 266 surface level parking stalls, 110 garage stalls, an office for the apartment complex staff, a community room or clubhouse community room, a gazebo covered picnic area, trail and sidewalk extensions, bicycle parking, and storm water facilities, together with all infrastructure and other improvements necessary to support the apartment complex (collectively, said improvements are referred to in this Redevelopment Contract as the “Redevelopment Project”); and

WHEREAS, the real property within the Redevelopment Project Area, other than easements for public utilities, is or will be privately owned by Redeveloper; and

WHEREAS, the City proposes to authorize and hereby does authorize upon the execution of this Redevelopment Contract, the issuance of its tax increment revenue notes for each phase of the Redevelopment Project (singularly, the “TIF Note”, and collectively, the "TIF Notes"), to provide for eligible costs of the Redevelopment Project; and

WHEREAS, the Redevelopment Project will occur in phases, as shown on the site plan attached as Exhibit "B", attached hereto and incorporated herein; and
WHEREAS, Redeveloper seeks the assistance of the City for the costs of the eligible improvements for the Redevelopment Project and therefore is willing to agree to the conditions herein set forth as an inducement to the City to issue the TIF Notes as provided in the Resolution;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the City and Redeveloper do hereby agree, covenant and warrant as follows:

Section 1. Representations, Warranties and Covenants of Redeveloper.

Redeveloper hereby represents, covenants and warrants as follows:

(a) Redeveloper is a Nebraska limited liability company duly organized and existing under the laws of the State of Nebraska, is not in violation of any provisions of its Articles of Organization or operating agreement, is authorized to enter into and perform its obligations under this Redevelopment Contract and, to the best of the knowledge of Redeveloper, is not in violation of the laws of the State of Nebraska.

(b) Throughout the term of this Redevelopment Contract, Redeveloper will reasonably endeavor to construct, operate and maintain the Redevelopment Project in accordance with the terms of this Redevelopment Contract, or amendment thereof, and all applicable local, state and federal laws and regulations (including, without limitation, environmental, zoning, building code and public health laws and regulations). Throughout the term of this Redevelopment Contract and subject to the provisions of Section 20 of this Redevelopment Contract, in the event of any casualty damage to the Redevelopment Project, as and to the extent owned by Redeveloper, Redeveloper agrees to repair and reconstruct such damaged portion or portions of the Redevelopment Project to the extent covered by insurance.

(c) Redeveloper intends to complete the first phase of the Redevelopment Project ("Phase One") on or before December 31, 2019.

(d) Redeveloper intends to complete the second phase of the Redevelopment Project ("Phase Two") on or before December 31, 2020.

(e) Redeveloper intends to complete the third phase of the Redevelopment Project ("Phase Three") on or before December 31, 2021.

(f) Redeveloper estimates that the total cost of the Redevelopment Project will be approximately $19,847,826.

(g) Redeveloper has not received notices or communications from any local, state or federal official or body that the activities of Redeveloper respecting the
Redevelopment Project Area or the construction of the Redevelopment Project thereon may be or will be in violation of any law or regulation.

(h) Redeveloper will use its best efforts to obtain or to cause its agents to obtain, in a timely manner, all required permits, licenses and approvals and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met for the Redevelopment Project to be lawfully constructed, occupied or operated.

(i) The execution and delivery of this Redevelopment Contract, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Redevelopment Contract are not prevented or limited by and will not conflict with or result in a breach (i) of any provision of any evidence of indebtedness, agreement or instrument of whatever nature to which Redeveloper is now a Party or by which it is bound; or (ii) of any past, pending or threatened litigation, court order, or administrative proceeding, by which Redeveloper is or might become bound.

(j) Redeveloper acknowledges and agrees that the City shall not be obligated to pay any costs related to the Redevelopment Project other than costs to be paid from available TIF Revenues (defined below), if any, and Redeveloper hereby undertakes and agrees to pay any and all such cost. All costs (both public and private) of the Redevelopment Project shall be paid in full and there are and shall be no construction liens unpaid against the Redevelopment Project Area or any of the improvements thereon. Redeveloper agrees to provide for the construction of both the Redevelopment Project public and private improvements located within the Redevelopment Project Area as described in the Plan or as described in this Redevelopment Contract, except to the extent that the City otherwise agrees by separate written agreement with Redeveloper.

(k) Redeveloper agrees and covenants for itself, its successors and assigns that as long as the TIF Notes are outstanding, it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Redevelopment Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Redevelopment Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Redevelopment Project.

(l) Redeveloper agrees that any contractor providing services related to the Redevelopment Project will utilize the federal immigration verification system, as defined in Section 4-114, Neb. Rev. Stat. 2012, to determine the work eligibility
status of new employees physically performing services on the Redevelopment Project.

(m) Redeveloper owns or has contracted to purchase the Redevelopment Project Area, in fee simple and free from any liens, encumbrances, or restrictions which would prevent the performance of this Redevelopment Contract by Redeveloper.

(n) Any general contractor chosen by Redeveloper or Redeveloper itself shall obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors’ general liability and completed operations of at least $1,000,000 per occurrence and $2,000,000 in the aggregate, and a penal bond as required by the Act and section 9 of this Redevelopment Contract, as applicable. The City and Redeveloper shall be named as additional insureds. Any contractor chosen by Redeveloper or Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Redevelopment Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include “All Risk” insurance for physical loss or damage. The contractor with respect to any specific contract or Redeveloper shall also carry insurance on all stored materials. The contractor or Redeveloper, as the case may be, shall furnish the City with a certificate of insurance evidencing policies as required above upon written request therefor by the City. Such certificates shall state that the insurance companies shall give the City prior written notice in the event of cancellation of or material change in any of the policies.

(o) At all times during the term of this Redevelopment Contract, Redeveloper shall maintain policies insuring the improvements located within the Redevelopment Project Area in an amount equal to at least ninety percent (90%) of their full insurable value.

(p) Redeveloper shall market the residences within the Redevelopment Project exclusively to tenants with at least one permanent resident that is fifty-five (55) years of age or older and prohibit children (18 years old and younger) from permanent residency within the Redevelopment Project; provided that such restrictions do not conflict with local, state or federal law, including, but not limited to, Title VIII of the Civil Rights Act of 1968 ("Fair Housing Act"), as amended by the Housing for Older Persons Act of 1995 ("HOPA"), as may be amended or supplemented. In the event the Fair Housing Act or HOPA is amended to make such laws less restrictive, Redeveloper shall comply with the standards of the Fair Housing Act and/or HOPA as of the date of this Redevelopment Contract; provided that such compliance is not in violation of any local, state or federal law.

(q) Prior to entering into any residential lease for a residential unit within the Redevelopment Project, Redeveloper shall implement application, leasing and auditing policies to ensure that occupancy of the dwelling units prohibits
permanent occupancy of children (18 years old and younger) and meets the standards for 55 and over housing under the Fair Housing Act and HOPA. As part of such policies, Redeveloper shall, at least every two (2) years, require all tenants to certify and provide proof via state or federally-issued identification the identity and age of all permanent residences residing in each dwelling unit within the Redevelopment Project ("Age Certifications"). The City, at its sole cost and exclusive discretion, may conduct a once-yearly audit of the Age Certifications to ensure Redeveloper's compliance with subsections (p) and (q) of this Section 1.

Section 2. Incorporation of Plan; Phasing.

This Redevelopment Contract hereby incorporates the Plan by this reference. The City and Redeveloper anticipate that Redeveloper will construct the Redevelopment Project in three (3) phases. The Parties anticipate that one (1) note will be issued for each Phase (three (3) notes total). Each Phase of the Redevelopment Project will specifically identify the specific lot or lots within the Redevelopment Project Area that will be developed in that Phase. Redeveloper and the City anticipate that such lots will be created via administrative consolidation and subdivision of the existing tax parcels within the Redevelopment Project Area following the execution of this Redevelopment Contract. Each Phase will have a different "effective date" (as defined in the Act) for the division of ad valorem taxes along with a new increment period. The increment for each Phase will end after expiration of the applicable 15 year period under the Act (for such Phase) or at the maturity date of the TIF Note for that Phase, whichever occurs first. The applicable effective dates will be established by Redevelopment Contract Amendments (defined below).

In accordance with Section 18-2147 of the Act, the City hereby provides that any ad valorem tax on any lot or lots located in the Redevelopment Project Area which is/are properly identified from time to time by the Redeveloper (such Lot or Lots being referred to herein as a “Phase”) for the benefit of any public body be divided as set forth below. The Redeveloper shall identify such lot or lots in the form of amendment attached hereto as Exhibit “D” (each, a “Redevelopment Contract Amendment”). The applicable ad valorem tax shall be divided for a period of fifteen (15) years (for each Phase) from the effective date set forth in the applicable Redevelopment Contract Amendment, consistent with the Redevelopment Plan.

Provided that Redeveloper is then in compliance with the terms and conditions of this Redevelopment Contract and applicable law, the City shall be obligated to execute the appropriate Redevelopment Contract Amendments and otherwise comply with the terms of this Section for the capture of the tax increment for the applicable portion of the Redevelopment Project Area. Specifically, provided a Redevelopment Contract Amendment is delivered to the City no later than July 1 of the calendar year of the effective date of such Phase (or later if allowed in the sole discretion of the City; but in no event later than July 20th of such year), the City shall: (a) execute the Redevelopment Contract Amendment, and (b) file before August 1 of such year a “Notice to Divide Tax for Community Redevelopment Project” for such Phase with the office of the Dodge County Treasurer and Dodge County Assessor, without requirement of additional hearings or public notice.
Section 3. Collection of TIF Revenues and Issuance of TIF Notes.

To provide for payment of some of the costs of the Redevelopment Project that are eligible for reimbursement under the Act ("Eligible Costs"), as set forth in the Plan and this Redevelopment Contract, as described in Exhibit "C", attached hereto and incorporated herein, the City shall proceed to issue three (3) TIF Notes in the principal amount of $866,034 for Phase One, $1,776,033 for Phase Two, and $1,307,033 for Phase Three, each at a rate of 5.0%, in the form attached hereto and incorporated herein as Exhibit "E". In consideration of Redeveloper undertaking the Redevelopment Project, the City shall issue the TIF Note for Phase One to Redeveloper no earlier than thirty (30) days after the execution of this Redevelopment Contract, and no later than sixty (60) days following the execution of this Redevelopment Contract. The TIF Notes for Phase Two and Phase Three shall be issued no earlier than thirty (30) days after the execution of a Redevelopment Contract Amendment for such Phase, and no later than sixty (60) days following the execution of a Redevelopment Contract Amendment for such Phase.

The TIF Notes shall constitute a limited obligation of the City payable exclusively from that portion of the incremental ad valorem real estate taxes generated from the Redevelopment Project pursuant to section 18-2147 of the Act (the "TIF Revenues") and collected for a period not to exceed fifteen (15) years from the effective date of each Phase. Upon receipt, the City shall deposit the TIF Revenues with the Treasurer of the City, and the Treasurer shall place the TIF Revenues in a special fund established solely to make payments on each TIF Note (the "TIF Fund"). On the dates set forth in each TIF Note, or such other dates that the TIF Revenues become available, the Treasurer shall disburse the TIF Revenues collected and available in the TIF Fund to Redeveloper as reimbursement of the Eligible Costs, to the extent paid by Redeveloper, as evidenced by paid invoices or other evidence acceptable to the City; each such reimbursement shall be and constitute a grant to Redeveloper made under the terms on this Redevelopment Contract and the Act. Unless otherwise determined appropriate by the City, the TIF Notes shall be issued on the basis of interest which is includable in income for both federal and Nebraska State income taxes.

The City and Redeveloper agree that Redeveloper is unable to undertake the construction in Phase One of the Redevelopment Project without some assurance that Redeveloper can undertake Phase Two and Phase Three. Redeveloper would not complete the initial public improvements for Phase One but-for the approval of the entire Redevelopment Project and, likewise, the subsequent phases of the Redevelopment Project would not occur but-for these initial public improvements. Accordingly, this Redevelopment Contract contemplates that the costs and expenses of all the public improvements for the Redevelopment Project are Eligible Costs for each phase of the Redevelopment Project. As such, Redeveloper may apply the payments toward the TIF Note generated from each Phase of the Redevelopment Project toward the payment of the Eligible Costs of the entire Redevelopment Project, if necessary, provided there is no duplication of expenses.

Section 4. Covenants With Respect to Taxation of Redevelopment Project.

Redeveloper agrees with respect to the Redevelopment Project as follows:
(a) Until the termination of this Redevelopment Contract (as described in Section 18 hereof), the Redevelopment Project shall be operated for the use substantially similar to that contemplated in the Plan and no sale or conveyance of such property shall be made to any person or entity for ownership or use which would cause the real property within the Redevelopment Project Area to be eligible for exemption from ad valorem taxes under Section 77-202 R.R.S. Neb. 2009, as now existing or hereafter amended, or any successor provision thereto, and that it will not make application for any structure, or any portion thereof, to be taxed separately from the underlying land of any lot.

(b) Redeveloper intends to create an aggregate taxable real property valuation of the Redevelopment Project Area of $19,656,375 by January 1, 2022, comprised of a $4,368,000 valuation for Phase One, a $8,736,000 valuation for Phase Two, and a $6,552,375 valuation for Phase Three (individually and collectively, the "Minimum Valuation"). During the period that any TIF Note is outstanding, Redeveloper, its successors and assigns, including subsequent purchasers of land within the Redevelopment Project Area, will not protest a real estate property valuation, as determined by the appropriate assessing and taxing officials of Dodge County, Nebraska, for purposes of local ad valorem real estate taxes at or below the Minimum Valuation; provided that if the aggregate real property valuation of the Redevelopment Project Area exceeds the Minimum Valuation, Redeveloper may protest such valuation down to, but not below, the Minimum Valuation.

(c) If, during the period of this Redevelopment Contract and after the filing of a notice to divide, a portion of the Redevelopment Project Area is assessed at less than the Minimum Valuation, Redeveloper agrees to defer receipt of any shortfall in TIF Revenues caused thereby. If Redeveloper is required to defer the receipt of any such shortfall amounts, Redeveloper shall be entitled to receive reimbursement of any such shortfall payment to the extent incremental ad valorem taxes later become available during the fifteen (15) year period prescribed by the Act (for each Phase) in an amount in excess of the amount necessary to meet the current debt service payments. If Redeveloper has monetized one or more of the TIF Notes by pledging it to its lender, Redeveloper shall solely be responsible for all payments due to such lender regardless of a shortfall. Redeveloper shall forgive any shortfall amounts not reimbursed at maturity of the TIF Notes.

(d) Redeveloper, its successors and assigns, including subsequent purchasers of land within the Redevelopment Project Area, further agree as follows:

(i) to pay all local ad valorem real estate taxes for the Redevelopment Project Area as levied and assessed before the same become delinquent; and

(ii) not to seek any administrative review or judicial review of the applicability or validity of any tax statute relating to taxation of the
Redevelopment Project or to raise such inapplicability or invalidity as a defense in any administrative or judicial proceedings; and

(iii) not to seek any tax deferral or tax abatement with respect to local ad valorem taxes, either as presently or prospectively authorized under any law of the State of Nebraska or federal law with respect to the Redevelopment Project; and

(iv) to pay or cause to be paid, when due and before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all water and sewer rates and charges, occupancy tax, special assessments and other governmental levies and charges which are assessed, levied, confirmed, imposed or become payable with respect to the Redevelopment Project; provided, however, that any special assessments levied for water, sewer or paving improvements shall be permitted to be paid as the same fall delinquent and may bear interest from the date of levy or other appropriate date set by the levying body; and

(v) to retain copies of all supporting documents (as defined under section 18-2119(4) of the Act) actually generated and received by redeveloper in relation to the Redevelopment Project or Plan until the expiration of three years following the end of the last fiscal year in which ad valorem taxes were divided in relation to the Redevelopment Project.

Section 5. Release and Indemnification.

Redeveloper hereby releases from and covenants and agrees that the City, together with its governing body, officers, agents, including their independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purpose of this Section 4, collectively the “Indemnified Parties”) shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect arising from the Redevelopment Project or within the Redevelopment Project Area. Provided, however, such release shall not be deemed to include such liability actions as arise directly out of the willful misconduct of the City.

Additionally, the Indemnified Parties shall not have any pecuniary obligation or monetary liability under this Redevelopment Contract. The obligation of the Indemnified Parties on the TIF Notes or any indebtedness contemplated hereunder shall be limited solely to the incremental ad valorem taxes generated from the Redevelopment Project pledged as security for such indebtedness. Specifically, but without limitation, the Indemnified Parties shall not be liable to Redeveloper or any other third party for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder.
Section 6. Covenantsto Run with the Land; Easement; Recording of Redevelopment Contract.

Redeveloper and City agree and acknowledge that this Redevelopment Contract and the undertakings of Redeveloper and the City as herein provided for shall be considered as and constitute covenants running with the land binding upon Redeveloper and the City and their successors and assigns and upon each successive owner of the Redevelopment Project Area or any portion thereof. Redeveloper and the City further agree and acknowledge that a memorandum of this Redevelopment Contract, in substantially the same form attached as Exhibit "F", shall be recorded at the expense of Redeveloper against all real estate located in the Redevelopment Project Area and shall remain of record until all TIF Notes have been paid in full or matured. The City shall have the authority to execute such memorandum(s) without additional public determinations or meetings. After all TIF Notes has been paid in full, Redeveloper or any successor or assign of Redeveloper shall have the right to request in writing and the City shall, upon such request, execute and deliver an appropriate instrument evidencing the termination of this Redevelopment Contract and of the covenants and undertakings herein provided. The City and Redeveloper shall have the right, from time to time, to release specific parcels or lots located within the Redevelopment Project Area from any or all of the specific provisions of this Redevelopment Contract via a written agreement between the Parties.

Section 7. Default and Remedies upon Default.

Redeveloper and City agree with respect to any defaults or failures of performance by Redeveloper or City as follows:

(a) The following shall constitute “Events of Default” under the terms of this Redevelopment Contract:

(i) failure by Redeveloper or City to observe timely or perform timely any covenant, condition, obligation or agreement on its part to be observed or performed under this Redevelopment Contract;

(ii) any representation or warranty made herein by Redeveloper or City proves untrue in any respect reasonably deemed to be material by the City or Redeveloper;

(iii) an event of default or material breach by or attributable to Redeveloper or City relating to the Redevelopment Project or any portion thereof, including, without limitation, breach of the terms of any agreement or other instrument relating to the financing or construction thereof, subject to subsection (f) of this Section 7; or

(iv) Redeveloper makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt or petitions for an order for relief, petitions or applies to any tribunal for the appointment of any receiver or any trustee or a debtor in possession of Redeveloper or
any part of its property or commences any proceeding related to Redeveloper under any reorganization, arrangement, readjustment of debt, dissolution or liquidation act, code, law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against Redeveloper any such proceedings and Redeveloper by any act indicates its consent or approval of or acquiescence in any such proceeding or the appointment of any receiver or any trustee or debtor in possession for Redeveloper or any part of its property or suffers any such receivership or trusteeship.

(b) Whenever an Event of Default occurs, in addition to all other remedies available to the City or Redeveloper at law or in equity, the City or Redeveloper may take such action at law or in equity as the City or Redeveloper reasonably deem appropriate, including specific performance or injunction to enforce or compel performance of the provisions of this Redevelopment Contract; provided that the remedy of specific performance against Redeveloper shall not include or be construed to include the covenant to build or construct the Redevelopment Project.

(c) If at any time during the term of this Redevelopment Contract an Event of Default shall occur and remain continuing and uncured for a period of more than sixty (60) days after written notice from the City to Redeveloper of such Event of Default, the TIF Note(s) shall be cancelled and the aggregate amount of all grants paid to Redeveloper (including principle and interest) for improvements shall stand forfeited and Redeveloper shall be required to repay the same to the City within thirty (30) days' written demand thereof. Excluding an Event of Default under subsection (p) or (q) under Section 1 of this Redevelopment Contract, the remedy set forth in this provision shall not apply if construction of the Redevelopment Project, or a Phase of the Redevelopment Project, as applicable, has been completed and is assessed at or above the Minimum Valuation.

(d) No remedy herein conferred upon or reserved to the City or the registered owner of the TIF Notes is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Redevelopment Contract or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(e) If any provision of this Redevelopment Contract is breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.
(f) Anything in this Section 7 to the contrary notwithstanding, none of the events described in subsection 7(a) above shall constitute an Event of Default after completion of the Redevelopment Project and payment of all TIF Notes in full. Further, anything in this Section 7 to the contrary notwithstanding, any breach of this Redevelopment Contract that is specific to a single Phase of the Redevelopment Project, the improvements within such Phase, or Redeveloper's covenants with respect to such Phase, shall not constitute an Event of Default with respect to the other Phase(s), nor shall it trigger a cross-default of the Note(s) issued in relation to the Phase(s) that is/are not in default of this Redevelopment Contract.

Section 8. Status of City.

The City shall not be regarded as the partner, joint venturer or other jointly acting party with Redeveloper for any purpose whatsoever and the undertakings and agreements on the part of the City herein provided for are undertaken solely pursuant to the provisions of sections 18-2101 to 18-2150 of the Act and for the limited governmental purposes of promoting and encouraging redevelopment of a blighted and substandard area. Redeveloper acknowledges that Redeveloper or its successors and assigns are and shall remain in control of the Redevelopment Project for all purposes provided that Redeveloper acknowledges and agrees that the City is and shall be the owner of and shall be in control of all public street, sewer and water improvements constituting a part of or serving the Redevelopment Project.

Section 9. Indemnification and Penal Bond

Redeveloper hereby agrees to indemnify and save the City harmless for any payment or liability to which the City may become subject for carrying out of any contract entered into by Redeveloper with respect to the Redevelopment Project. Redeveloper agrees to provide to the City evidence that there is in effect a bond for the payment costs as required under Section 18-2151 of the Act, if applicable.

Section 10. Subdivision Agreement

Subsequent to the execution of this Redevelopment Contract, Redeveloper and the City shall enter into a subdivision agreement in a form substantially similar to that attached hereto as Exhibit "G" (the "Subdivision Agreement"). Pursuant to the Subdivision Agreement, the City will undertake construction of the west one-half of Yager Road and the south one-half of 32nd Street immediately adjacent to the Redevelopment Project Area prior to the completion of Phase Two. Redeveloper will reimburse the City for one-half of its costs for such street improvements, not to exceed $375,000. In consideration thereof, Redeveloper shall not object to the creation of a street improvement district or the levy of a special assessment with respect to construction of the aforementioned street improvements, and the City shall not levy any special assessment upon the real property owned by Redeveloper in the Redevelopment Project Area with respect to the construction of the aforementioned street improvements.
Section 11.  Additional Parties Added as Redeveloper.

The Parties specifically agree that additional parties or entities may be admitted to and included within the meaning of the term “Redeveloper” upon the mutual written consent of both Parties.

Section 12.  Redevelopment Contract Binding Upon Successors and Assigns.

This Redevelopment Contract is made for the benefit of Redeveloper, the City and the registered owners from time to time of the TIF Notes as third party beneficiaries. This Redevelopment Contract shall be binding upon the City and Redeveloper, and any successors or assigns thereof. Redeveloper may assign its interest in the Redevelopment Project only upon receipt of prior written consent from the City. The City and Redeveloper acknowledge and agree that, in the event Redeveloper assigns its rights and obligations under this Redevelopment Contract, in whole or in part, to any assignee, Redeveloper and the assignee shall both be bound by the terms of the Plan and this Redevelopment Contract (as and to the extent of any such assignment with respect to the Assignee). No assignment by Redeveloper to the Assignee shall be effective until a written instrument binding the assignee under the terms of the Plan and this Redevelopment Contract (as and to the extent of such assignment), duly acknowledged and in recordable form, has been executed and delivered by the Assignee and recorded in the real estate records of Dodge County, Nebraska, with respect to the Redevelopment Project Area.

Section 13.  Titles of Sections.

Any titles of the several Sections of this Redevelopment Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.


Except as otherwise specified herein, all notices hereunder shall be in writing and shall be given to the relevant Party at its address set forth below, or such other address as such Party may hereafter specify by notice to the other given by United States mail or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

(a) in the case of Redeveloper, if mailed to or delivered personally to:

Fremont Enterprises, LLC
1704 North Bell Street #134
Fremont, Nebraska 68025
with a copy to:

Michael D. Sands  
Baird Holm LLP  
1700 Farnam Street  
Suite 1500  
Omaha, NE 68102

(b) in the case of City, if mailed to or delivered personally to:

City Clerk  
City of Fremont  
400 E Military Ave  
Fremont, NE 68025

Each such notice, request or other communication shall be effective (i) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (ii) if given by any other means, when delivered at the addresses specified in this Section 13 or at any such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other Party as provided in this section.

Section 15. Severability.

If any provision of this Redevelopment Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case, for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative and unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained, invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, sections or paragraphs in this Redevelopment Contract shall not affect the remaining portions of this Redevelopment Contract or any part thereof.

Section 16. Counterparts.

This Redevelopment Contract may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 17. Law Governing.

The Parties agree that this Redevelopment Contract shall be governed and construed in accordance with the laws of Nebraska.

Section 18. Time of the Essence.

Time shall be of the essence of this Redevelopment Contract.
Section 19.  Termination.

This Redevelopment Contract shall commence as of the date first above written and shall terminate upon the earlier of the maturity date set forth in the TIF Note for Phase Three or payment of all principal and interest owed toward all TIF Notes.

Section 20.  Force Majeure Event.

Neither Redeveloper nor the City shall be considered in breach of, or in default in its obligations with respect to any of the obligations under this Redevelopment Contract in the event that an enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, caused by a Force Majeure Event, which is defined herein as any failure or delay in performance by a Party that is proximately caused by acts of God, or wars or insurrections; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of Redeveloper or the City, as the case may be, shall be extended for the period of the enforced delay as determined by the mutual agreement of Redeveloper and the City; provided, that Redeveloper or the City, as the case may be, shall, within twenty (20) days after the beginning of any such enforced delay, have notified Redeveloper or the City (as applicable) in writing of the cause or causes thereof, and requested an extension for the period of the enforced delay.

Section 21.  Effect of Redevelopment Contract.

This Redevelopment Contract (including the Plan as incorporated by reference) constitutes the entire understanding by and between the Parties concerning the subject matter hereof, and supersedes and replaces all prior agreements. No other prior or contemporaneous representations, inducements, promises or agreements, oral or otherwise, between or among the Parties relating to the subject matter hereof and not embodied in this Redevelopment Contract shall be of any force and effect.

(The remainder of this page is intentionally left blank)
IN WITNESS WHEREOF, the City and Redeveloper have caused this Redevelopment Contract to be executed by their duly authorized representatives.

MAYOR AND CITY COUNCIL OF THE CITY
OF FREMONT, NEBRASKA, as governing body
of the Community Development Agency of the City
of Fremont, Nebraska

By: ________________________________
    Mayor

ATTEST:

______________________________
City Clerk

STATE OF NEBRASKA     )
      ) ss.
COUNTY OF DODGE       )

The foregoing instrument was acknowledged before me this _____ day of _____________, 2019, by ________________, Mayor, and ________________, City Clerk, of the governing body of the Community Development Agency of the City of Fremont, Nebraska on behalf of such agency.

(S E A L)

______________________________
Notary Public
FREMONT ENTERPRISES, LLC, a Nebraska limited liability company

By: ________________

Name: Brian M. Zubert

Title: Manager

STATE OF ______________
) ss.
COUNTY OF ____________

The foregoing instrument was acknowledged before me this _____ day of ________, 2019, by Brian M. Zubert, Manager of Fremont Enterprises, LLC, a Nebraska limited liability company, on behalf of the company.

(S E A L)

Notary Public
Exhibit "A"
Redevelopment Project Area
Legal Description:

Lot 1, Fountain Springs Second Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Second Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Third Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 1, Fountain Springs Fourth Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Fourth Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

TOGETHER WITH

All public rights-of-way contiguous thereto.

* Subsequent to the approval of this Redevelopment Contract, Redeveloper intends to administratively consolidate and subdivide the Redevelopment Project Area, or a portion thereof, as shown on Exhibit "B". Subsequent to said administrative consolidation and subdivision, as applicable, the above legal description shall be replaced with the legal description provided in the administrative consolidation or subdivision, as applicable, of the Redevelopment Project Area approved by the City.
Exhibit "B"
Redevelopment Project Phases and Site Plan

(See attached)*

* The attached documents are preliminary in nature and subject to change.
Exhibit "C"

Redevelopment Project Description and Projected TIF Sources and Uses

The Redevelopment Project will consist of the construction of approximately 216 market rate residential units primarily for residents age 55 and over, 266 surface level parking stalls, 110 garage stalls, an office for the apartment complex staff, a community room or clubhouse community room, a gazebo covered picnic area, and trail and sidewalk extensions, together with all infrastructure and other improvements necessary to support the apartment complex. Redevelopment will require the construction of the public improvements listed below as "Eligible Costs", as shown on Exhibit "B" and detailed under Section G of the Plan.

Projected Sources and Assumptions:

Base Tax Amount of Redevelopment Project Area $696,390
Post-Redevelopment Valuation $19,656,375
Tax Levy 2.084580
TIF Revenues/Year (average) $389,401
Total Potential TIF Revenues $5,841,015
Phase One TIF Note Amount $866,034
Phase Two TIF Note Amount $1,776,033
Phase Three TIF Note Amount $1,307,033
Interest Rate on TIF Notes 5.0%

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Projected Amortization:

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Original Loan Amount $866,034
Capitalized Interest $0
Loan Balance Remaining $0

ASSUMPTIONS:
1. Loan Amount: $866,034
2. Interest Rate: 5.00%

Exhibit "C"
## Phase Two:

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---

**Original Loan Amount:** $1,776,033

**Capitalized Interest:** $0

**Loan Balance Remaining:** $0

**Exhibit "C"**

---

**Assumptions:**

1. Loan Amount: $1,776,033
2. Interest Rate: 5.00%

---

**Increment Base:** $8,426,493
Phase Three:

| DATE | Valuation Base | Valuation Levy | Revenues Fee | Available For TIF Loan | Principal 5.00% Interest at 5.00% Total Loan Balance Capitalized Interest at 5.00% Interest at 5.00% |
|------|----------------|----------------|--------------|------------------------|------------------|------------------|------------------|
| $1,307,033 | **$1,307,033** | **$1,307,033** | **$1,307,033** | **$1,307,033** | **$1,307,033** | **$1,307,033** | **$1,307,033** | **$1,307,033** |
| 0.5  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 2.5  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 5.5  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 6.5  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 8  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 9.5  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 10  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 11  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 12  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 13  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 14  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |
| 15  | $6,320,245 | 0  | $6,320,245 | 2.084558 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 | $65,875 |

| 1. Loan Amount: | $1,307,033 |
| 2. Interest Rate: | 5.00% |

**Exhibit "C"**

* The above numbers are estimates and subject to change.
**Projected Uses ("Eligible Costs")**:

<table>
<thead>
<tr>
<th>Cost</th>
<th>Phase One</th>
<th>Phase Two</th>
<th>Phase Three</th>
<th>Aggregate</th>
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<td>Land Acquisition</td>
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<td>$511,111</td>
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<td>Building Permit</td>
<td>$37,550</td>
<td>$75,100</td>
<td>$56,325</td>
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<td>Soil &amp; Material Testing</td>
<td>$2,222</td>
<td>$4,444</td>
<td>$3,334</td>
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<td>City Sidewalks &amp; Trails Extensions</td>
<td>$18,444</td>
<td>$36,889</td>
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<td>Sanitary Sewer and Water Extensions</td>
<td>$66,000</td>
<td>$132,000</td>
<td>$99,000</td>
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<td>$1,740</td>
<td>$3,480</td>
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<td>Soil Correction/Mitigation/Excavation/Storm Water</td>
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<td>Architecture and Engineering fees</td>
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<td><strong>TOTAL:</strong></td>
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<td><strong>$3,016,354</strong></td>
<td><strong>$2,101,793</strong></td>
<td><strong>$6,715,625</strong></td>
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* The above figures are only estimates of the Eligible Costs and such actual costs will be reflected in the cost certifications required under Section 3 of the Redevelopment Contract.

** Eligible Costs are projected to be in excess of $4,078,000, but the aggregate total of the TIF Notes is limited to $4,078,000, which is approximately the sum generated by the projected incremental ad valorem real property taxes collected in relation to the Redevelopment Project and paid as debt service on the TIF Notes at a 5.0% interest rate.

*** All Eligible Costs contemplated in the Plan and not otherwise specified herein shall be included as Eligible Costs for purposes of this Redevelopment Contract under this Exhibit "C".
AMENDMENT TO REDEVELOPMENT CONTRACT
(THE FOUNTAIN SPRINGS REDEVELOPMENT PROJECT)

This Amendment to Redevelopment Contract (The Fountain Springs Redevelopment Project) (this "Amendment") is made and entered by and between Fremont Enterprises, LLC, a Nebraska limited liability company ("Redeveloper"), and the City Council of the City of Fremont, Nebraska, as the governing body of the Community Development Agency of the City of Fremont, Nebraska (the "City"), and is effective as of the ___ day of _________, 20___ (the "Effective Date").

RECITALS

WHEREAS, Redeveloper and the City entered into that certain Redevelopment Contract between Redeveloper and City dated ______________, 2019 ("Redevelopment Contract"); and

WHEREAS, pursuant to Section 2 of the Redevelopment Contract, Redeveloper and the City wish to amend the Redevelopment Contract in accordance with the terms of this Amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Redeveloper and the City agree as follows:

1. Amendment: The Parties hereby amend and supplement the Redevelopment Contract in accordance with the following terms:

   (a) This Amendment incorporates a new Phase of the Redevelopment Project ("Phase ___") which shall include the following lot(s) in the Redevelopment Project Area:

   [identification of such lot(s) including the legal description of each]

   (b) The effective date for Phase ___ shall be __________________, 20___.

   (c) The base year valuation for Phase ___ shall be the year 20___.

   (d) The City shall collect TIF Revenues on that portion of the Redevelopment Project Area detailed above for payment on the TIF Note in accordance with Section 3 of the Redevelopment Contract.

2. Miscellaneous. This Amendment shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. The Parties shall execute and deliver any
further and additional instruments, agreements, and other documents as may be necessary to evidence or carry out the provisions of this Amendment. This Amendment shall modify only those terms of the Redevelopment Contract expressly set forth and modified in this Amendment. No implied or other modification of the Redevelopment Contract is intended or effective. Except as specifically modified by this Amendment, the Redevelopment Contract shall remain in full force and effect. In the event of a conflict between the terms of this Amendment and the Redevelopment Contract, the terms of this Amendment shall control. Capitalized words contained herein shall be defined as set forth in the Redevelopment Contract unless otherwise defined herein. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Signatures to this Amendment transmitted by facsimile, sent by email (including ".pdf"), or delivered by other electronic means shall be valid and effective to bind the Party so signing.

(Signatures on following pages)
IN WITNESS WHEREOF, the City and Redeveloper have caused this Redevelopment Contract to be executed by their duly authorized representatives.

MAYOR AND CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA, as governing body of the Community Development Agency of the City of Fremont, Nebraska

By: ________________________________
   Mayor

ATTEST:

_______________________________
City Clerk

STATE OF NEBRASKA   )
   ) ss.
COUNTY OF DODGE )

The foregoing instrument was acknowledged before me this ___ day of ____________, 2019, by ____________, Mayor, and ____________, City Clerk, of the governing body of the Community Development Agency of the City of Fremont, Nebraska on behalf of such agency.

(S E A L)

_______________________________
Notary Public

Exhibit "D"
FREMONT ENTERPRISES, LLC, a Nebraska limited liability company

By: _____________________________________________

Name: Brian M. Zubert

Title: Manager

STATE OF ______________ )
COUNTY OF ____________ ) ss.

The foregoing instrument was acknowledged before me this _____ day of ________, 2019, by Brian M. Zubert, Manager of Fremont Enterprises, LLC, a Nebraska limited liability company, on behalf of the company.

(S E A L)

______________________________
Notary Public
Exhibit "E"
TIF Note

(See attached)
REDEVELOPMENT PROMISSORY NOTE
(THE FOUNTAIN SPRINGS REDEVELOPMENT PROJECT)

$__________________                    ______________________, 2019

FOR VALUE RECEIVED, the undersigned, City Council of the City of Fremont, Nebraska, as the governing body of the Community Development Agency of the City of Fremont, Nebraska (hereinafter known as "Borrower"), promises to pay Fremont Enterprises, LLC, a Nebraska limited liability company, address: c/o Anew Development, 13761 US Hwy 30, Blair, Nebraska 68008 ("Holder"), and/or its assigns, the principal sum of ________________________ Dollars ($__________________), together with interest thereon at the rate of 5.0% per annum from Holder's receipt of a certificate of occupancy for the residences within "Phase ____" of the "Redevelopment Project" under that certain Redevelopment Contract (The Fountain Springs Redevelopment Project), dated the ___ day of __________________, 2019, by and between the Borrower and the Holder (the "Redevelopment Contract"), until the earlier of the payment of this Redevelopment Promissory Note in full or December 31, 20___. The principal balance and interest thereon shall be due and payable to the Holder of this Redevelopment Promissory Note as and at such time as any excess ad valorem taxes generated by the Redevelopment Project as set forth in Redevelopment Contract are collected by the Borrower and available for the retirement of this debt.

In the event of default under this Redevelopment Promissory Note, all sums secured by this Redevelopment Promissory Note or any other agreement securing this Redevelopment Promissory Note shall bear interest at a rate equal to five percent (5%) above the prime rate as published by the Wall Street Journal from time-to-time; however, in the event said interest rate exceeds the maximum rate allowable by law, then such rate of interest shall equal the highest legal rate available.
The Borrower may prepay the principal amount outstanding in whole or in part, without penalty or the prior consent of the Holder.

Pursuant to Sections 18-2124 and 18-2150, R.R.S. Neb. 2012, said portion of taxes has been pledged for the payment of this Redevelopment Promissory Note, both principal and interest as the same fall due or become subject to mandatory redemption. This Redevelopment Promissory Note shall not constitute a general obligation of the Borrower and the Borrower shall be liable for the payment thereof only out of said portion of taxes as described in this paragraph. This Redevelopment Promissory Note shall not constitute an obligation of the State of Nebraska or of the City of Fremont (except for such receipts as have been pledged pursuant to said Sections 18-2124 and 18-2150 R.R.S. Neb. 2012) and neither the State of Nebraska nor the City of Fremont shall be liable for the payment thereof from any fund or source including but not limited to tax monies belonging to either thereof (except for such receipts as have been pledged as described above in this paragraph). Neither the members of the Holder's governing body nor any person executing this Redevelopment Promissory Note shall be liable personally on this Redevelopment Promissory Note by reason of the issuance hereof.

This Redevelopment Promissory Note is transferable by the registered owner or such owner's attorney duly authorized in writing at the office of the Borrower upon surrender of this Redevelopment Promissory Note for notation of transfer as provided on the reverse hereof.

In the event the monies collected and held in that special fund established under Section 18-2147 of the Nebraska Revised Statutes and pursuant to the Redevelopment Contract are insufficient to pay in full all amounts due and owing after all excess ad valorem taxes generated by the Redevelopment Project, as set forth in the Redevelopment Contract, have been collected by the Borrower and paid, immediately upon being available, towards the retirement of the amounts due hereunder, then the Holder shall waive any unpaid portion of the principal and interest due.

In the event this Redevelopment Promissory Note is referred to an attorney for collection the Holder shall be entitled to reasonable attorney fees allowable by law and all court costs and other expenses incurred in connection with such collection.

The Borrower shall be in default in the event the Borrower shall fail to pay, when due, any amount required hereunder.

IN THE EVENT THAT THIS REDEVELOPMENT PROMISSORY NOTE IS RECALLED OR OTHERWISE TERMINATED DUE TO AN "EVENT OF DEFAULT" UNDER
THE REDEVELOPMENT CONTRACT, SUCH EVENT OF DEFAULT SHALL NOT CONSTITUTE A CROSS DEFAULT OF ANY OTHER NOTE OR NOTES ISSUED TO HOLDER WITH RESPECT TO OTHER PHASES (AS DEFINED IN THE REDEVELOPMENT CONTRACT) OF THE REDEVELOPMENT PROJECT.

Demand, presentment, protest and notice of nonpayment under this Redevelopment Promissory Note are hereby waived.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Redevelopment Promissory Note shall operate as a waiver of such remedy, right or option. In any event, a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion.

Any notice provided for in this Redevelopment Promissory Note to the Borrower or the Holder shall be in writing and shall be given by regular mail to the Holder or Borrower, or at such other address as either party may designate by notice in writing.

This Redevelopment Promissory Note shall be governed by and construed in accordance with the Laws of the State of Nebraska. All payments hereunder shall be payable in lawful money of the United States of America and shall be legal tender for public and private debts at the time of payment.

COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF FREMONT, NEBRASKA

By: ________________________________

Chairperson (Council President)

ATTEST:

______________________________

Secretary (City Clerk)
PROVISION FOR REGISTRATION

The ownership of this Redevelopment Promissory Note shall be registered as to both principal and interest on the books and records of the Community Development Agency of the City of Fremont, Nebraska, kept by the City Treasurer, as paying agent and registrar, who shall make notation of such registration in the registration blank below, and the transfer of this Redevelopment Promissory Note may thereafter be registered only upon an assignment duly executed by the registered owner or such owner's attorney or legal representative, in such form as shall be satisfactory to said Treasurer, such registration of transfer to be made on such books and endorsed hereon by said Treasurer.

<table>
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<tr>
<th>Date of Registration</th>
<th>Name of Registered Owner</th>
<th>Signature of Treasurer (Paying Agent and Registrar)</th>
</tr>
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<tbody>
<tr>
<td>___________<em><strong>, 20</strong></em></td>
<td>Fremont Enterprises, LLC</td>
<td></td>
</tr>
</tbody>
</table>
MEMORANDUM OF REDEVELOPMENT CONTRACT

This Memorandum of Redevelopment Contract ("Memorandum") is made this ___ day of __________, 2019, by and between City Council of the City of Fremont, Nebraska, as the governing body of the Community Development Agency of the City of Fremont, Nebraska (the "City"), and Fremont Enterprises, LLC, a Nebraska limited liability company ("Redeveloper").

1. **Redevelopment Contract.** City and Redeveloper have entered into that certain Redevelopment Contract dated as of ________________, 2019 ("Redevelopment Contract"), describing the public and private improvements being made by the Redeveloper in the Redevelopment Project Area, including the real property owned by Redeveloper and legally described as:

   [Insert Legal Description of parcel]

2. **Tax Increment Financing.** The Redevelopment Contract provides for the capture of the tax-increment financing ("TIF") revenues by the City of the improvements to be made by the Redeveloper for a period not to exceed fifteen (15) years after the effective date (as defined in the Nebraska Community Development Law) for each applicable Phase. The TIF revenues so captured by the City shall be used to reimburse the Eligible Costs incurred by Redeveloper, as described in the Redevelopment Contract.

3. **Redevelopment Project Valuation.** Redeveloper intends to create an aggregate taxable real property valuation of the Redevelopment Project Area of $19,656,375 by January 1, 2022 (the "Minimum Valuation"). During the period that any TIF Note is outstanding, Redeveloper, its successors and assigns, including subsequent purchasers of land within the Redevelopment Project Area, will not protest a real estate property valuation, as determined by the appropriate assessing and taxing officials of Dodge County, Nebraska, for purposes of local ad valorem real estate taxes at or below the Minimum Valuation; provided that if the aggregate real property valuation of the Redevelopment Project Area exceeds the Minimum Valuation, Redeveloper may protest such valuation down to, but not below, the Minimum Valuation.

4. **Remaining Terms.** The rest and remaining terms of the Redevelopment Contract are hereby incorporated into this Memorandum as if they were set forth in full. All capitalized terms in this Memorandum that are not otherwise defined herein shall have the same meaning as set forth in the Redevelopment Contract. A full and correct copy of the Redevelopment Contract may be inspected at the City offices in Fremont, Nebraska.

5. **Termination of Memorandum.** Unless terminated sooner in accordance with the terms of the Redevelopment Contract, this Memorandum shall be deemed to automatically terminate and be released from the above-described real property upon the earlier of payoff of all TIF Notes or maturity of the TIF Note for Phase Three.
MAYOR AND CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA, as governing body of the Community Development Agency of the City of Fremont, Nebraska

By:__________________________________________
Mayor

ATTEST:

__________________________________________
City Clerk

STATE OF NEBRASKA )
) ss.
COUNTY OF DODGE )

The foregoing instrument was acknowledged before me this ___ day of ____________, 2019, by ________________, Mayor, and ________________, City Clerk, of the governing body of the Community Development Agency of the City of Fremont, Nebraska on behalf of such agency.

(S E A L)

Notary Public
FREMONT ENTERPRISES, LLC, a Nebraska limited liability company

By: ____________________________________________
Name: Brian M. Zubert
Title: Manager

STATE OF _____________ )
COUNTY OF __________ ) ss.

The foregoing instrument was acknowledged before me this ____ day of _______________, 2019, by Brian M. Zubert, the Manager of Fremont Enterprises, LLC, a Nebraska limited liability company, on behalf of the company.

(S E A L)

__________________________
Notary Public
Exhibit "G"
Subdivision Agreement

(See attached)
FOUNTAIN SPRINGS APARTMENTS
SUBDIVISION AGREEMENT

THIS SUBDIVISION AGREEMENT (hereinafter referred to as “Agreement”) is made this _______ day of _________ 2019, by and between Fremont Enterprises, LLC, a Nebraska limited liability Company (hereinafter referred to as “Developer”) and the City of Fremont, a Nebraska municipal corporation (hereinafter referred to as “City”).

RECITALS:

Developer owns and intends to develop a parcel of land legally described in the legal description, attached as Exhibit “A”, which area is fully within City’s zoning and platting jurisdiction; and

Developer desires to provide for the construction, installation, and location of certain improvements within the “Development Area”, as defined in Section 1; and

Developer and City desire to agree on the method of installation and the allocation of expenses for the “Public Improvements”, as defined in Section 1; and

City and Developer desire to set forth in this Agreement their respective understandings and agreements with regard to the development of the Development Area.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND OF THE PROMISES HEREIN CONTAINED, IT IS MUTUALLY AGREED THAT THE FOLLOWING TERMS SHALL GOVERN:

SECTION 1 DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

A. “Cost(s)” of each Private Improvement or Public Improvement shall mean all construction costs, engineering fees, design fees, attorneys’ fees, inspection fees, testing expenses, publication costs, financing costs (which shall include interest), and all other related or miscellaneous costs or expenses incurred by Developer and/or City in connection with said Private Improvements or Public Improvements.

B. “Dedicated Street(s)” shall mean those public streets, if any, including curbing and turn lanes, to be constructed, modified, or improved within: (1) that portion of the Development Area designated as “dedicated right-of-ways” in Exhibit “C”, and (2) any other areas to be dedicated as right-of-ways pursuant to any future replat(s) of the Development Area. This definition shall not be construed to obligate Developer to dedicate any additional public right-of-ways beyond what is explicitly depicted on Exhibit “C” nor shall it obligate Developer to replat any
portion of the Development Area in the future.

C. “Development Area” shall mean the real property situated within the area identified or depicted in Exhibit “A” and all Dedicated Streets.

D. “Final Plat” shall mean the final plat for administrative consolidation and/or subdivision of the Development Area prepared for filing or recording, at the Developer's expense, in accordance with applicable regulations.

E. “Lead Agency” shall mean the entity, or entities, responsible for designing, preparing plans for, bidding, installing, or constructing the “Public Improvements”, as defined in this Section, or, alternatively, responsible for engaging a qualified contractor or subcontractor to perform such responsibilities. In the event one entity designs a particular Public Improvement and another entity constructs or installs said Public Improvement, both entities shall be considered Lead Agencies for the purposes of this Agreement.

F. “Party”, when capitalized, shall mean City or Developer, individually, and “Parties”, when capitalized, shall mean City and Developer, collectively.

G. “Private Improvement(s)” shall mean those improvements or betterments required by Developer, or otherwise undertaken by Developer, pursuant to that certain Redevelopment Contract dated August 13, 2019, and this Agreement between City and Developer, on, to, or otherwise benefiting the Development Area other than those improvements identified as Public Improvements in Section 1(H).

H. “Public Improvement(s)” shall mean:

1. All installations, modifications, or improvements of Dedicated Streets and improvements constructed and installed within the boundaries of or immediately adjacent to the Development, as shown on Exhibit "C".

2. All stormwater detention facilities as shown on Exhibit "B";

3. All fire hydrants as shown on Exhibit "B";

4. All Dedicated Street signage and traffic control signage required by, and meeting the standards of, the “Manual of Uniform Traffic Control Devices” but only if first approved in writing by City’s Public Works Department and only if located at a Dedicated Street intersection or related to the Development Area, as shown on Exhibit "C";

5. All “Sanitary and Wastewater Sewers” to be constructed and installed within the boundaries of the Development Area or other area specifically approved by the City. Sanitary and Wastewater Sewers shall include all necessary sanitary and wastewater sewer mains, manholes, lines, pipes, and related
appurtenances, as shown on the plans and drawings in Exhibit “B”;

(6) The “Water Distribution System” that is or will be constructed and installed within the boundaries of the Development Area or other areas specifically approved by the City as shown on the plans and drawings in Exhibit “B”; 

(7) All “Storm Sewers” which are or will be constructed within the boundaries of the Development Area or other areas specifically approved by the City, including all necessary storm sewers, inlets, manholes, lines, pipes, and related appurtenances; as shown on the plans and drawings in Exhibit “B”; 

(8) The electrical utility lines, public street lighting, and other devices or facilities that are or will be constructed and installed by the City within the boundaries of the Development Area (the “Electric Power System”). The Electric Power System shall include all electrical utility lines and other devices (defined in Section 4.A.(1) below) so constructed and installed for the benefit of the Development Area, as approved by the City; 

(9) The natural gas main lines and other devices or facilities that are or will be constructed and installed by the City within the boundaries of the Development Area (the “Natural Gas System”). The Natural Gas System shall include all natural gas main lines and other devices so constructed and installed for the benefit of the Development Area, as approved by the City; and

(10) The west one-half of Yager Road and the south one-half of 32nd Street immediately adjacent to the Development Area as shown on Exhibit “C,” as approved by the City.

SECTION 2 STANDARDS, AUTHORITY, AND DOCUMENTATION

I. Standards for Private Improvements and Public Improvements. If Developer is the Lead Agency for a Public Improvement and for all Private Improvements, Developer shall cause all such Private Improvements and Public Improvements undertaken by Developer, its agents, contractors, or subcontractors to be constructed and installed in accordance with this Agreement and all applicable laws.

J. Prior to Commencing Work on the Public Improvements. Prior to commencing any work in connection with any individual Public Improvement for which Developer is the Lead Agency or is responsible to construct, Developer shall first:

(1) Obtain initial approval from City, as applicable, for the specifications and technical terms of any other agreement(s) or plan(s) for, or relating to, the construction or installation of said individual Public Improvement(s) prior to Developer’s execution of any such agreement(s) or plan(s). Once Developer obtains approval from City, as applicable, Developer shall deliver to the City
Clerk duly executed copies of any agreement(s) or plan(s) for work required for, or otherwise entered into, in connection with said individual Public Improvement. Such agreement(s) or plan(s) shall include, but not be limited to, any required bonds, insurance certifications, and all plans for said individual Public Improvement(s). Any such agreement(s) or plan(s) shall include details describing the manner and means of any additional connections required by or for Public Improvement(s), as applicable, prepared by Developer’s engineer;

(2) Obtain and file of record any permanent easements reasonably required by City, as applicable, for said individual Public Improvement. Public Improvements which may invoke this requirement may include, but are not limited to, sanitary and wastewater sewer lines, storm sewer, water, electric and natural gas lines, and post-construction stormwater management, including all appurtenances, as reasonably determined by the City Engineer. Said easements shall be prepared and filed in a form satisfactory to the City and Developer shall provide a copy of such recorded easements to the City Clerk;

(3) Obtain general liability insurance and performance bonds equivalent to the total construction costs for said individual Public Improvement, and provide a copy of such general liability insurance and performance bonds to the City Clerk; and

(4) Obtain final approval from City and other entities, as applicable, for the construction and installation of said individual Public Improvement and obtain all necessary agreements, permits, and approvals related to the same and provide proof of such final approval from such entities other than City, as applicable, to the City Clerk.

K. No Recourse against City. Any contract(s) entered into by Developer for the construction or installation of any Public Improvement(s) shall provide that the contractor or subcontractor constructing or installing said Public Improvement(s) shall have no recourse against City for any Costs, claims, or matters arising out of, or related to in any way whatsoever, said construction or installation including, without limitation, the Cost for said Public Improvement(s), construction oversight of said Public Improvement(s), the design or preparation of plans and specifications for said Public Improvement(s), or the construction of said Public Improvement(s).

L. All Necessary Agreements, Permits, and Approvals. Prior to commencing any work within any public right-of-way for any Public Improvement for which Developer is Lead Agency or responsible to construct, excluding sidewalks and trails, Developer shall enter into all necessary right-of-way agreements and obtain all necessary permits and approvals from the requisite governmental entities exercising authority over said right-of-ways. If City requests copies of any such
agreements, permits, or approvals, Developer shall provide said copies to City in a timely manner.

M. City Review and Approval. Developer shall submit to City all plans, designs, and materials for the Public Improvements for which the Developer is the Lead Agency or responsible to construct for review prior to the construction of the Public Improvements to ensure the same will meet City’s requirements. City may require Developer, at Developer’s sole cost and expense, to modify said plans, designs, and materials to ensure compliance with City requirements. To the degree any such plans, designs and materials approved by the City conflict with those shown on Exhibit "B" and "C", the plans, designs and materials approved by the City shall supersede Exhibit "B" and "C", as applicable.

SECTION 3 REPRESENTATIONS AND ACKNOWLEDGEMENTS

A. Developer Representations and Acknowledgments. Developer represents and warrants to City as follows:

(1) Developer is incorporated under the laws of the State of Nebraska. Developer is duly authorized to transact business under the laws of the State of Nebraska.

(2) Developer is or will be the owner of record of the Development Area and possesses or will possess the rights and authority necessary to make decisions affecting the Development Area.

(3) Developer has full power and authority to enter into, deliver, and perform its obligations under this Agreement and each of the documents related hereto.

(4) Developer has taken all necessary action to authorize Developer’s execution, delivery of, and performance under this Agreement, and as such, this Agreement constitutes Developer’s valid and binding obligation, enforceable against Developer in accordance with its terms.

(5) Developer agrees to reasonably cooperate with City, as applicable, for the timely and orderly installation of the Public Improvements as required under the terms of this Agreement, or any other agreement with a third party for the construction and installation of a Public Improvement, as applicable, following the execution of this Agreement and submittal of required documents.

(6) Developer shall comply with the terms of this Agreement, and the provisions of any agreement submitted to City pursuant to this Agreement in relation to the Public Improvements, which agreements shall not be assigned without prior written approval from City.

(7) Developer shall comply with performance and maintenance securities requirements specified in Subsection 11-315.06.G of the City of Fremont,
Nebraska Municipal Code (“Code”) and as otherwise required by applicable law. Developer shall cause City to be named as an additional insured under any policy of insurance, including all payment and performance bonds obtained by Developer, or any other person, (whether or not required by this Agreement) in connection with the construction, installation, or operation of any Public Improvement for which Developer will be the Lead Agency or responsible to construct.

(8) Developer shall ensure that all documents, contracts, and instruments prepared or entered into by or on behalf of Developer, its agents, contractors, or subcontractors pursuant to the terms of this Agreement, shall, in all material respects, be fully authorized, valid, binding, and enforceable in accordance with their terms.

(9) Developer shall cause all delinquent personal property and real estate taxes and assessments levied on the Development Area to be paid prior to City's approval of the Final Plat.

(10) Except for damages or claims resulting solely from the negligence or malfeasance of Developer or any of its officers, agents, or employees, Developer shall not be liable to any person as a result of any act undertaken by City or Developer to date, or at any time in the future in furtherance of this Agreement, and, to the maximum extent permitted by law, City hereby waives for itself, its employees, agents, and assigns any such right, remedy, or recourse it may have against Developer, its officers, agents, or employees, and in no event shall Developer or any of its officers, agents, or employees be liable for consequential, incidental or indirect damages.

B. City Representations and Acknowledgments. City represents and warrants to Developer as follows:

(1) City agrees to reasonably cooperate with Developer, its agents, contractors, and subcontractors for the timely and orderly installation of the Public Improvements following the execution of this Agreement and submittal of required documents.

(2) City shall pay the Cost for any oversizing of Dedicated Streets (above those specifications shown on Exhibit "C" or the sizes listed in Table 11-713.02.01 of the Fremont Unified Development Code) and any oversizing of Public Improvements, if any, approved and authorized by the City.

(3) City represents and warrants that Developer shall have no responsibility for any costs for future improvements to Dedicated Streets so long as the Dedicated Streets are constructed to City specifications and in accordance with this Agreement. Neither City nor any of its officers, agents, or employees:
i. Is acting as attorney, architect, engineer, or otherwise in the interest or on behalf of Developer in furtherance of this Agreement; or

ii. Owes any duty to Developer or any other person because of any action City or Developer has undertaken, or in the future will undertake in furtherance of this Agreement, including any City inspection or City approval of any matter related to the same.

iii. Except for damages or claims resulting solely from the negligence or malfeasance of City or any of its officers, agents, or employees, shall be liable to any person as a result of any act undertaken by City or Developer to date, or at any time in the future in furtherance of this Agreement, and, to the maximum extent permitted by law, Developer hereby waives for itself, its employees, agents, and assigns any such right, remedy, or recourse it may have against City, its officers, agents, or employees, and in no event shall City or any of its officers, agents, or employees be liable for consequential, incidental or indirect damages.

SECTION 4 APPORTIONMENT OF COSTS, CONSTRUCTION OF IMPROVEMENTS AND RESPONSIBILITIES

A. Apportionment of Costs and Construction of Private Improvements and Public Improvements. Developer, at its sole cost and expense, shall be responsible for constructing and privately financing and paying for the Cost of all Private Improvements. The Parties shall be responsible for the construction and Cost of the Public Improvements as follows:

1) Electric Power System. City shall be responsible to construct and pay the cost, except as provided for herein, of an Electric Power System within the Development Area. The City shall construct, own, operate and maintain all electric distribution lines, including service lines to the single-family residence in the Development Area.

Residential: Before City commences construction of an underground Electric Power System, Developer shall pay the City $750 per each residential multi-family apartment building (9 anticipated).

Commercial and Multifamily (apartment) Buildings: The City shall construct and install overhead and underground primary (8000-volt & 13,800-volt) electric service, devices, and facilities.

For the Fountain Springs Adult Apartment Properties Development, the following costs shall be paid by Developer:

i. The cost difference between overhead and underground construction;
i.e., a cost of $3,146 per apartment building (assuming nine buildings).

ii. The Developer will provide and install two – 2-inch PVC conduits, for electric primary cables, from the transformer location to nearest power pole or sectionalizer location as determined by the City; this conduit will be transferred by warranty bill of sale to the City and thereafter operated and maintained by the City.

iii. The Developer will provide and install all secondary conduits, wire, and meterbank enclosures that will feed each apartment building; this equipment will not be owned nor maintained by the City.

iv. The Developer shall reimburse City for the Cost of the public street lighting at the applicable RES1 or DES1 rates ($750 and $2,700), consisting of five (5) such structures along all Dedicated Streets per City specifications, as shown on Exhibit "B".

Upon completion of the public street lighting, City shall invoice such Cost, and Developer shall pay such invoice within thirty (30) days after City sends such invoice. All other costs of the Electric Power System not listed above shall be paid by the City.

(1) Water Distribution System. Developer shall be the Lead Agency and shall be responsible to construct and pay for the Cost of a Water Distribution System and water main system as designed by a licensed engineer up to the Development Area boundaries as shown on Exhibit "B". This includes the main line, taps, and line to a stop box at edge of City right-of-way, in accordance with City specifications (the "Water Distribution System"). The Water Distribution System will be designed to serve all lots within the Development Area and shall be sized as specified in the plans and drawings in Exhibit "B". Upon completion of the Water Distribution System and after having passed all necessary chemical and pressure testing requirements, Developer shall, at no cost to the City, transfer by warranty bill of sale, ownership of the Water Distribution System to the City for operation and maintenance.

For the Fountain Springs Adult Apartment Properties Development, the below costs shall be paid by Developer. All other costs of the Water Distribution System not listed below shall be paid by the City.

i. The cost of $2,000 per apartment building (assuming nine buildings). The Water Connection District No. WC-903-06 connection fee will be waived for the connection to the City’s Water Distribution System.

(2) Natural Gas System. City shall be responsible to construct and pay for the Cost of the construction of a Natural Gas System and individual service lines
that serve each platted lot inside the Development Area. The City shall construct, own, operate, and maintain all main gas lines and secondary lines up to each metering point in the Development Area.

(3) Sanitary and Wastewater Sewers and Storm Sewers. Developer shall be the Lead Agency and shall be responsible to construct and pay the Cost of the construction of a sanitary and wastewater sewers and storm sewers designed by a licensed engineer (including main line, tap, and line to edge of City right-of-way) in accordance with City specifications. The sanitary and wastewater sewer system and storm sewers shall be designed to serve all lots within the Development Area and shall be sized as specified in the plans and drawings in Exhibit “B”. Upon completion of the sanitary and wastewater sewer system and storm sewers and after having passed all testing requirements, Developer shall, at no cost to the City, transfer by warranty bill of sale ownership of the sanitary and wastewater system and storm sewers to City for operation and maintenance.

(4) Dedicated Streets and Other Streets. Developer shall be the Lead Agency and shall be responsible to construct all internal private roadways within the Development Area as shown on Exhibit “C”.

a. Dedicated Streets. The City shall be the Lead Agency and shall be responsible to construct the Dedicated Streets within the Development Area as shown on Exhibit “C”, consisting exclusively of the west one-half of Yager Road and the south one-half of 32nd Street immediately adjacent to the Development Area. Developer shall reimburse the City for one-half of the City’s Cost to construct, not to exceed $375,000, the west one-half of Yager Road and the south one-half of 32nd Street immediately adjacent to the Development Area as shown on Exhibit “C” upon the City completing construction of the aforementioned Dedicated Streets and delivering an invoice for such costs to Developer. In consideration of the representations and warranties of the City and Developer in this Section 4(a), Developer shall not object to the creation of a street improvement district or the levy of a special assessment with respect to construction of the Dedicated Streets, and the City shall not levy any special assessment upon the real property owned by Developer in the Development Area with respect to the construction of the Dedicated Streets.

(5) Sidewalks. Developer shall be responsible to construct and pay the Cost of sidewalks along both sides of all Dedicated Streets. Developer shall provide dropped curbs for ADA ramps at all intersections with sidewalks within the Development Area as shown on Exhibit “C”.

(6) Trails. Developer shall be responsible to construct and pay the Cost of trails throughout the development, per Exhibit “C”. Trails shall be constructed eight (8) feet in width and be shown on Exhibit “C”.
(7) Dedicated Street Signage and Traffic Controls. Developer shall be responsible to construct and pay the Cost of any Dedicated Street signage, traffic control or signals required. Upon completion of the Public Improvements, Developer shall invoice City for its share of such Cost, and City shall pay such invoice within thirty (30) days after City receives such invoice.

(8) Construction Stormwater Management. Developer, its successors, or assigns shall be responsible for stormwater management of the systems shown on Exhibit "B" during and after construction of Public Improvements per City requirements.

(9) Stormwater Detention Facilities. Developer shall be the Lead Agency and shall be responsible to construct and pay for the Cost of stormwater detention facilities. Developer shall own and maintain all stormwater detention facilities, as shown on Exhibit "B".

(10) Fire Hydrants. Pursuant to the Code, Developer shall be the Lead Agency and shall be responsible to construct, install and pay for the construction and installation Costs of fire hydrants for the protection of the Development Area. City shall approve the fire hydrant (i.e. Mueller A423 fire hydrant with a direct bury 5¼' or vertical shoe riser) and control valves before being installed by the Developer. The location of the hydrants must also be approved by City.

i. Other Developer Responsibilities.

(1) Review Fee. To cover engineering, legal and other miscellaneous expenses incurred by City in connection with City's review of plans and specifications in connection with the construction of certain Public Improvements, Developer shall pay City a one-time fee of $1,000 prior to City's approval of the plans and specifications for Public Improvements.

(2) Grading. Developer shall pay for the Cost of all grading of the Development Area, including all right-of-ways as shown in Exhibit “B”.

(3) Entrance Signs. Developer shall be responsible to construct, install and pay for the Cost of entrance signs or related fixtures and any median landscaping and related fixtures, if any. Plans for such proposed improvements that are to be located in public right-of-ways and a proposed maintenance agreement for the improvements must be submitted to the City for review and approval prior to the installation of improvements. Entrance signs shall be owned and maintained by the homeowner’s association.

(4) No Wells. Developer shall not design, construct, install, or expand any potable wells or potable well components within the Development Area (except wells
for de-watering for construction of Public Improvements) without obtaining City’s approval, as required by Code. Furthermore, Developer shall remove all wells and well system components existing within the Development Area at the time of this Agreement’s execution prior to making a connection to the Water Distribution System. Developer shall obtain all requisite approvals from City and the State of Nebraska necessary to comply with this provision.

(5) **No Septic Systems.** Developer shall remove all septic systems, septic system components, and other onsite sewage retention systems existing within the Development Area at the time of this Agreement’s execution prior to making a connection to the Sanitary and Wastewater Sewer. Developer shall obtain all requisite approvals from City and State of Nebraska necessary to comply with this provision.

(6) **Subsequent Replatting.** If Developer wishes to replat any portion of the Development Area, such replat must be approved in accordance with Uniform Development Code (“Code”). If City approves such replat(s), such approval shall be contingent upon, but not limited to, Developer dedicating and filing of record all permanent easements necessary to provide additional access to the subdivided lots. All such easements must meet City’s approval prior to dedication.

(7) **Easements/Dedicated Right-of-Way.** Developer shall be responsible for granting easements and dedicated right-of-ways to City and memorializing such easements and dedicated right-of-ways on the Final Plat, as contemplated herein, if any. All such instruments shall include a prescription outlining the rights, terms, and maintenance responsibilities of the corresponding easements.

(8) **Plat.** Developer shall file or record the Final Plat with Dodge County and provide City with three executed paper copies and with a digital file in CAD/GIS format.

(9) **Compliance with Laws, Statutes, and Ordinances.** Developer, in performing its obligations under this Agreement, shall comply with all applicable federal, state, and local laws. The terms of this provision shall apply equally to Developer and any third party leasing any portion of the Development Area from Developer, and any party working for or on behalf of Developer.

**SECTION 5 MISCELLANEOUS**

A. **Incorporation of Recitals.** The recitals set forth above are, by this reference, incorporated into and deemed part of this Agreement.

B. **Agreement Binding.** The provisions of this Agreement, and all exhibits and
documents attached or referenced herein, shall run with the land and shall be binding upon, and shall inure to the benefit of, the Parties, their respective representatives, successors, assigns, heirs, and estates, including all successor owners of the property described in the attached Exhibit “A”. Every time the phrase “successors or assigns”, or similar language, is used throughout this Agreement, it is to be attributed the same meaning as provided in this “Agreement Binding” provision. No special meaning shall be attributed to any instance herein in which the name of a Party is used without the phrase “successors and assigns” following immediately thereafter, unless expressly stated otherwise.

C. Termination of Agreement. This Agreement shall not be terminated except by: (1) written notice of termination by Developer to City, to be effective upon City’s receipt of the notice of termination, but only so long as no construction or installation of any of the Public Improvements or Private Improvements has yet commenced or (2) written agreement between Developer and City in the event any construction or installation of any of the Public Improvements or Private Improvements has commenced. In the event the construction or installation of any of the Public Improvements or Private Improvements has commenced, Developer shall be required by City to complete the applicable Public Improvements and Private Improvements to a reasonable point of termination, as determined by City, to ensure the Development Area does not negatively impact public health, safety, and welfare. Notwithstanding the foregoing, City may suspend its performance under this Agreement upon the recurrence of any breach or default upon which City has given a notice to Developer specifying such breach or default (“Notice to Cure”) in the preceding one hundred eighty (180) days. City shall have no obligation to resume performance under this Agreement until such time as Developer has remedied the default specified in the Notice to Cure. Developer’s obligation to complete Public Improvements and Private Improvements that have commenced prior to termination of this Agreement to a reasonable point of termination, as determined by City, shall survive the expiration or termination of this Agreement.

D. Indemnity. Developer agrees to defend, indemnify, and hold City and its respective employees, agents, and assigns (each, a “City Indemnitee”) harmless from and against any and all responsibility, claims, liability, obligation, judgments, actions, loss, damage, or injury of any nature whatsoever arising from any act or omission constituting a breach of duty of the Developer in connection with the Final Plat, this Agreement, Development Area, and development, including payment of reasonable attorney’s fees; provided, that City must notify Developer in writing of the facts or underlying circumstances giving rise to an indemnification claim hereunder within two (2) years of the date that such City Indemnitee first obtains knowledge of such facts or circumstances giving rise to such claim.

E. Assignment. Developer may not assign all or any portion of this Agreement nor delegate any of its obligations hereunder without the express prior written consent of City, which consent shall not be unreasonably withheld.
F. **No Waiver of Regulations.** Nothing herein shall be construed to imply any waiver of any provision of the Code.

G. **No Continuing Waivers.** A waiver by any Party of any default, breach, or failure of another shall not be construed as a continuing waiver of the same or of any subsequent or different default, breach, or failure.

H. **Severability.** In the event that any provision of this Agreement proves to be invalid, void, or illegal by a court of competent jurisdiction, such decision shall in no way affect, impair, or invalidate any other provisions of this Agreement, thus such other provisions shall remain in full force and effect as if the invalid, void, or illegal provision was never part of this Agreement.

I. **Governing Law.** Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law, except to the extent such provisions may be superseded by applicable federal law, in which case the latter shall apply.

J. **Forum Selection and Personal Jurisdiction.** Any dispute arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by the courts located in Dodge County, Nebraska. Accordingly, the Parties agree to exclusive personal jurisdiction in the courts located in Dodge County, Nebraska.

K. **Entire Agreement.** This Agreement and all exhibits and documents attached or referenced herein, which are hereby incorporated and specifically made a part of this Agreement by this reference, express the entire understanding and all agreements of the Parties. Specifically, this Agreement supersedes any prior written or oral agreement or understanding between or among any of the Parties, whether individually or collectively, concerning the subject matter hereof.

L. **Modification by Agreement.** This Agreement may be modified or amended only by a written agreement executed by both Parties. In the event a party to this Agreement or subsequent amendment(s) dissolves, or ceases to exist by some other means, without any valid successors or assigns, said party shall be deemed to be without signing authority and, accordingly, the signature of said party shall not be required in order to validly execute subsequent modifications or amendments to this Agreement. Any modifications or amendments to this Agreement shall conform to the requirements of any applicable laws, rules, regulations, standards, and specifications of any governmental agency with jurisdiction over any such matter included in any modification or amendment of this Agreement without cost to City.

M. **Notices, Consents, and Approvals.** Unless expressly stated otherwise herein, all payments, notices, statements, demands, requests, consents, approvals, authorizations, or other submissions required to be made by the Parties shall be...
in writing, whether or not so stated, and shall be deemed sufficient and served upon the other only if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

For Developer: Fremont Enterprises, LLC 1704 North Bell Street #134 Fremont, Nebraska 68025

With a Copy to: David C. Levy Baird Holm LLP 1700 Farnam Street Suite 1500 Omaha, NE 68102

For City: City Clerk City of Fremont 400 E Military Ave Fremont, NE 68025

Such addresses, names, or titles may be changed from time to time by written notice to the other Party.

N. Related Contract(s) Voidable. No elected official or any officer or employee of City shall have a financial interest, direct or indirect, in any City contract related to this Agreement. Any violation of this section with the knowledge of the person or corporation contracting with City or such elected official, officer, or employee shall render such contracts voidable by the Mayor or City Council.

O. Non-Discrimination. In the performance of this Agreement, the Parties, their agents, contractors, subcontractors, and consultants shall not discriminate, or permit discrimination, against any person on account of disability, race, color, sex, age, political or religious opinions or affiliations, or national origin in violation of any applicable laws, rules, or regulations of any governmental entity or agency with jurisdiction over any such matter.

P. Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define or limit the scope of any section.

Q. Approval of Annexation, Rezoning and Subdivision. Developer acknowledges that City’s approval of the annexation and rezoning of the Development Area, passed and approved by the Fremont City Council on August 13, 2019, by Resolution No. 2019-____ is specifically subject to and conditioned on Developer’s execution and compliance with this Agreement. The parties further acknowledge that consolidation and subdivision of the tax parcels within the Development Area will occur via administrative approval following execution of this Agreement.
R. No Obligation to Construct or Operate. It is expressly agreed that nothing contained in this Agreement shall be construed as an obligation, either expressed or implied, incumbent upon Developer to: (1) commence the construction of any Public Improvement (2) commence the operation of a business, or (3) thereafter continuously operate a business on the Development Area. City recognizes and agrees that Developer may, at Developer’s sole discretion, elect not to develop the Development Area or, if developed, cease the operation of its business on the Development Area. If Developer does not develop the Development Area pursuant to this Agreement or ceases operation of the Development Area, City shall have the right to vacate the Final Plat and/or terminate this Agreement pursuant to the termination provisions provided for in this Agreement.

S. Compliance Letter. At any time, and from time to time, Developer may deliver written notice to City requesting that City provide a written Compliance Letter which provides that, to the knowledge of City: (1) this Agreement is in full force and effect and a binding obligation of the Parties, (2) this Agreement has not been amended, or if amended, the resolution number of each amendment, and (3) City has not notified Developer of a violation in relation to this Agreement, or, if a notification of violation has been provided to Developer, a brief description of said notification. The City Administrator, or his or her designee, shall be authorized to execute, on behalf of City, any Compliance Letter requested by Developer, which complies with this Section. City acknowledges that a Compliance Letter may be provided to transferees or successors in interest to Developer or to a mortgagee or beneficiary under a deed of trust holding an interest in the Development Area. City reserves the right to modify or amend any such Compliance Letter issued by City in the event City’s knowledge regarding the contents of such letter changes to an extent that the representations contained therein are no longer accurate.

T. Additional Remedies of City; Cross-Default. The Parties acknowledge that Developer and the City have entered into that certain "Redevelopment Contract (The Fountain Springs Redevelopment Project) dated on or about August 13, 2019 (the "Redevelopment Contract"). If Developer materially violates any term of this Agreement or the Redevelopment Contract, the City shall have the authority, after first giving ten (10) days written notice to the Developer, to discontinue the issuance of building and/or utility connection permits for the Development Area until such time as the violation is corrected.

U. Term. The Developer shall install all Public Improvements, that it is responsible to construct, within a two (2) years after the signing of this Agreement. The City Engineer may approve any extension of this time period.

ATTEST:      CITY:
                     City of Fremont, a Nebraska municipal corporation
Tyler Ficken, City Clerk  
Scott Getzschman, Mayor
DEVELOPER:

Fremont Enterprises, LLC,
a Nebraska limited liability company

_______________________________
By:

_______________________________
Name: Brian M. Zubert

_______________________________
Title: Manager

STATE OF _________________) ss.
COUNTY OF _________________

Before me, a notary public, in and for said county and state, personally came
Brian M. Zubert, Manager of Fremont Enterprises, LLC, a Nebraska limited liability
company, known to me to be the identical person who executed the above instrument
and acknowledged the execution thereof be his voluntary act and deed on behalf of said
limited liability company.

Witness my hand and Notarial Seal this ___ day of ____________, 2019.

_______________________________
Notary Public
EXHIBIT "A"

Development Area

Legal Description:

Lot 1, Fountain Springs Second Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Second Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Third Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 1, Fountain Springs Fourth Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Fourth Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

TOGETHER WITH

All public rights-of-way contiguous thereto.

* Subsequent to the execution of this Subdivision Agreement, Redeveloper intends to administratively consolidate and further subdivide the Development Area. Subsequent to said administrative consolidation and subdivision, the above legal description shall be replaced with the legal description provided in the administrative consolidation and subdivision, as applicable, of the Development Area approved by the City.
EXHIBIT "B"

Site Plans

(See attached)
EXHIBIT "C"

Dedicated Public Streets

(See attached)
Site Statistics:  (Approximately 11.35 Acres Total or 494,406 sf)

Roofs
9 buildings x 10632 sf = 95,688 sf
7 garages x 3224 sf = 22,568 sf
2 garages x 6448 sf = 12,896 sf
1 office x 720 sf = 720 sf
95,688 sf + 22,568 sf + 12,896 sf + 720 sf = 131,872 sf

Hard Surface
North parking lot = 60,809 sf
South parking lot = 55,170 sf
6 porches x 9 buildings x 80 sf = 4,320 sf
Sidewalks = 3,777 sf + 5,654 sf = 582 sf + 2,316 sf + 3,605 sf + 3,586 sf + 1,809 sf + 94 sf + 21,403 sf
2 Dumpsters x 200 sf = 400 sf
60,809 sf + 55,170 sf + 4,320 sf + 21,403 sf + 400 sf = 142,102 sf

Grass, Drainage & Pervious Surface
92,228 sf property size - 131,872 sf (roof) - 142,102 sf (hard surface) = 218,254 sf (44% Pervious)

Parking Facility
710 Garage Stalls of which 22 are HC
286 Surface Stalls of which 19 are HC
July 31, 2019

To: Honorable Mayor Scott Getzschman
Fremont City Council
Brian Newton, City Administrator

During recent Planning Commission and City Council meetings the School District's position in regard to the utilization of Tax Increment Financing (TIF) has been discussed on both sides of the issue of economic development and residential growth in Fremont. At a recent City Council meeting, consideration for a 55+ apartment building development in Fountain Springs and the utilization of TIF was discussed.

In January of 2017, the Board of Education passed a resolution regarding the utilization of TIF for residential development (see next page). Since that time we have been consistent with our message in this regard. We have had discussions with at least four developers related to the District's position relative to TIF for residential development and have voiced our opposition to the City, County, Chamber and GFDC. The only exceptions to this very strong opposition have been in cases of 55+ housing development and the redevelopment of the 505 Building on Main Street.

Residential development for people who are 55+ rarely house students and meets a need the City continues to struggle with in finding available housing for this demographic of population. In our discussions with developers, for the most part, they have been understanding of the District's position in regard to residential development for people under 55 years of age and have moved on with their projects without the use of TIF.

As the City continues to grow and develop there will certainly be additional developers interested in utilizing TIF for residential development. This letter will serve as a statement of the Fremont School District’s opposition to utilizing this financing tool for residential development designated for people under 55 years of age.

Respectfully submitted,

Mark Shepard
Superintendent
Fremont Public Schools
WHEREAS, the Fremont Public Schools Board of Education recognizes the value of re-development of commercial and industrial sites within the community to bolster the economy and broaden the tax base; and,

WHEREAS, the Fremont City Council has elected to allow private entities to utilize Tax Increment Financing under the “Community Development Law” (§§ 18-2101 to 18-2144, R.R.S.) to strengthen their financial packages for re-development; and,

WHEREAS, the Community Development Laws and local ordinances are being followed in pursuit of such re-development.

NOW, THEREFORE BE IT RESOLVED, that the Board of Education of Dodge County School District No. 1, a/k/a Fremont Public Schools understands the value of the use of Tax Increment Financing as a tool for re-development for commercial and industrial sites; provided that such re-development does not include the expansion of residential dwelling units within such commercial and industrial re-development sites since the expansion of residential dwelling units without the increased taxable property values could have a detrimental effect on the District's finances.

BE IT FURTHER RESOLVED, that the Board of Education of Dodge County School District No. 1, a/k/a Fremont Public Schools does not support the use of Tax Increment Financing for development or re-development of residential dwelling sites or areas due to the possible negative effects of such utilization on District financing and housing needs.
RESOLUTION NO. 2019-006
(Redevelopment Agreement and Subdivision Agreement for the Fountain Springs 55+ Apartment Redevelopment Project)

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF FREMONT, NEBRASKA APPROVING THE REDEVELOPMENT AGREEMENT AND SUBDIVISION AGREEMENT FOR THE FOUNTAIN SPRINGS 55+ APARTMENT REDEVELOPMENT PROJECT AND AUTHORIZING THE ISSUANCE OF TAX INCREMENT FINANCING INDEBTEDNESS.

WHEREAS, the Community Development Agency of the City of Fremont, Nebraska (the “CDA”) via Resolution No. 2014-137, dated July 29, 2014, approved and adopted a Redevelopment Plan. On July 9, 2019 the CDA held a public hearing and failed to make a recommendation on Resolution 2019-005 to amend the 23rd & Bell Street Redevelopment Plan, pursuant to the Nebraska Community Development Law codified at Neb. Rev. Stat. §§ 18-2101 et seq. (the “Act”);

WHEREAS, a copy of the Redevelopment Agreement by and between the CDA and Fremont Enterprises, LLC, a Nebraska limited liability company, that will implement and govern the project identified as the Fountain Springs 55+ Apartment Redevelopment Project (“Project”) is attached as Attachment “A” and incorporated herein by this reference;

WHEREAS, on August 13, 2019, a meeting of the CDA was held at the Fremont City Council Chambers, 400 East Military Avenue, in Fremont, Nebraska in order to determine whether the Redevelopment Agreement AND Subdivision Agreement should be approved;

WHEREAS, the Redevelopment Plan and the Redevelopment Agreement will, in accordance with the present and future needs of the City of Fremont, promote the health, safety, morals, order, convenience, prosperity and the general welfare of the community in conformance with the legislative declarations and determinations set forth in the Act;

WHEREAS, the Redevelopment Plan is feasible and is in conformance with the general plan for development of the City and its objectives are being accomplished in the Redevelopment Agreement for the Project;

WHEREAS, the Project as described in the Redevelopment Agreement would not be economically feasible as designed without the use of tax increment financing; and the Project as designed would not occur in the North Broad Street Redevelopment Area without the use of tax increment financing; and the Project is in the long-term best interests of the community;
WHEREAS, the CDA has reviewed the Redevelopment Agreement and has found it to be in conformity with the Act and the general plan for development of the City of Fremont, and in the best interests of the City of Fremont; and

WHEREAS, pursuant to the provisions of the Act and in light of the foregoing findings and determinations, the CDA desires to approve the Redevelopment Agreement and to approve TIF Indebtedness in an amount not to THREE MILLION NINE HUNDRED FOURTY NINE THOUSAND ONE HUNDRED DOLLARS (3,949,100) in the form of the TIF Note attached to the Redevelopment Agreement;

WHEREAS, a Subdivision Agreement is associated with the Redevelopment Agreement;

NOW, THEREFORE, BE IT RESOLVED, that the CDA of the City of Fremont, Nebraska does hereby approve and adopt the Redevelopment Agreement in substantially the form attached hereto as Attachment “A”; and the associated Subdivision Agreement Attachment “B”;

BE IT FURTHER RESOLVED, that the CDA of the City of Fremont hereby authorizes its legal counsel to finalize the terms and conditions of the Redevelopment Agreement on behalf of the CDA, and that any and all actions previously taken by its legal counsel to fulfill this resolution are hereby ratified and approved, except that the amount of the TIF Indebtedness and the use of the TIF proceeds shall not be modified without the consent and approval of the CDA;

BE IT FURTHER RESOLVED, that the CDA of the City of Fremont is hereby authorized, following the lapse of thirty (30) days after the approval of the Redevelopment Agreement, issue indebtedness in an amount not to exceed THREE MILLION NINE HUNDRED FOURTY NINE THOUSAND ONE HUNDRED DOLLARS (3,949,100) in the form of the TIF Note attached to the Redevelopment Agreement, with such TIF Indebtedness to be repaid solely from the Tax Increment created by the Project and does not represent the general obligation of the CDA nor the City of Fremont; and

BE IT FURTHER RESOLVED, that the CDA hereby authorizes its Chair to execute and deliver the Redevelopment Agreement and to take all such other actions contemplated and required by the Redevelopment Agreement and to fulfill the resolutions set forth above.

DATED THIS 13th DAY OF AUGUST 2019.

THE CITY OF FREMONT, NEBRASKA

By: __________________________
    Scott Getzschman, Chairperson

ATTEST: _______________________
    Tyler Ficken, Secretary
ATTACHMENT “A”

Redevelopment Agreement

[See Attached]
ATTACHMENT “B”

Subdivision Agreement

[See Attached]
TO: Honorable Mayor and City Council
FROM: Jennifer L. Dam, AICP, Planning Director
DATE: August 13, 2019
SUBJECT: Request for Amendment to 23 & Bell Redevelopment Plan

Recommendation: Approval of Redevelopment Plan amendment

Background:

This item was heard July 9 by the Community Development Authority. The CDA motion to approve the plan failed on a 4-3 vote. The City Council heard this item later that evening and voted 5-3 with the Mayor casting the deciding vote to continue this item to the August 13, 2019 City Council meeting.

This is a request for an amendment to the Redevelopment Plan for the 23rd & Bell Redevelopment Area to include the Fountain Springs 55+ apartment complex project. The proposed project includes a 9 building 216 unit phased apartment complex for residents aged 55 and over, 266 surface parking stalls and 110 garage stalls, an office for staff, a community room or clubhouse community room, a gazebo, trail and sidewalk extensions together with all infrastructure and other improvements necessary to support the apartment complex. The project will be constructed in three phases.

The 23 & Bell Redevelopment area was declared blighted and substandard by the Fremont City Council on July 15, 2014. The 23 & Bell Area Redevelopment Plan was approved July 29, 2014. An amendment to the Redevelopment Plan for the Fountain Springs elderly housing consisting of 32 units was approved by the City Council on December 29, 2015.

18-2103(28) of the Nebraska Revised Statutes defines what work is considered a redevelopment project. A redevelopment project may include land acquisition, installation of public improvements, preparation of the plan, and survey work, among other things.

The area for which project are proposed consists of Lots 1 & 2 Fountain Springs 2nd Subdivision, Lot 2 Fountain Springs 3rd Subdivision and Lots 1 & 2 Fountain Springs 4th Subdivision located in the SE ¼ Section 11 Township 17 Range 8 East, Fremont, Nebraska.

These lots are zoned UR, Urban Residential.

The property is currently undeveloped agricultural land.

The City Council held a public hearing on an amendment to the Comprehensive Plan to change the designation from commercial to residential on June 11, 2019 and voted to approve.

Apartments are allowed in commercially zoned properties.

The “Blue Print for Tomorrow” Comprehensive Plan notes that “...the total acres of land needed for 55-year old and older adults is expected to represent approximately 40% of the future land development” (p.4.4)

The 2017 Housing study estimated a need for 147 rental units for the 55+ population.
The proposed Redevelopment Plan addresses the statutory elements required in such a plan. (Attached with the proposed plan amendment.)

The plan states that “according to Redeveloper, the cost to construct the apartment complex is greater than the Project's as-completed fair market value. Further, without the assistance of TIF, the return on investment for the Project would be too low to attract prudent investors given the risks involved in preparing the site, constructing the apartment complex, stabilizing the occupancy rates in the apartments, and other business risks. Specifically, the extraordinary costs associated with soil mitigation, storm water facilities, strengthened or modified building components, and thickened reinforced pavement make the Project cost prohibitive without the assistance of TIF. Without TIF, the Project yields a return-on-investment of approximately 4 percent. With TIF, the Project yields a return-on-investment of 11.39% percent. A return-on-investment below 10 percent would not overcome the risk factors to attract the investment and financing needed to build and maintain the Project. Thus, according to the Redeveloper, an ordinarily prudent developer would not construct the Project without TIF.”

The redevelopment area lacks infrastructure and has poor soil conditions, which contributes to the inability to attract development to the area. TIF can be used to address that blighting condition.

The proposed improvements for which approximately $3,949,100 of Tax Increment Financing (in three notes of $866,034; $1,776,033 and $1,307,033) would be utilized include site acquisition, site preparation, architectural and engineering fees, public utility extension and installation, installation of streets and sidewalks, landscaping, façade enhancements, energy efficiency enhancements, and other improvements deemed feasible and necessary in support of the public health, safety and welfare.

The cost benefit analysis is based on projects that consists a 9 building 216 unit phased apartment complex for residents aged 55 and over, 266 surface parking stalls and 110 garage stalls, an office for staff, a community room or clubhouse community room, a gazebo, trail and sidewalk extensions together with all infrastructure and other improvements necessary to support the apartment complex.

The project will add sales tax revenue to the community.

The cost benefit analysis estimates the following tax shift based on the 2018 Dodge County tax levy and estimated completed assessed value of the buildings:

- Estimated Base Project Area Valuation: $696,390
- Estimated Completed Project Assessed Valuation: $19,656,375
- Potential TIF Revenues: $5,841,015

The developer proposes that approximately $3,949,100 be financed with Tax Increment Financing (TIF) to provide for the construction and installation of infrastructure, acquisition, soil mitigation and related improvements.

The property was platted in anticipation of the receipt of TIF for eligible expenses. However, the project, as designed would not be feasible without the availability of tax increment financing for eligible public expenses.

Findings:

- The area was declared blighted and substandard in July 2014.
- The proposed uses are consistent with the Comprehensive Plan.
An estimated $3,949,100 in tax increment financing is necessary to provide for the construction and installation of infrastructure and related eligible expenditures.

The proposed redevelopment projects would not be feasible without tax increment financing.

The proposed redevelopment projects are in the best economic interest of the City of Fremont.
AMENDMENT TO THE GENERAL REDEVELOPMENT PLAN
FOR THE 23RD & BELL AREA

(FOUNTAIN SPRINGS APARTMENTS REDEVELOPMENT PROJECT)
29th & YAGER

FREMONT, DODGE COUNTY, NEBRASKA

PREPARED MAY, 2019

FOR

THE COMMUNITY DEVELOPMENT
AGENCY OF

FREMONT, NEBRASKA
A. Introduction

This Amendment to the General Redevelopment Plan for the 23rd and Bell Area ("Redevelopment Plan") is a guide for redevelopment activities to remove or eliminate blight and substandard conditions within the City of Fremont, Nebraska (the "City"). The Mayor and City Council of the City (the "Council"), recognizing that blighted and substandard conditions are a threat to the continued stability and vitality of the City, passed a resolution designating certain areas of the City to be blighted and substandard and in need of redevelopment pursuant to the requirements of section 18-2103 of the Nebraska Community Development Law, sections 18-2101 et. seq., as amended (the "Act"). One of the areas the Council designated as blighted and substandard and in need of redevelopment is the "23rd and Bell Area" (referred to herein as the "Redevelopment Area").

The City further adopted a "General Redevelopment Plan for the 23rd and Bell Area" (the "Master Plan"). A copy of the Master Plan is attached hereto as Exhibit "A" and incorporated herein. The Master Plan sets forth the goals and parameters for redevelopment projects within the Redevelopment Area. The Master Plan contemplates that the Community Development Agency of the City (the "Agency") or private developers may set forth redevelopment projects under the Act via amendments to the Master Plan.

In conformance with the Master Plan, this Redevelopment Plan submits the phased implementation of a redevelopment project in the Redevelopment Area utilizing tax increment financing ("TIF") resources for site acquisition, construction of eligible public improvements, and to remove existing and avoid future blighted and substandard conditions, as further described in this Redevelopment Plan (the "Project"). The Project contemplates the phased construction of a 9-building apartment complex consisting of approximately 216 market rate residential units primarily for residents age 55 and over, 266 surface level parking stalls, 110 garage stalls, an office for the apartment complex staff, a community room or clubhouse community room, a gazebo covered picnic area, and trail and sidewalk extensions, together with all infrastructure and other improvements necessary to support the apartment complex. Fremont Enterprises, LLC, a Nebraska Limited Liability Company, or its assigns ("Redeveloper") will undertake construction of the Project.

The Project encompasses only a portion of the real property within the Redevelopment Area. As such, the Master Plan remains subject to further amendment upon the identification of additional redevelopment projects within the Redevelopment Area.
B. Redevelopment Area; Existing Conditions

Exhibit 1 to the Master Plan sets forth the boundaries of the Redevelopment Area. The Redevelopment Area is identical to the "23rd and Bell Area," which the Council previously declared blighted and substandard and in need of redevelopment.

C. Project Site

Exhibit "B", sets forth the boundaries and existing conditions of the development area for the Project (the "Project Site"). The approximate address of the Project Site is 29th and Yager Road. The Project Site is completely within the blighted and substandard Redevelopment Area and is in need of redevelopment.

D. Conformance with the Master Plan for the Redevelopment Area and Comprehensive Plan of the City

The Master Plan sets forth the following objectives for development within the Redevelopment Area: (1) improving unsafe or unsanitary conditions relating to drainage and related infrastructure; (2) assembling and platting of land for redevelopment; (3) developing or improving other infrastructure in the area, including sidewalks, trails, streets, and utilities; and (4) undertaking façade, structural, streetscaping, or landscape improvements in the area. The Project meets the above objectives, and therefore conforms to the Master Plan.

Pursuant to the Act, the Project must also conform to and further the objectives of the City of Fremont comprehensive plan for land use and development (the "Comprehensive Plan"). The Comprehensive Plan anticipates future residential and commercial development focused primarily to the north and east of existing development within the City. Regarding the City's need for additional housing, the Comprehensive Plan provides that "the total acres of land needed for 55-year old and older adults is expected to represent approximately 40 percent of future land development." The Comprehensive Plan further sets forth the objective to "[e]xpand the use of standard economic development tools and incentives such as Tax Increment Financing."

Redeveloper intends to develop the Project Site for the purpose of constructing a 9-building apartment complex comprised of approximately 216 market rate residential units for residents age 55 and over. The Comprehensive Plan and other plans for development and expansion of the City contemplate the need for housing, with specific emphasis on housing options for residents age 55 and over. The migration of this demographic from single family homes to the apartment complex will aid the stressed housing market of affordable single family
units in the City. This Redevelopment Plan and the Project described herein further those goals and comply with the Comprehensive Plan.

Exhibit "C", shows the future land use map (showing the Redevelopment Area and surrounding areas) included within the Comprehensive Plan. The map sets forth a "Commercial" designation for future use of the Redevelopment Area. As part of the Project, and due to the lack of commercial development in the area, the City intends to amend the future use map to set forth a residential designation for the Project Site.

E. Project Overview

The Project Site is directly west of North Yager Road, north of East 29th Street and south of East 32nd Street. The Project Site is approximately 10.46 acres. The Project Site was improved for development in 2004-2006, but has remained vacant due to the extraordinary costs of development specific to the area detailed below. The Project will consist of the phased construction of 9 buildings comprised of approximately 216 market rate residential units primarily for residents age 55 and over, 266 surface level parking stalls, 110 garages, an office for the apartment complex staff, a community room clubhouse, and a gazebo picnic area. Exhibit "D", attached hereto and incorporated herein, sets forth the proposed site plans for the Project. The Project does not constitute "workforce housing", as defined under section 18-2103(32) of the Act.

Redeveloper does not yet own the Project Site but has entered into a purchase agreement with the three current owners. Redeveloper plans to close on the Project Site shortly after approval of this Redevelopment Plan. No public acquisition of the Project Site is necessary. The Project will not displace any families or businesses.

The Project requires infrastructure improvements and other public improvements, as well as private improvements, as described in Paragraph G of this Redevelopment Plan, which are not financially feasible to undertake at one time. Completing the Project in phases will allow Redeveloper to maximize the TIF resources available for public improvements, which is necessary for the Project to succeed. Further, implementation of the Project in multiple phases will allow Redeveloper to construct the private improvements at a rate that the market can support, and to adapt subsequent phases of the Project to the changing needs of the City. The Agency and Redeveloper anticipate that Redeveloper will construct the Project in three phases consisting of the following private improvements:

"Phase One": Construction of approximately 2 apartment buildings (comprised of 48 individual units), 60 surface lot parking spaces, 2 garage buildings (comprised of 20 total parking spaces), the community room, and the office area for apartment staff.
"Phase Two": Construction of approximately 4 apartment buildings (comprised of 96 individual units), 118 surface lot parking spaces, 4 garage buildings (comprised of 40 total parking spaces), and the gazebo covered picnic area. Additionally, the City will undertake construction of the west one-half of Yager Road and the south one-half of 32nd Street immediately adjacent to the Project Site prior to the completion of Phase Two. Redeveloper will reimburse the City for one-half of its costs for such street improvements, not to exceed $375,000.

"Phase Three": Construction of approximately 3 apartment buildings (comprised of 72 individual units), 87 surface lot parking spaces, and 5 garage buildings (comprised of 50 total parking spaces).

Exhibit "D" sets forth the proposed site plans for each of the three phases. Redeveloper intends to administratively subdivide the Project Site so that the area comprising each phase is a separate tax lot (or made up of two tax lots). The "effective date" (as provided under section 18-2147 of the Act) for purposes of TIF for each phase will be determined on a lot by lot basis in order to maximize the TIF proceeds available to help finance the public improvements. While the market will determine the actual completion schedule for each phase, Redeveloper anticipates that the buildout of each phase will take approximately six to eight months for construction plus lease-up and move-in time. However, the Project requires flexibility and may require more or less time between phases.

F. Existing Conditions (All Phases)

1. Existing Land Use

The Project Site consists of vacant, undeveloped land.

2. Existing Zoning

The Project Site is currently zoned UR (Urban Residential). Multi-family dwellings are a conditional use in UR zoning districts. Part of the Project Site lies outside the City's corporate limits and is being conditionally annexed pending successful closing on the Project by the Developer.

3. Existing Public Improvements

The streets adjacent to the Project Site (East 29th Street, East 32nd Street, and North Yager Road) provide access to the Project Site. Water and sewer infrastructure exists in the
areas adjacent to the Project Site and Redeveloper will extend the utilities therefrom to serve the Project Site. Redeveloper will regrade and improve the drainage ditch along the south side of 32nd to prevent back up onto the roadway and continuous flow to the crossing at Yager.

G. Proposed Redevelopment (All Phases)

1. Public Improvements

The Project will require infrastructure improvements and other public improvements. These improvements will include, but are not limited to:

a. Public Access; Traffic Flow, Street Layouts and Street Grades

The public streets adjacent to the Project Site (East 29th Street, East 32nd Street, and North Yager Road) provide access to the Project Site. As shown on the site plans in Exhibit "D", Redeveloper will construct internal private roadways, parking lots and sidewalks for use by the apartment's employees, residents and guests. The City will undertake redevelopment of the west one-half of Yager Road and the south one-half of 32nd Street immediately adjacent to the Project Site pursuant to a separate subdivision agreement between Redeveloper and the City. Redeveloper will reimburse the City for one-half of its costs for such street improvements, not to exceed $375,000. Redeveloper will cooperate with the City to address any issues related to increased traffic flow and other street improvement issues created by the Project. All streets, sidewalks and other infrastructure constructed by Redeveloper will be subject to review and approval by the City's engineer or other designee of the City.

b. Construction of Electrical, Water and Sewer Improvements.

Redeveloper will construct or extend water and sanitary sewer systems to provide appropriate service to the Project Site. The Project Site is currently undeveloped and will require grading to provide effective drainage throughout the area. The Project Site requires filling and grading to properly drain the ground water runoff and provide appropriate grading levels to erect the apartment complex. Redeveloper also anticipates the construction of electric utilities extending to the residences within the Project Site.

c. Other incidental improvements

The topsoil within the Project Site requires considerable mitigation prior to infill. Additionally, due to the soil makeup, all surface-level concrete within the Project Site must be at least 7 inches thick and strengthened by steel reinforcing bars, rather than a normal thickness of 3.5 inches. Such costs are extraordinary costs incurred by Redeveloper and greatly contribute to
the Project Site's vacant, blighted and substandard condition. Additionally, the City requires Redeveloper to construct extensions to trails and sidewalks in the area, upgrade the landscaping, and construct amenities such as the picnic area to prevent the recurrence of substandard and blighted conditions. The extraordinary expenses detailed herein exceed the minimum building and design standards in the City and aim to prevent the recurrence of substandard and blighted conditions; such costs are therefore included as eligible costs under Exhibit "F".

d. Additional public facilities or utilities

Other than the construction or extension of the utilities and infrastructure detailed above, Redeveloper and the City anticipate that the existing public facilities and utilities can adequately meet the demands of the Project.

e. Property Acquisition, Demolition and Disposal

No public acquisition of private property or relocation of families or businesses is necessary to accomplish the Project. Redeveloper intends to purchase the Project Site from the current owner subsequent to approval of this Redevelopment Plan. Pursuant to a purchase agreement between Redeveloper and the current owner, the sale price of the Project Site will be $1,150,000 plus additional soft costs.

f. Population Density

The Project Site currently sits undeveloped and vacant. The Project will increase population density in the area. However, the City desires an increase in population density in the area to provide additional housing in the City. Adequate public infrastructure exists to accommodate the increase in population density anticipated in relation to the Project.

g. Land Coverage

Land coverage for the Project Site includes approximately 10.46 acres of undeveloped land. The Project contemplates the construction of a 9-building apartment complex consisting of approximately 216 market rate residential units primarily for residents age 55 and over, 266 surface level parking stalls, 110 garages, an office for the apartment complex staff, a clubhouse, and a picnic area, together with all infrastructure and other improvements necessary to support the apartment complex, as shown on the site plans set forth in Exhibit "D". The Project will comply with all applicable land coverage ratios required by the City.

h. Parking
The Project includes the construction of 266 surface level parking stalls and 110 garages. All parking facilities will comply with the City's zoning ordinance.

g. **Zoning, Building Code and Ordinance**

The Project Site is zoned as UR (Urban Residential). Multi-family dwellings are a conditional use in UR zoning districts. Accordingly, Redeveloper will pursue a conditional use permit allowing multi-family residential use within the Project Site. Redeveloper and the City further anticipate that the City will annex the northern half of the Project Site so that the entire Project Site is within the City's corporate limits. Redeveloper will be responsible for all zoning, building code, or ordinance changes that are necessary for the Project.

3. **Private Improvements**

Private improvements for the Project include the construction of a 9-building apartment complex consisting of approximately 216 market rate residential units primarily for residents age 55 and over, 110 garages, an office for the apartment complex staff, and a clubhouse. Redeveloper or other builders taking reconveyance from Redeveloper will construct the private improvements. Paragraphs E and I of this Redevelopment Plan details the anticipated implementation of the private improvements.

H. **Project Costs (All Phases)**

The total estimated cost of the Project is $19,847,827. A breakdown of the estimated cost of the Project is attached and incorporated herein as Exhibit "E". The estimated costs of the Project are preliminary and subject to change.

I. **Implementation**

Redeveloper is unable to undertake the construction in Phase One of the Project without some assurance that Redeveloper can undertake Phase Two and Phase Three. Redeveloper would not complete the initial public improvements for Phase One but-for the approval of the entire Project and, likewise, the subsequent phases of the Project would not occur but-for these initial public improvements. Accordingly, this Redevelopment Plan contemplates that the costs and expenses of all the public improvements for the Project are eligible TIF uses for each phase of the Project. As such, Redeveloper may apply the TIF Revenues (defined below) generated from each phase of the Project toward the payment of the eligible expenses of the entire Project, if necessary, provided there is no duplication of expenses between phases.
The Project's construction schedule will depend on the market demand and availability of construction materials and services, but based upon the current housing market and the need for housing in the City, Redeveloper anticipates the following construction schedule for the Project:

**Phase One:**
- Construction start date 7/15/2019
- Construction completion 12/31/2019

**Phase Two:**
- Construction start date 1/1/2020
- Construction completion 12/31/2020

**Phase Three:**
- Construction start date 1/1/2021
- Construction completion 12/31/2021

The anticipated start dates and completion dates are preliminary and subject to change based upon market conditions, availability of materials, workforce availability and other extraneous factors.

Upon the completion of each phase, Redeveloper will submit to the Agency an amendment to the redevelopment contract on a form prescribed by the Agency. Each amendment to the redevelopment contract shall set forth the "effective date" (as defined in the Act) for the pertinent phase and must be submitted to the Agency on or before June 30 of the year in which taxes are to be divided for such phase.

**J. Financing**

The City and the Agency contemplate the use of TIF for the Project. Section 18-2147 of the Act authorizes the use of TIF. It provides that any ad valorem tax levied upon real property, or any portion thereof, in a redevelopment project shall be divided, for a period not to exceed fifteen years after the effective date as identified in the redevelopment contract, or amendment thereof, or in the resolution(s) of the authority authorizing the issuance of bonds pursuant to the Act, as follows:

(a) That portion of the ad valorem tax the levy produces at the rate fixed each year by or for each public body upon the redevelopment project valuation shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body (“Base Tax Amount”); and
(b) That portion of the ad valorem tax on real property, as provided in the redevelopment contract or bond resolution, in the redevelopment project in excess of the Base Tax Amount, if any, (referred to herein as “TIF Revenues”) shall be allocated to and, when collected, paid into a special fund of the Agency to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing, in whole or in part, the redevelopment project.

With respect to the Project, Redeveloper and the Agency will conclusively set forth the actual base tax year and Base Tax Amount for each phase in the redevelopment contract, or amendment thereof, and/or the resolution authorizing the TIF Indebtedness. The Agency and Redeveloper anticipate that the effective dates will be different for each of the phases; and therefore the increment period for each phase will be different. It is further anticipated that the Agency will issue one (1) TIF bond or note for each phase (three (3) total).

Notwithstanding any provision herein to the contrary, all TIF Revenues resulting from improvements constructed/installed after the commencement of the first portion of each phase shall only be divided and allocated over the applicable 15-year increment period.

1. **Necessity of TIF**

Redeveloper advised and warranted to the City that it would not be economically feasible to develop the Project without TIF. According to Redeveloper, the cost to construct the apartment complex is greater than the Project's as-completed fair market value. Further, without the assistance of TIF, the return on investment for the Project would be too low to attract prudent investors given the risks involved in preparing the site, constructing the apartment complex, stabilizing the occupancy rates in the apartments, and other business risks. Specifically, the extraordinary costs associated with soil mitigation, storm water facilities, strengthened or modified building components, and thickened reinforced pavement make the Project cost prohibitive without the assistance of TIF. Without TIF, the Project yields a return-on-investment of approximately 4 percent. With TIF, the Project yields a return-on-investment of 11.39% percent. A return-on-investment below 10 percent would not overcome the risk factors to attract the investment and financing needed to build and maintain the Project. Thus, according to the Redeveloper, an ordinarily prudent developer would not construct the Project without TIF.

Additionally, due to significant public improvement and mitigation costs, Redeveloper cannot construct the Project without the use of TIF for all phases of the Project. Construction of Phase One is not feasible without the intent to complete all the phases, and Phases Two and
Phase Three are not feasible without the use of TIF. Thus, the approval of TIF for all three phases is critical to Redeveloper's undertaking of the Project.

2. Sources and Uses of Financing

Based upon the projections in Exhibit "F", the Agency and Redeveloper contemplate issuance of three (3) TIF bonds or notes in an amount not to exceed the principal amount of $866,034 for Phase One, $1,776,033 for Phase Two, and $1,307,033 for Phase Three, each at a rate of 5.0% (the "TIF Indebtedness").

As shown on Exhibit "F", the anticipated TIF Indebtedness amount does not exceed the anticipated TIF-eligible costs for all three phases.

The total estimated cost of the Project is $19,847,827. As such, the TIF Indebtedness covers approximately one-quarter of the total cost. Redeveloper anticipates it will finance the balance of the public and private costs exceeding the TIF Indebtedness via a mix of owner's equity (20%) and traditional bank financing (51%). In addition to owner's equity, Redeveloper will pledge personal assets valued at $5,000,000 as collateral on its construction loan. Redeveloper and the Agency will provide a detailed breakdown of the TIF sources and uses in the redevelopment contract for the Project. The above figures are only projections and are subject to change as a result of market conditions and other extraneous factors.

K. Cost-Benefit Analysis

A cost-benefit analysis for the Project is attached as Exhibit "G" and incorporated herein.

Exhibits:
Exhibit A: Master Plan
Exhibit B: Project Site
Exhibit C: Future Land Use
Exhibit D: Site Plan
Exhibit E: Estimated Cost of the Project
Exhibit F: Sources and Uses of TIF
Exhibit G: Cost-Benefit Analysis
EXHIBIT "A"

Master Plan

(See attached)
EXHIBIT "B"

Project Site

Legal Description:

Lot 1, Fountain Springs Second Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Second Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Third Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 1, Fountain Springs Fourth Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Fourth Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

TOGETHER WITH

All public rights-of-way contiguous thereto.

* Subsequent to the approval of this Redevelopment Plan, Redeveloper intends to administratively subdivide the Project Site, or a portion thereof. Subsequent to said administrative subdivision, the above legal description shall be replaced with the legal description provided in the administrative subdivision of the Project Site approved by the City.
Depiction (outlined in red):
EXHIBIT "C"

Future Land Use Map
EXHIBIT "D"

Site Plan

(See attached)
* The attached estimate of construction costs for the Project are preliminary in nature and are subject to change.
EXHIBIT "F"

Sources and Uses of TIF for All Phases

SOURCES

Assumptions:

Base Tax Amount of Project Site $696,390
Post-Redevelopment Valuation $19,656,375
Tax Levy 2.0845580
TIF Revenues/Year (average) $389,401
Total Potential TIF Revenues $5,841,015
Phase One TIF Note Amount $866,034
Phase Two TIF Note Amount $1,776,033
Phase Three TIF Note Amount $1,307,033
Interest Rate on TIF Notes 5.0%

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* The above "sources" and "uses" for the Project are estimates based upon the assumptions of Redeveloper and are subject to change.
EXHIBIT "G"

Cost-Benefit Analysis
(Pursuant to Neb. Rev. Stat. § 18-2113)

The cost-benefit analysis for the Project, described in the attached Redevelopment Plan, which will utilize funds authorized by section18-2147 of the Act, is below:

1. **Tax shifts resulting from the approval of the use of funds pursuant to Section 18-2147:**

   The City and Dodge County will continue to allocate the taxes generated by the base value of the Project Site between the relevant taxing jurisdictions pursuant to the Act. Only the incremental taxes created by the Project will be captured to pay for the project's eligible public expenditures. Since the incremental taxes would not exist without the use of TIF to support the Project, the true tax shift of the Project is a positive shift in taxes after 15 years. However, for the purposes of illustrating the incremental taxes used for TIF, the estimated 15 year tax shift for the Project is set forth below:

   **Assumptions:**

   - Base Tax Amount of Project Site: $696,390
   - Post-Redevelopment Valuation: $19,656,375
   - Tax Levy: 2.0845580
   - TIF Revenues/Year (average): $389,401
   - Total Potential TIF Revenues: $5,841,015

   **Notes:**

   The numbers above represent the aggregate of all three phases collected over the course of 17 years (i.e., Phase One: year 1 – 15; Phase Two: year 2-16; and Phase Three: year 3-17).

   The Base Tax Amount provided above is the assessed value of the Project Site in 2018.

   The projected TIF Revenues are based on assumed values and levy rates; actual amounts and rates will vary from those assumptions, and it is understood that the actual tax shift may vary materially from the projected amount. The 2018 levy rate is assumed to be the levy rate.
2. Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the Project:

a. Public infrastructure improvements and impacts:

Redeveloper will construct or extend water and sewer systems to provide appropriate service to the Project Site; and Redeveloper will fill and grade the Project Site to provide for effective surface water runoff. Redeveloper also anticipates the construction of electric utilities extending to the residences within the Project Site. It is the intent of this Redevelopment Plan that such infrastructure and site preparation are paid for by the Redeveloper and reimbursed by TIF. Other than the construction or extension of the utilities and infrastructure detailed above, Redeveloper and the City anticipate that the existing public facilities and utilities can adequately meet the demands of the Project.

b. Local Tax impacts (in addition to impacts of Tax Shifts described above):

The Project should create material tax and other public revenue for the City and other local taxing jurisdictions. While the use of TIF will defer receipt of a majority of new ad valorem real property taxes generated by the Project, the Project should generate immediate revenues for the City. The Project and new residences therein will require and pay for City services. Additionally, the City will benefit from the sales tax charged on materials used to construct the Project. Redeveloper and the Agency do not anticipate that the Project will have any material adverse impact on such City services, but will generate revenue providing support for those services.

3. Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the Project:

Other than the management and leasing offices for the apartment complex, Agency and Redeveloper do not anticipate that any employers will locate within the Project Site. However, the Project will provide additional housing for employees in the area. The Agency and Redeveloper do not anticipate that the Project will have an adverse impact on employers and employees of firms locating or expanding within the boundaries of the area of the Project Site.

4. Impacts on other employers and employees within the City and the immediate area that is located outside of the boundaries of the area of the Project:

The Project should have a material positive impact on private sector businesses surrounding the Project Site. The Project will provide much needed housing in the community, which will benefit employers, employees, and the City in general. Further, the residences

Exhibit "G"
constructed as part of the Project should increase the need for services and products from existing businesses, such as household products and general consumer services.

The Agency and Redeveloper do not anticipate that the Project will have a negative impact on local employers. Construction of the apartment complex should create a pool of additional employees in the City and/or additional housing options for current employees.

5. Impacts on student populations of school districts within the City:

Due to the targeted demographic of the apartment complex, the Project will not result in the addition of school-aged children to the school district. The school district will not receive taxes from the residences built during the time the increased taxes are utilized to pay the TIF Indebtedness. The school district has received state aid to education in the past. Part of the school aid formula involves assessed valuation in the school district. The valuation that generates the TIF Indebtedness payments is not included in the formula and does not count against the state aid that the school district would receive. Taxes on any increase in the base value of the land will benefit the school district. After the TIF Indebtedness is paid, or at the end of the respective 15 years of division of taxes, whichever is sooner, the increased valuation from the residential construction will be available to and benefit the school district.

6. Other impacts determined by the Agency to be relevant to the consideration of costs and benefits arising from the Project:

The Project Site is blighted and contains substandard conditions that are a detriment to the City as a whole. The Project will revitalize and occupy a vacant space without negatively impacting the surrounding businesses or straining the public infrastructure. There are no other material impacts determined by the City or Agency relevant to the consideration of the cost or benefits arising from the Project. As such, the benefits of the Project outweigh the costs.
General Redevelopment Plan
for the
23rd & Bell Area
July 2014

CITY OF
FREMONT
NEBRASKA PATHFINDERS

Prepared by:
Fremont Planning Department
Purpose of the Redevelopment Plan
The purpose of this redevelopment plan is to help guide the general redevelopment of the area contained within the 23rd & Bell Blight Study. According to the Community Development Law contained within state statutes, the general redevelopment plan is geared toward establishing remedies that alleviate the conditions causing blighted and substandard conditions and thus improving the overall economic well-being of the area and community as a whole.

Legal Description of the redevelopment area
The legal description for the 23rd & Bell redevelopment area is the same as adopted in the 23rd & Bell Blight Study; which was more particularly described as:

The 23rd and Bell Street Blight area contains an estimated 219 acres located in northeast Fremont and shall be described as follows:

From the point of beginning at the west right of way of North Platte Ave and the southeast corner of Northside Block 17; thence continuing north along the west right of way of North Platte Avenue and continuing along the west property line of Lewis Addition Lots 1, 3, and 2 to the south property line of Rodamar Addition Replat 1 Lot 6; thence continuing west to the southwest corner of Rodamar Addition Replat 1 Lot 6; thence continuing north along the west property line of Rodamar Addition Replat 1 Lot 6 and Rodamar Addition Replat 1 Lot 2 to the northwest corner of Rodamar Addition Replat 1 Lot 2; thence continuing east along the north property line
of Rodmar Addition Replat 1 Lot 2 to the west right of way of North Yager Road/CR-46; thence continuing north along the west right of way of North Yager Road/CR-46 to the northeast corner of Rodmar Addition replat 1 Lot 7; thence continuing west along the north property line of Rodmar Addition replat 1 Lot 7 to the southeast corner of Fountain Springs Addition Lot 1 Block 2; thence continuing north along the east property line of Fountain Springs Addition Block 2 and Fountain Springs Addition Lot 1 to the north right of way of 29th Street; thence east along the north right of way of 29th Street to the southwest corner of Fountain Springs 2nd Lot 2; thence north along the west property line of Fountain Springs 2nd Lot 2 to the northwest corner of Fountain Springs 2nd Lot 2; thence continuing west along the north property line of Fountain Springs 2nd Lot 1 and Fountain Springs Addition Lot 1 Block 1 to the northwest corner of Fountain Springs Addition Lot 1 Block 1 and the east property line of Shallmar 6th Lot 1; thence continuing north along the east property line of east property line of Shallmar 6th Lot 1 until it intersects with the half section line of SE1/4 Section 11-Township 17-Range 8E; thence continuing along east along the half section line of the N1/2 SW1/4 Section 12-Township 17-Range 8E to the northeast corner of Fremont Technology Park Outlot B; thence continuing south along the east property line of Fremont Technology Park Outlot B to the southeast corner of Fremont Technology Park Outlot B; thence continuing west along the south property line of Fremont Technology Park to a point intersecting a line extending north from the west right of way of North Lincoln Avenue; thence continuing south along the west right of way of North Lincoln Avenue to the northeast corner of Lincoln Park Addition Lot 3; thence continuing west along the north property line of Lincoln Park Addition Lot 3 to the northwest corner of Lincoln Park Addition Lot 3; thence continuing south along the west property line of Lincoln Park Addition Lot 3 to the southwest corner of Lincoln Park Addition Lot 3; thence continuing west to the east boundary line of the W1/2 of SW1/4 of SW1/4 Section 12-Township 17-Range 8E; thence continuing south along the east boundary line of the W1/2 of SW1/4 of SW1/4 Section 12-Township 17-Range 8E to the north right of way of East 23rd Street; thence continuing east approximately 88 feet to a point intersecting a line extending north from the east right of way of North Clarman Avenue; thence continuing south across 23rd Street and the east right of way of North Clarman Avenue to the southwest corner of Fair Acres 5th Replat Lot 4; thence continuing west across North Clarman Avenue and the south boundary of Fair Acres 2nd Addition Block 5 to the east right of way of North Yager Road; thence continuing south along the east right of way of North Yager Road to a point of intersection with the south right of way of East 19th Street; thence continuing west along the south right of way of East 19th Street to the point of beginning at the west right of way of N Platte Ave and the southeast corner of Northside Block 17.

See Exhibit 1 for map and list of properties in the 23rd and Bell Street Blight area.
Background

Community Development Law, found in Sections 18-2101 through 18-2144 of the Nebraska Revised Statutes, allows a community to undertake efforts to revitalize blighted and substandard areas. The City has undertaken the preparation of this redevelopment plan with the desire to improve the social and economic well-being of the community by either introducing projects that address the conditions that contribute to blight or undertaking efforts by the private sector to alleviate such conditions through specific projects.

This redevelopment plan notes general activities and/or projects within the 23rd and Bell study area. A redevelopment project can involve a broad range of activities including:

- Disposal of property, either real or personal
- Acquisition of blighted and substandard areas
- Sale or lease of land for a variety of purposes
- Acquisition of real property to be repaired or rehabilitated
- Demolition of existing buildings, structures, public facilities, and infrastructure as well as the construction of the same as deemed essential to the preparation of sites for uses in accordance with a redevelopment plan

However, it is important to note that state statutes mandate a detailed proposal outlining a redevelopment project or activity must be submitted to the City and its redevelopment authority for evaluation prior to approval as a qualified project. This also includes a cost benefit analysis for any potential project involving Tax Increment Financing (TIF).

With regard to the comprehensive plan, it is hereby incorporated by reference. Additionally, if any conditions found in the redevelopment plan are found to be in conflict with the comprehensive plan, the provisions of the comprehensive plan shall supersede this document. Furthermore, this redevelopment plan shall not constitute an amendment of the comprehensive plan.

Outline of the Redevelopment Plan

The area included in redevelopment plan is highlighted in Exhibit 1, which is on the following page.
The area includes approximately 219 acres of land, and is a mix of residential, commercial, and light industrial uses. The blight study for this area noted that over 73% of the buildings within the redevelopment area were considered substandard due to age; with many of these structures being residential in nature. In addition, the blight study noted that almost 70% of the structures in the redevelopment area were considered blighted due to structural condition. Furthermore, the blight study notes a number of unsafe conditions relating to street layout and deteriorating infrastructure (or lack thereof).

**Potential redevelopment projects**

As specific redevelopment projects are considered for the area, multiple factors contributing the blighted and substandard conditions should be addressed. Possible activities that would improve these conditions include:

* Removal of deteriorating and/or dilapidated structures
* Renovation or rehabilitation of structures
* Improving unsafe or unsanitary conditions relating to drainage and related infrastructure
* Assembling and platting of land for redevelopment
* Developing or improving other infrastructure in the area, including sidewalks, trails, streets, and utilities
* Increased enforcement of municipal codes relating to nuisances
* Undertaking façade, structural, streetscaping, or landscape improvements in the area

**Relationship to the Comprehensive Plan**

Redevelopment activities should be in conformance with the future land use map (attached herein) as well as the comprehensive plan as a whole. Concerning the comprehensive plan, this redevelopment plan supports the recommendations regarding the improvement of existing housing stock, redevelopment of deteriorating economic areas, and improvement of facilities that enhance the overall quality of life. Because this redevelopment plan is general in nature, specific redevelopment project must be weighed against and found to be in harmony with the comprehensive plan before being undertaken.
No text content available from this image.
Site Statistics: (Approximately 11.35 Acres Total or 494,406 sf)

Roofs
- 9 buildings x 10632 sf = 95,688 sf
- 7 garages x 3224 sf = 22,568 sf
- 2 garages x 6448 sf = 12,896 sf
- 1 office x 720 sf = 720 sf

Total Roof Area: 131,872 sf

Hard Surface
- North parking lot = 60,809 sf
- South parking lot = 55,170 sf
- 6 porches x 9 buildings x 80 sf = 4,320 sf
- Sidewalks = 3,777 sf + 5,654 sf = 582 sf + 2,316 sf + 3,605 sf + 3,566 sf + 1,809 sf + 94 sf = 21,403 sf
- 2 Dumpsters x 200 sf = 400 sf

Total Hard Surface: 142,102 sf

Grass, Drainage & Pervious Surface
- 92,228 sf property size - 131,872 sf (roof) - 142,102 sf (hard surface) = 218,254 sf (44% Pervious)

Parking Facility
- 170 Garage Stalls of which 22 are HC
- 286 Surface Stalls of which 19 are HC
ENLARGED UNIT PLAN - TYPE 1 UNIT

ENLARGED UNIT PLAN - TYPE 1A
(TYPE "A" DWELLING UNIT)

ENLARGED UNIT PLAN - TYPE 1B
(TYPE "B" DWELLING UNIT)

ENLARGED UNIT PLAN - TYPE 2 UNIT

KITCHEN
DINING AREA
LIVING ROOM
BEDROOM
TOILET

BEDROOM
TOILET

BEDROOM - 1
BEDROOM - 2

GENERAL NOTES
## Project Construction Cost Estimate

**FOUNTAIN SPRINGS 50 & OVER WORKFORCE APARTMENTS PROJECT DATA**

**BRIAN M. ZUBERT OR ASSIGN(S)**

**MARKET RATE 50 & OVER AND PROFESSIONALS**

**20TH STREET AND NORTH YAGER RD.**

**FREMONT, DODGE COUNTY, NEBRASKA  68025**

**INCOMPLETE TO BE UPDATED UPON CONSTRUCTION BID PHASE OF PROJECT**

**PRESENTATION BELOW REPRESENTS VARIOUS OVERALL EXPENSES BROKEN TO ONE 24 UNIT BUILDING**

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<th>PHASE DESCRIPTION</th>
<th>CONTRACTOR / WORK DETAIL</th>
<th>GROSS PRICE OR AREA</th>
<th>ORIGINAL BID AMOUNT PER BUILDING</th>
<th>CHANGE ORDERS</th>
<th>TOTAL</th>
<th>UNIT COST</th>
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May 10, 2019

DELIVERED VIA ELECTRONIC MAIL

Brian Newton  
City of Fremont  
City Administrator  
400 E Military Ave  
Fremont, NE 68025  
brian.newton@fremontne.gov

Re:  Fountain Springs Apartments TIF Project

Dear Brian:

This firm represents Fremont Enterprises, LLC, with respect to the above-referenced redevelopment project in the City of Fremont, Nebraska. Per your request, enclosed with this correspondence is a copy of the redevelopment plan for the City’s consideration. This letter and the enclosed redevelopment plan shall act as redeveloper’s TIF application to the City. Please confirm that upon receipt of these materials by May 10, 2019, the Planning Commission will consider the redevelopment plan at its June 17, 2019, regularly scheduled meeting, and the City Council will consider the redevelopment plan at its July 9, 2019, regularly scheduled meeting.

Please let me know if you have any questions or requests for additional materials. We look forward to working with the City on this project.

Very truly yours,

Michael D. Sands

cc: Brian Zubert; Robert Fields

Enclosure
July 31, 2019

To: Honorable Mayor Scott Getzschman  
Fremont City Council  
Brian Newton, City Administrator

During recent Planning Commission and City Council meetings the School District's position in regard to the utilization of Tax Increment Financing (TIF) has been discussed on both sides of the issue of economic development and residential growth in Fremont. At a recent City Council meeting, consideration for a 55+ apartment building development in Fountain Springs and the utilization of TIF was discussed.

In January of 2017, the Board of Education passed a resolution regarding the utilization of TIF for residential development (see next page). Since that time we have been consistent with our message in this regard. We have had discussions with at least four developers related to the District's position relative to TIF for residential development and have voiced our opposition to the City, County, Chamber and GFDC. The only exceptions to this very strong opposition have been in cases of 55+ housing development and the redevelopment of the 505 Building on Main Street.

Residential development for people who are 55+ rarely house students and meets a need the City continues to struggle with in finding available housing for this demographic of population. In our discussions with developers, for the most part, they have been understanding of the District's position in regard to residential development for people under 55 years of age and have moved on with their projects without the use of TIF.

As the City continues to grow and develop there will certainly be additional developers interested in utilizing TIF for residential development. This letter will serve as a statement of the Fremont School District's opposition to utilizing this financing tool for residential development designated for people under 55 years of age.

Respectfully submitted,

[Signature]
Mark Shepard  
Superintendent  
Fremont Public Schools
WHEREAS, the Fremont Public Schools Board of Education recognizes the value of re-development of commercial and industrial sites within the community to bolster the economy and broaden the tax base; and,

WHEREAS, the Fremont City Council has elected to allow private entities to utilize Tax Increment Financing under the “Community Development Law” (§§ 18-2101 to 18-2144, R.R.S.) to strengthen their financial packages for re-development; and,

WHEREAS, the Community Development Laws and local ordinances are being followed in pursuit of such re-development.

NOW, THEREFORE BE IT RESOLVED, that the Board of Education of Dodge County School District No. 1, a/k/a Fremont Public Schools understands the value of the use of Tax Increment Financing as a tool for re-development for commercial and industrial sites; provided that such re-development does not include the expansion of residential dwelling units within such commercial and industrial re-development sites since the expansion of residential dwelling units without the increased taxable property values could have a detrimental effect on the District's finances.

BE IT FURTHER RESOLVED, that the Board of Education of Dodge County School District No. 1, a/k/a Fremont Public Schools does not support the use of Tax Increment Financing for development or re-development of residential dwelling sites or areas due to the possible negative effects of such utilization on District financing and housing needs.
RESOLUTION NO. 2019-117

A RESOLUTION OF THE CITY OF FREMONT, NEBRASKA, AUTHORIZING AN AMENDMENT TO THE 23rd AND BELL REDEVELOPMENT PLAN TO SPECIFY THE FOUNTAIN SPRINGS 55+ MULTI-FAMILY PROJECT FOR PROPERTY LOCATED BETWEEN 29th AND 32nd STREETS WEST OF YAGER ROAD.

WHEREAS, the City Council for the City of Fremont, Nebraska, seeks to promote the health, safety, morals, and the general welfare of the community; and

WHEREAS, a request for approval of an amendment to the 23rd and Bell Redevelopment Plan to specify the Fountain Springs 55+ Multi-family complex was filed with the offices of the Department of Planning, City of Fremont (City); and

WHEREAS, the property is legally described as Lots 1 and 2, Fountain Springs Subdivision 2nd Addition; Lot 2 Fountain Springs Subdivision 3rd Addition; Lots 1 and 2 Fountain Springs Subdivision 4th Addition;

WHEREAS, the City has determined that the subject property is currently zoned UR, Urban Residential;

WHEREAS, a public hearing on the proposed amendment to the 23 & Bell Redevelopment Plan was held by the Planning Commission on July 8, 2019, by the Community Development Agency on July 9, 2019, and by the City Council on August 13, 2019; and

WHEREAS, the City has determined that such proceedings were in compliance with Neb. Rev. Stat. §18-2112 to 18-2117 with regard to redevelopment plans;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA, the amendment to the 23rd and Bell Street Redevelopment Plan to adopt the Fountain Springs 55+ multi-family plan is hereby approved.

PASSED AND APPROVED THIS THE 13th DAY OF AUGUST, 2019.

Scott Getzschman, Mayor

ATTEST:

Tyler Ficken, City Clerk
STAFF REPORT

To: Honorable Mayor and Members of City Council
From: Jennifer Dam, Planning Director
Date: August 13, 2019
Subject: Approval of Redevelopment Agreement with Fremont Enterprises, LLC.

Recommendation: Approval of the Redevelopment Agreement for the Fountain Springs 55+ Apartments Redevelopment Plan

Background:

This matter involves the approval of a Redevelopment Agreement proposed for execution by the City of Fremont (“CDA”) and Fremont Enterprises, LLC (“FE”).

A. Project. The project involves the construction of a 216 apartment units in a 9 building complex for individuals aged 55 and over, garages, parking lots, 110 garage stalls, an office, a community room or clubhouse community room, a gazebo, trail and sidewalk extensions, bicycle parking, storm water facilities and all infrastructure and other improvements necessary to support the project. The project is anticipated to be constructed in 3 phases. This facility will enable the Redeveloper to add housing primarily for those aged 55 and over which strongly needed in the City of Fremont.

B. Tax Increment Financing. The Redevelopment Agreement involves the use of tax increment financing to pay for those eligible expenditures under the Nebraska Community Development Law. It is projected that the new facility, based upon comparable properties, will have an estimated assessed valuation of nearly nineteen million six hundred sixty thousand dollars ($19,660,000). The incremental taxes from such development can be captured by the CDA for a period not to exceed fifteen (15) years for each phase of the project. The Redevelopment Agreement authorizes the CDA to issue a Tax Increment Financing in three Notes in the amounts of $866,034; $1,776,033 and $1,307,033 (totaling $3,949,100) which will be repaid by the incremental taxes from the project. The Note is not the general obligation of the CDA nor the City of Fremont, Nebraska. The Redeveloper is responsible for any shortfalls. The tax increment financing is intended to reimburse the Redeveloper for those eligible expenditures which, according to the Redevelopment Agreement, include site acquisition cost, site preparation cost, utility cost, design expenses and landscaping.

C. Approval. The Redevelopment Agreement is consistent with the Redevelopment Plan adopted by the City Council of the City of Fremont on July 29, 2014, pursuant to Resolution No. 2014-137, and the Amendment to Plan approved on August 13, 2019, pursuant to Resolution No. 2019-117.

Fiscal Impact: A $9,660,000 project will be constructed. Taxes in the amount of approximately $3,949,100 will be diverted to the project until the improvement expenses are paid, or for a period of fifteen years, whichever comes first. Additionally, infrastructure improvements serving the project and improvements to streets will be constructed by the developer.
REDEVELOPMENT CONTRACT

(THE FOUNTAIN SPRINGS REDEVELOPMENT PROJECT)

This Redevelopment Contract (“Redevelopment Contract”) is made and entered into as of the 13th day of August, 2019, by and between the Mayor and City Council of the City of Fremont, Nebraska, as the governing body of the Community Development Agency of the City of Fremont, Nebraska (the “City”) and Fremont Enterprises, LLC, a Nebraska limited liability company (“Redeveloper”). The City and/or Redeveloper may be referred to hereinafter as the “Party” or collectively as the “Parties”.

WITNESSETH:

WHEREAS, the Mayor and Council of the City adopted and approved a plan entitled “Amendment to the General Redevelopment Plan for the 23rd and Bell Area (Fountain Springs Apartments Redevelopment Project)”, as may be amended or supplemented (the “Plan”), for the real estate described on Exhibit “A” hereto attached and by such reference incorporated herein (the “Redevelopment Project Area”), which is located in the City of Fremont, Nebraska, and which the Mayor and Council of the City previously declared blighted and substandard or otherwise eligible for redevelopment; and

WHEREAS, the City has encouraged and induced Redeveloper to engage in certain development activities and construct improvements in the Redevelopment Project Area and it is not economically feasible for Redeveloper to incur the substantial investment necessary for such redevelopment of the Redevelopment Project Area without the assistance of tax-increment financing (“TIF”) provided by the City to Redeveloper in this Redevelopment Contract; and

WHEREAS, pursuant to the Plan, Redeveloper is undertaking the phased construction of a 9-building apartment complex consisting of approximately 216 market rate residential units primarily for residents age 55 and over, 266 surface level parking stalls, 110 garage stalls, an office for the apartment complex staff, a community room or clubhouse community room, a gazebo covered picnic area, trail and sidewalk extensions, bicycle parking, and storm water facilities, together with all infrastructure and other improvements necessary to support the apartment complex (collectively, said improvements are referred to in this Redevelopment Contract as the “Redevelopment Project”); and

WHEREAS, the real property within the Redevelopment Project Area, other than easements for public utilities, is or will be privately owned by Redeveloper; and

WHEREAS, the City proposes to authorize and hereby does authorize upon the execution of this Redevelopment Contract, the issuance of its tax increment revenue notes for each phase of the Redevelopment Project (singularly, the “TIF Note”, and collectively, the "TIF Notes"), to provide for eligible costs of the Redevelopment Project; and

WHEREAS, the Redevelopment Project will occur in phases, as shown on the site plan attached as Exhibit "B", attached hereto and incorporated herein; and
WHEREAS, Redeveloper seeks the assistance of the City for the costs of the eligible improvements for the Redevelopment Project and therefore is willing to agree to the conditions herein set forth as an inducement to the City to issue the TIF Notes as provided in the Resolution;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the City and Redeveloper do hereby agree, covenant and warrant as follows:

Section 1. **Representations, Warranties and Covenants of Redeveloper.**

Redeveloper hereby represents, covenants and warrants as follows:

(a) Redeveloper is a Nebraska limited liability company duly organized and existing under the laws of the State of Nebraska, is not in violation of any provisions of its Articles of Organization or operating agreement, is authorized to enter into and perform its obligations under this Redevelopment Contract and, to the best of the knowledge of Redeveloper, is not in violation of the laws of the State of Nebraska.

(b) Throughout the term of this Redevelopment Contract, Redeveloper will reasonably endeavor to construct, operate and maintain the Redevelopment Project in accordance with the terms of this Redevelopment Contract, or amendment thereof, and all applicable local, state and federal laws and regulations (including, without limitation, environmental, zoning, building code and public health laws and regulations). Throughout the term of this Redevelopment Contract and subject to the provisions of Section 20 of this Redevelopment Contract, in the event of any casualty damage to the Redevelopment Project, as and to the extent owned by Redeveloper, Redeveloper agrees to repair and reconstruct such damaged portion or portions of the Redevelopment Project to the extent covered by insurance.

(c) Redeveloper intends to complete the first phase of the Redevelopment Project ("Phase One") on or before December 31, 2019.

(d) Redeveloper intends to complete the second phase of the Redevelopment Project ("Phase Two") on or before December 31, 2020.

(e) Redeveloper intends to complete the third phase of the Redevelopment Project ("Phase Three") on or before December 31, 2021.

(f) Redeveloper estimates that the total cost of the Redevelopment Project will be approximately $19,847,826.

(g) Redeveloper has not received notices or communications from any local, state or federal official or body that the activities of Redeveloper respecting the
Redevelopment Project Area or the construction of the Redevelopment Project thereon may be or will be in violation of any law or regulation.

(h) Redeveloper will use its best efforts to obtain or to cause its agents to obtain, in a timely manner, all required permits, licenses and approvals and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met for the Redevelopment Project to be lawfully constructed, occupied or operated.

(i) The execution and delivery of this Redevelopment Contract, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Redevelopment Contract are not prevented or limited by and will not conflict with or result in a breach (i) of any provision of any evidence of indebtedness, agreement or instrument of whatever nature to which Redeveloper is now a Party or by which it is bound; or (ii) of any past, pending or threatened litigation, court order, or administrative proceeding, by which Redeveloper is or might become bound.

(j) Redeveloper acknowledges and agrees that the City shall not be obligated to pay any costs related to the Redevelopment Project other than costs to be paid from available TIF Revenues (defined below), if any, and Redeveloper hereby undertakes and agrees to pay any and all such cost. All costs (both public and private) of the Redevelopment Project shall be paid in full and there are and shall be no construction liens unpaid against the Redevelopment Project Area or any of the improvements thereon. Redeveloper agrees to provide for the construction of both the Redevelopment Project public and private improvements located within the Redevelopment Project Area as described in the Plan or as described in this Redevelopment Contract, except to the extent that the City otherwise agrees by separate written agreement with Redeveloper.

(k) Redeveloper agrees and covenants for itself, its successors and assigns that as long as the TIF Notes are outstanding, it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Redevelopment Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Redevelopment Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Redevelopment Project.

(l) Redeveloper agrees that any contractor providing services related to the Redevelopment Project will utilize the federal immigration verification system, as defined in Section 4-114, Neb. Rev. Stat. 2012, to determine the work eligibility
status of new employees physically performing services on the Redevelopment Project.

(m) Redeveloper owns or has contracted to purchase the Redevelopment Project Area, in fee simple and free from any liens, encumbrances, or restrictions which would prevent the performance of this Redevelopment Contract by Redeveloper.

(n) Any general contractor chosen by Redeveloper or Redeveloper itself shall obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors’ general liability and completed operations of at least $1,000,000 per occurrence and $2,000,000 in the aggregate, and a penal bond as required by the Act and section 9 of this Redevelopment Contract, as applicable. The City and Redeveloper shall be named as additional insureds. Any contractor chosen by Redeveloper or Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Redevelopment Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include “All Risk” insurance for physical loss or damage. The contractor with respect to any specific contract or Redeveloper shall also carry insurance on all stored materials. The contractor or Redeveloper, as the case may be, shall furnish the City with a certificate of insurance evidencing policies as required above upon written request therefor by the City. Such certificates shall state that the insurance companies shall give the City prior written notice in the event of cancellation of or material change in any of the policies.

(o) At all times during the term of this Redevelopment Contract, Redeveloper shall maintain policies insuring the improvements located within the Redevelopment Project Area in an amount equal to at least ninety percent (90%) of their full insurable value.

(p) Redeveloper shall market the residences within the Redevelopment Project exclusively to tenants with at least one permanent resident that is fifty-five (55) years of age or older and prohibit children (18 years old and younger) from permanent residency within the Redevelopment Project; provided that such restrictions do not conflict with local, state or federal law, including, but not limited to, Title VIII of the Civil Rights Act of 1968 ("Fair Housing Act"), as amended by the Housing for Older Persons Act of 1995 ("HOPA"), as may be amended or supplemented. In the event the Fair Housing Act or HOPA is amended to make such laws less restrictive, Redeveloper shall comply with the standards of the Fair Housing Act and/or HOPA as of the date of this Redevelopment Contract; provided that such compliance is not in violation of any local, state or federal law.

(q) Prior to entering into any residential lease for a residential unit within the Redevelopment Project, Redeveloper shall implement application, leasing and auditing policies to ensure that occupancy of the dwelling units prohibits
permanent occupancy of children (18 years old and younger) and meets the standards for 55 and over housing under the Fair Housing Act and HOPA. As part of such policies, Redeveloper shall, at least every two (2) years, require all tenants to certify and provide proof via state or federally-issued identification the identity and age of all permanent residences residing in each dwelling unit within the Redevelopment Project ("Age Certifications"). The City, at its sole cost and exclusive discretion, may conduct a once-yearly audit of the Age Certifications to ensure Redeveloper's compliance with subsections (p) and (q) of this Section 1.

Section 2.  Incorporation of Plan; Phasing.

This Redevelopment Contract hereby incorporates the Plan by this reference. The City and Redeveloper anticipate that Redeveloper will construct the Redevelopment Project in three (3) phases. The Parties anticipate that one (1) note will be issued for each Phase (three (3) notes total). Each Phase of the Redevelopment Project will specifically identify the specific lot or lots within the Redevelopment Project Area that will be developed in that Phase. Redeveloper and the City anticipate that such lots will be created via administrative consolidation and subdivision of the existing tax parcels within the Redevelopment Project Area following the execution of this Redevelopment Contract. Each Phase will have a different "effective date" (as defined in the Act) for the division of ad valorem taxes along with a new increment period. The increment for each Phase will end after expiration of the applicable 15 year period under the Act (for such Phase) or at the maturity date of the TIF Note for that Phase, whichever occurs first. The applicable effective dates will be established by Redevelopment Contract Amendments (defined below).

In accordance with Section 18-2147 of the Act, the City hereby provides that any ad valorem tax on any lot or lots located in the Redevelopment Project Area which is/are properly identified from time to time by the Redeveloper (such Lot or Lots being referred to herein as a “Phase”) for the benefit of any public body be divided as set forth below. The Redeveloper shall identify such lot or lots in the form of amendment attached hereto as Exhibit “D” (each, a “Redevelopment Contract Amendment”). The applicable ad valorem tax shall be divided for a period of fifteen (15) years (for each Phase) from the effective date set forth in the applicable Redevelopment Contract Amendment, consistent with the Redevelopment Plan.

Provided that Redeveloper is then in compliance with the terms and conditions of this Redevelopment Contract and applicable law, the City shall be obligated to execute the appropriate Redevelopment Contract Amendments and otherwise comply with the terms of this Section for the capture of the tax increment for the applicable portion of the Redevelopment Project Area. Specifically, provided a Redevelopment Contract Amendment is delivered to the City no later than July 1 of the calendar year of the effective date of such Phase (or later if allowed in the sole discretion of the City; but in no event later than July 20th of such year), the City shall: (a) execute the Redevelopment Contract Amendment, and (b) file before August 1 of such year a “Notice to Divide Tax for Community Redevelopment Project” for such Phase with the office of the Dodge County Treasurer and Dodge County Assessor, without requirement of additional hearings or public notice.
Section 3. **Collection of TIF Revenues and Issuance of TIF Notes.**

To provide for payment of some of the costs of the Redevelopment Project that are eligible for reimbursement under the Act ("Eligible Costs"), as set forth in the Plan and this Redevelopment Contract, as described in Exhibit "C", attached hereto and incorporated herein, the City shall proceed to issue three (3) TIF Notes in the principal amount of $866,034 for Phase One, $1,776,033 for Phase Two, and $1,307,033 for Phase Three, each at a rate of 5.0%, in the form attached hereto and incorporated herein as Exhibit "E". In consideration of Redeveloper undertaking the Redevelopment Project, the City shall issue the TIF Note for Phase One to Redeveloper no earlier than thirty (30) days after the execution of this Redevelopment Contract, and no later than sixty (60) days following the execution of this Redevelopment Contract. The TIF Notes for Phase Two and Phase Three shall be issued no earlier than thirty (30) days after the execution of a Redevelopment Contract Amendment for such Phase, and no later than sixty (60) days following the execution of a Redevelopment Contract Amendment for such Phase.

The TIF Notes shall constitute a limited obligation of the City payable exclusively from that portion of the incremental ad valorem real estate taxes generated from the Redevelopment Project pursuant to section 18-2147 of the Act (the "TIF Revenues") and collected for a period not to exceed fifteen (15) years from the effective date of each Phase. Upon receipt, the City shall deposit the TIF Revenues with the Treasurer of the City, and the Treasurer shall place the TIF Revenues in a special fund established solely to make payments on each TIF Note (the "TIF Fund"). On the dates set forth in each TIF Note, or such other dates that the TIF Revenues become available, the Treasurer shall disburse the TIF Revenues collected and available in the TIF Fund to Redeveloper as reimbursement of the Eligible Costs, to the extent paid by Redeveloper, as evidenced by paid invoices or other evidence acceptable to the City; each such reimbursement shall be and constitute a grant to Redeveloper made under the terms of this Redevelopment Contract and the Act. Unless otherwise determined appropriate by the City, the TIF Notes shall be issued on the basis of interest which is includable in income for both federal and Nebraska State income taxes.

The City and Redeveloper agree that Redeveloper is unable to undertake the construction in Phase One of the Redevelopment Project without some assurance that Redeveloper can undertake Phase Two and Phase Three. Redeveloper would not complete the initial public improvements for Phase One but-for the approval of the entire Redevelopment Project and, likewise, the subsequent phases of the Redevelopment Project would not occur but-for these initial public improvements. Accordingly, this Redevelopment Contract contemplates that the costs and expenses of all the public improvements for the Redevelopment Project are Eligible Costs for each phase of the Redevelopment Project. As such, Redeveloper may apply the payments toward the TIF Note generated from each Phase of the Redevelopment Project toward the payment of the Eligible Costs of the entire Redevelopment Project, if necessary, provided there is no duplication of expenses.

Section 4. **Covenants With Respect to Taxation of Redevelopment Project.**

Redeveloper agrees with respect to the Redevelopment Project as follows:
Until the termination of this Redevelopment Contract (as described in Section 18 hereof), the Redevelopment Project shall be operated for the use substantially similar to that contemplated in the Plan and no sale or conveyance of such property shall be made to any person or entity for ownership or use which would cause the real property within the Redevelopment Project Area to be eligible for exemption from ad valorem taxes under Section 77-202 R.R.S. Neb. 2009, as now existing or hereafter amended, or any successor provision thereto, and that it will not make application for any structure, or any portion thereof, to be taxed separately from the underlying land of any lot.

Redeveloper intends to create an aggregate taxable real property valuation of the Redevelopment Project Area of $19,656,375 by January 1, 2022, comprised of a $4,368,000 valuation for Phase One, a $8,736,000 valuation for Phase Two, and a $6,552,375 valuation for Phase Three (individually and collectively, the "Minimum Valuation"). During the period that any TIF Note is outstanding, Redeveloper, its successors and assigns, including subsequent purchasers of land within the Redevelopment Project Area, will not protest a real estate property valuation, as determined by the appropriate assessing and taxing officials of Dodge County, Nebraska, for purposes of local ad valorem real estate taxes at or below the Minimum Valuation; provided that if the aggregate real property valuation of the Redevelopment Project Area exceeds the Minimum Valuation, Redeveloper may protest such valuation down to, but not below, the Minimum Valuation.

If, during the period of this Redevelopment Contract and after the filing of a notice to divide, a portion of the Redevelopment Project Area is assessed at less than the Minimum Valuation, Redeveloper agrees to defer receipt of any shortfall in TIF Revenues caused thereby. If Redeveloper is required to defer the receipt of any such shortfall amounts, Redeveloper shall be entitled to receive reimbursement of any such shortfall payment to the extent incremental ad valorem taxes later become available during the fifteen (15) year period prescribed by the Act (for each Phase) in an amount in excess of the amount necessary to meet the current debt service payments. If Redeveloper has monetized one or more of the TIF Notes by pledging it to its lender, Redeveloper shall solely be responsible for all payments due to such lender regardless of a shortfall. Redeveloper shall forgive any shortfall amounts not reimbursed at maturity of the TIF Notes.

Redeveloper, its successors and assigns, including subsequent purchasers of land within the Redevelopment Project Area, further agree as follows:

(i) to pay all local ad valorem real estate taxes for the Redevelopment Project Area as levied and assessed before the same become delinquent; and

(ii) not to seek any administrative review or judicial review of the applicability or validity of any tax statute relating to taxation of the
Redevelopment Project or to raise such inapplicability or invalidity as a defense in any administrative or judicial proceedings; and

(iii) not to seek any tax deferral or tax abatement with respect to local ad valorem taxes, either as presently or prospectively authorized under any law of the State of Nebraska or federal law with respect to the Redevelopment Project; and

(iv) to pay or cause to be paid, when due and before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all water and sewer rates and charges, occupancy tax, special assessments and other governmental levies and charges which are assessed, levied, confirmed, imposed or become payable with respect to the Redevelopment Project; provided, however, that any special assessments levied for water, sewer or paving improvements shall be permitted to be paid as the same fall delinquent and may bear interest from the date of levy or other appropriate date set by the levying body; and

(v) to retain copies of all supporting documents (as defined under section 18-2119(4) of the Act) actually generated and received by redeveloper in relation to the Redevelopment Project or Plan until the expiration of three years following the end of the last fiscal year in which ad valorem taxes were divided in relation to the Redevelopment Project.

Section 5. Release and Indemnification.

Redeveloper hereby releases from and covenants and agrees that the City, together with its governing body, officers, agents, including their independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purpose of this Section 4, collectively the “Indemnified Parties”) shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect arising from the Redevelopment Project or within the Redevelopment Project Area. Provided, however, such release shall not be deemed to include such liability actions as arise directly out of the willful misconduct of the City.

Additionally, the Indemnified Parties shall not have any pecuniary obligation or monetary liability under this Redevelopment Contract. The obligation of the Indemnified Parties on the TIF Notes or any indebtedness contemplated hereunder shall be limited solely to the incremental ad valorem taxes generated from the Redevelopment Project pledged as security for such indebtedness. Specifically, but without limitation, the Indemnified Parties shall not be liable to Redeveloper or any other third party for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder.
Section 6. **Covenants to Run with the Land; Easement; Recording of Redevelopment Contract.**

Redeveloper and City agree and acknowledge that this Redevelopment Contract and the undertakings of Redeveloper and the City as herein provided for shall be considered as and constitute covenants running with the land binding upon Redeveloper and the City and their successors and assigns and upon each successive owner of the Redevelopment Project Area or any portion thereof. Redeveloper and the City further agree and acknowledge that a memorandum of this Redevelopment Contract, in substantially the same form attached as Exhibit "F", shall be recorded at the expense of Redeveloper against all real estate located in the Redevelopment Project Area and shall remain of record until all TIF Notes have been paid in full or matured. The City shall have the authority to execute such memorandum(s) without additional public determinations or meetings. After all TIF Notes has been paid in full, Redeveloper or any successor or assign of Redeveloper shall have the right to request in writing and the City shall, upon such request, execute and deliver an appropriate instrument evidencing the termination of this Redevelopment Contract and of the covenants and undertakings herein provided. The City and Redeveloper shall have the right, from time to time, to release specific parcels or lots located within the Redevelopment Project Area from any or all of the specific provisions of this Redevelopment Contract via a written agreement between the Parties.

Section 7. **Default and Remedies upon Default.**

Redeveloper and City agree with respect to any defaults or failures of performance by Redeveloper or City as follows:

(a) The following shall constitute “Events of Default” under the terms of this Redevelopment Contract:

(i) failure by Redeveloper or City to observe timely or perform timely any covenant, condition, obligation or agreement on its part to be observed or performed under this Redevelopment Contract;

(ii) any representation or warranty made herein by Redeveloper or City proves untrue in any respect reasonably deemed to be material by the City or Redeveloper;

(iii) an event of default or material breach by or attributable to Redeveloper or City relating to the Redevelopment Project or any portion thereof, including, without limitation, breach of the terms of any agreement or other instrument relating to the financing or construction thereof, subject to subsection (f) of this Section 7; or

(iv) Redeveloper makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt or petitions for an order for relief, petitions or applies to any tribunal for the appointment of any receiver or any trustee or a debtor in possession of Redeveloper or
any part of its property or commences any proceeding related to Redeveloper under any reorganization, arrangement, readjustment of debt, dissolution or liquidation act, code, law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against Redeveloper any such proceedings and Redeveloper by any act indicates its consent or approval of or acquiescence in any such proceeding or the appointment of any receiver or any trustee or debtor in possession for Redeveloper or any part of its property or suffers any such receivership or trusteeship.

(b) Whenever an Event of Default occurs, in addition to all other remedies available to the City or Redeveloper at law or in equity, the City or Redeveloper may take such action at law or in equity as the City or Redeveloper reasonably deem appropriate, including specific performance or injunction to enforce or compel performance of the provisions of this Redevelopment Contract; provided that the remedy of specific performance against Redeveloper shall not include or be construed to include the covenant to build or construct the Redevelopment Project.

(c) If at any time during the term of this Redevelopment Contract an Event of Default shall occur and remain continuing and uncured for a period of more than sixty (60) days after written notice from the City to Redeveloper of such Event of Default, the TIF Note(s) shall be cancelled and the aggregate amount of all grants paid to Redeveloper (including principle and interest) for improvements shall stand forfeited and Redeveloper shall be required to repay the same to the City within thirty (30) days' written demand thereof. Excluding an Event of Default under subsection (p) or (q) under Section 1 of this Redevelopment Contract, the remedy set forth in this provision shall not apply if construction of the Redevelopment Project, or a Phase of the Redevelopment Project, as applicable, has been completed and is assessed at or above the Minimum Valuation.

(d) No remedy herein conferred upon or reserved to the City or the registered owner of the TIF Notes is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Redevelopment Contract or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(e) If any provision of this Redevelopment Contract is breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.
(f) Anything in this Section 7 to the contrary notwithstanding, none of the events described in subsection 7(a) above shall constitute an Event of Default after completion of the Redevelopment Project and payment of all TIF Notes in full. Further, anything in this Section 7 to the contrary notwithstanding, any breach of this Redevelopment Contract that is specific to a single Phase of the Redevelopment Project, the improvements within such Phase, or Redeveloper's covenants with respect to such Phase, shall not constitute an Event of Default with respect to the other Phase(s), nor shall it trigger a cross-default of the Note(s) issued in relation to the Phase(s) that is/are not in default of this Redevelopment Contract.

Section 8. Status of City.

The City shall not be regarded as the partner, joint venturer or other jointly acting party with Redeveloper for any purpose whatsoever and the undertakings and agreements on the part of the City herein provided for are undertaken solely pursuant to the provisions of sections 18-2101 to 18-2150 of the Act and for the limited governmental purposes of promoting and encouraging redevelopment of a blighted and substandard area. Redeveloper acknowledges that Redeveloper or its successors and assigns are and shall remain in control of the Redevelopment Project for all purposes provided that Redeveloper acknowledges and agrees that the City is and shall be the owner of and shall be in control of all public street, sewer and water improvements constituting a part of or serving the Redevelopment Project.

Section 9. Indemnification and Penal Bond

Redeveloper hereby agrees to indemnify and save the City harmless for any payment or liability to which the City may become subject for carrying out of any contract entered into by Redeveloper with respect to the Redevelopment Project. Redeveloper agrees to provide to the City evidence that there is in effect a bond for the payment costs as required under Section 18-2151 of the Act, if applicable.

Section 10. Subdivision Agreement

Subsequent to the execution of this Redevelopment Contract, Redeveloper and the City shall enter into a subdivision agreement in a form substantially similar to that attached hereto as Exhibit "G" (the "Subdivision Agreement"). Pursuant to the Subdivision Agreement, the City will undertake construction of the west one-half of Yager Road and the south one-half of 32nd Street immediately adjacent to the Redevelopment Project Area prior to the completion of Phase Two. Redeveloper will reimburse the City for one-half of its costs for such street improvements, not to exceed $375,000. In consideration thereof, Redeveloper shall not object to the creation of a street improvement district or the levy of a special assessment with respect to construction of the aforementioned street improvements, and the City shall not levy any special assessment upon the real property owned by Redeveloper in the Redevelopment Project Area with respect to the construction of the aforementioned street improvements.
Section 11. **Additional Parties Added as Redeveloper.**

The Parties specifically agree that additional parties or entities may be admitted to and included within the meaning of the term “Redeveloper” upon the mutual written consent of both Parties.

Section 12. **Redevelopment Contract Binding Upon Successors and Assigns.**

This Redevelopment Contract is made for the benefit of Redeveloper, the City and the registered owners from time to time of the TIF Notes as third party beneficiaries. This Redevelopment Contract shall be binding upon the City and Redeveloper, and any successors or assigns thereof. Redeveloper may assign its interest in the Redevelopment Project only upon receipt of prior written consent from the City. The City and Redeveloper acknowledge and agree that, in the event Redeveloper assigns its rights and obligations under this Redevelopment Contract, in whole or in part, to any assignee, Redeveloper and the assignee shall both be bound by the terms of the Plan and this Redevelopment Contract (as and to the extent of any such assignment with respect to the Assignee). No assignment by Redeveloper to the Assignee shall be effective until a written instrument binding the assignee under the terms of the Plan and this Redevelopment Contract (as and to the extent of such assignment), duly acknowledged and in recordable form, has been executed and delivered by the Assignee and recorded in the real estate records of Dodge County, Nebraska, with respect to the Redevelopment Project Area.

Section 13. **Titles of Sections.**

Any titles of the several Sections of this Redevelopment Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.

Section 14. **Notices.**

Except as otherwise specified herein, all notices hereunder shall be in writing and shall be given to the relevant Party at its address set forth below, or such other address as such Party may hereafter specify by notice to the other given by United States mail or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

(a) in the case of Redeveloper, if mailed to or delivered personally to:

Fremont Enterprises, LLC  
1704 North Bell Street #134  
Fremont, Nebraska 68025
with a copy to:

Michael D. Sands
Baird Holm LLP
1700 Farnam Street
Suite 1500
Omaha, NE 68102

(b) in the case of City, if mailed to or delivered personally to:

City Clerk
City of Fremont
400 E Military Ave
Fremont, NE 68025

Each such notice, request or other communication shall be effective (i) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (ii) if given by any other means, when delivered at the addresses specified in this Section 13 or at any such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other Party as provided in this section.

Section 15. Severability.

If any provision of this Redevelopment Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case, for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative and unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained, invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, sections or paragraphs in this Redevelopment Contract shall not affect the remaining portions of this Redevelopment Contract or any part thereof.

Section 16. Counterparts.

This Redevelopment Contract may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 17. Law Governing.

The Parties agree that this Redevelopment Contract shall be governed and construed in accordance with the laws of Nebraska.

Section 18. Time of the Essence.

Time shall be of the essence of this Redevelopment Contract.
Section 19. Termination.

This Redevelopment Contract shall commence as of the date first above written and shall terminate upon the earlier of the maturity date set forth in the TIF Note for Phase Three or payment of all principal and interest owed toward all TIF Notes.

Section 20. Force Majeure Event.

Neither Redeveloper nor the City shall be considered in breach of, or in default in its obligations with respect to any of the obligations under this Redevelopment Contract in the event that an enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, caused by a Force Majeure Event, which is defined herein as any failure or delay in performance by a Party that is proximately caused by acts of God, or wars or insurrections; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of Redeveloper or the City, as the case may be, shall be extended for the period of the enforced delay as determined by the mutual agreement of Redeveloper and the City; provided, that Redeveloper or the City, as the case may be, shall, within twenty (20) days after the beginning of any such enforced delay, have notified Redeveloper or the City (as applicable) in writing of the cause or causes thereof, and requested an extension for the period of the enforced delay.

Section 21. Effect of Redevelopment Contract.

This Redevelopment Contract (including the Plan as incorporated by reference) constitutes the entire understanding by and between the Parties concerning the subject matter hereof, and supersedes and replaces all prior agreements. No other prior or contemporaneous representations, inducements, promises or agreements, oral or otherwise, between or among the Parties relating to the subject matter hereof and not embodied in this Redevelopment Contract shall be of any force and effect.

(The remainder of this page is intentionally left blank)
IN WITNESS WHEREOF, the City and Redeveloper have caused this Redevelopment Contract to be executed by their duly authorized representatives.

MAYOR AND CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA, as governing body of the Community Development Agency of the City of Fremont, Nebraska

By: ________________________________
Mayor

ATTEST:

______________________________
City Clerk

STATE OF NEBRASKA )
COUNTY OF DODGE ) ss.

The foregoing instrument was acknowledged before me this _____ day of _____________, 2019, by ________________, Mayor, and ________________, City Clerk, of the governing body of the Community Development Agency of the City of Fremont, Nebraska on behalf of such agency.

(S E A L)
Notary Public
FREMONT ENTERPRISES, LLC, a Nebraska limited liability company

By: ________________________________

Name: Brian M. Zubert

Title: Manager

STATE OF ____________) ss.
COUNTY OF ____________

The foregoing instrument was acknowledged before me this _____ day of ________, 2019, by Brian M. Zubert, Manager of Fremont Enterprises, LLC, a Nebraska limited liability company, on behalf of the company.

(S E A L)

Notary Public
Exhibit "A"
Redevelopment Project Area
Depiction of Existing Redevelopment Project Area (outlined in red):
Legal Description:
Lot 1, Fountain Springs Second Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Second Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Third Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 1, Fountain Springs Fourth Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Fourth Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

TOGETHER WITH

All public rights-of-way contiguous thereto.

* Subsequent to the approval of this Redevelopment Contract, Redeveloper intends to administratively consolidate and subdivide the Redevelopment Project Area, or a portion thereof, as shown on Exhibit "B". Subsequent to said administrative consolidation and subdivision, as applicable, the above legal description shall be replaced with the legal description provided in the administrative consolidation or subdivision, as applicable, of the Redevelopment Project Area approved by the City.
Exhibit "B"
Redevelopment Project Phases and Site Plan

(See attached)*

* The attached documents are preliminary in nature and subject to change.
Exhibit "C"
Redevelopment Project Description and Projected TIF Sources and Uses

The Redevelopment Project will consist of the construction of approximately 216 market rate residential units primarily for residents age 55 and over, 266 surface level parking stalls, 110 garage stalls, an office for the apartment complex staff, a community room or clubhouse community room, a gazebo covered picnic area, and trail and sidewalk extensions, together with all infrastructure and other improvements necessary to support the apartment complex. Redevelopment will require the construction of the public improvements listed below as "Eligible Costs", as shown on Exhibit "B" and detailed under Section G of the Plan.

Projected Sources and Assumptions:

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<th>Description</th>
<th>Value</th>
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<td>Post-Redevelopment Valuation</td>
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# Projected Amortization:

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**Total Less Pre-TIF Treasurer's Collections: $1,317,420**

**Capitalized Interest: $0**

**Loan Balance Remaining: $0**

**Original Loan Amount: $866,034**

** ASSUMPTIONS:**

- **1. Loan Amount:** $866,034
- **2. Interest Rate:** 5.00%

---

Exhibit "C"
### Phase Two:

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<th>Date</th>
<th>Total Collection</th>
<th>Less Pre-</th>
<th>TIF</th>
<th>Treasurer’s</th>
<th>Revenues</th>
<th>Debt Service Payments</th>
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|      | $2,634,840 | $26,340 | $2,608,500 | $1,780,950 | $740,600 | $2,521,550 | $0 |

Original Loan Amount: $1,776,033
Capitalized Interest: $0
Loan Balance Remaining: $0

ASSUMPTIONS:
1. Loan Amount: $1,776,033
2. Interest Rate: 5.00%
3. Increment Base: $8,426,493

Exhibit "C"
Phase Three:

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<tr>
<th>DATE</th>
<th>Total Taxable Development</th>
<th>Less Pre-TIF Treasurer's 1% Collection Revenues Available For TIF Loan</th>
<th>Debt Service Payments Loan Balance</th>
<th>Capitalized Interest 5.00%</th>
<th>Interest 5.00%</th>
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**Original Loan Amount:** $1,307,033

**Capitalized Interest:** $0

**Assumptions:**

1. Loan Amount: $1,307,033
2. Interest Rate: 5.00%

**Increment Base:** $6,320,245

* The above numbers are estimates and subject to change.

Exhibit "C"
Projected Uses ("Eligible Costs"):

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<th>Phase Three</th>
<th>Aggregate</th>
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</table>

* The above figures are only estimates of the Eligible Costs and such actual costs will be reflected in the cost certifications required under Section 3 of the Redevelopment Contract.

** Eligible Costs are projected to be in excess of $4,078,000, but the aggregate total of the TIF Notes is limited to $4,078,000, which is approximately the sum generated by the projected incremental ad valorem real property taxes collected in relation to the Redevelopment Project and paid as debt service on the TIF Notes at a 5.0% interest rate.

*** All Eligible Costs contemplated in the Plan and not otherwise specified herein shall be included as Eligible Costs for purposes of this Redevelopment Contract under this Exhibit "C".
AMENDMENT TO REDEVELOPMENT CONTRACT
(THE FOUNTAIN SPRINGS REDEVELOPMENT PROJECT)

This Amendment to Redevelopment Contract (The Fountain Springs Redevelopment Project) (this "Amendment") is made and entered by and between Fremont Enterprises, LLC, a Nebraska limited liability company ("Redeveloper"), and the City Council of the City of Fremont, Nebraska, as the governing body of the Community Development Agency of the City of Fremont, Nebraska (the "City"), and is effective as of the ___ day of __________, 20___ (the "Effective Date").

RECITALS

WHEREAS, Redeveloper and the City entered into that certain Redevelopment Contract between Redeveloper and City dated __________, 2019 ("Redevelopment Contract"); and

WHEREAS, pursuant to Section 2 of the Redevelopment Contract, Redeveloper and the City wish to amend the Redevelopment Contract in accordance with the terms of this Amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Redeveloper and the City agree as follows:

1. Amendment: The Parties hereby amend and supplement the Redevelopment Contract in accordance with the following terms:

   (a) This Amendment incorporates a new Phase of the Redevelopment Project ("Phase ___") which shall include the following lot(s) in the Redevelopment Project Area:

   [identification of such lot(s) including the legal description of each]

   (b) The effective date for Phase ___ shall be _______________, 20___.

   (c) The base year valuation for Phase ___ shall be the year 20___.

   (d) The City shall collect TIF Revenues on that portion of the Redevelopment Project Area detailed above for payment on the TIF Note in accordance with Section 3 of the Redevelopment Contract.

2. Miscellaneous. This Amendment shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. The Parties shall execute and deliver any
further and additional instruments, agreements, and other documents as may be necessary to evidence or carry out the provisions of this Amendment. This Amendment shall modify only those terms of the Redevelopment Contract expressly set forth and modified in this Amendment. No implied or other modification of the Redevelopment Contract is intended or effective. Except as specifically modified by this Amendment, the Redevelopment Contract shall remain in full force and effect. In the event of a conflict between the terms of this Amendment and the Redevelopment Contract, the terms of this Amendment shall control. Capitalized words contained herein shall be defined as set forth in the Redevelopment Contract unless otherwise defined herein. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Signatures to this Amendment transmitted by facsimile, sent by email (including ".pdf"), or delivered by other electronic means shall be valid and effective to bind the Party so signing.

(Signatures on following pages)
IN WITNESS WHEREOF, the City and Redeveloper have caused this Redevelopment Contract to be executed by their duly authorized representatives.

MAYOR AND CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA, as governing body of the Community Development Agency of the City of Fremont, Nebraska

By: ____________________________
   Mayor

ATTEST:

______________________________
City Clerk

STATE OF NEBRASKA )
                    ) ss.
COUNTY OF DODGE )

The foregoing instrument was acknowledged before me this ____ day of ____________, 2019, by ________________, Mayor, and ________________, City Clerk, of the governing body of the Community Development Agency of the City of Fremont, Nebraska on behalf of such agency.

(S E A L)

______________________________
Notary Public
FREMONT ENTERPRISES, LLC, a Nebraska limited liability company

By: ________________________________

Name: Brian M. Zubert

Title: Manager

STATE OF ____________
COUNTY OF ____________

The foregoing instrument was acknowledged before me this _____ day of ________, 2019, by Brian M. Zubert, Manager of Fremont Enterprises, LLC, a Nebraska limited liability company, on behalf of the company.

(S E A L)

Notary Public

Exhibit "D"
Exhibit "E"
TIF Note

(See attached)
REDEVELOPMENT PROMISSORY NOTE
(THE FOUNTAIN SPRINGS REDEVELOPMENT PROJECT)

$__________________                    ______________________, 2019

FOR VALUE RECEIVED, the undersigned, City Council of the City of Fremont, Nebraska, as the governing body of the Community Development Agency of the City of Fremont, Nebraska (hereinafter known as "Borrower"), promises to pay Fremont Enterprises, LLC, a Nebraska limited liability company, address: c/o Anew Development, 13761 US Hwy 30, Blair, Nebraska 68008 ("Holder"), and/or its assigns, the principal sum of ___________________________ Dollars ($__________________), together with interest thereon at the rate of 5.0% per annum from Holder's receipt of a certificate of occupancy for the residences within "Phase ____" of the "Redevelopment Project" under that certain Redevelopment Contract (The Fountain Springs Redevelopment Project), dated the ____ day of __________________, 2019, by and between the Borrower and the Holder (the "Redevelopment Contract"), until the earlier of the payment of this Redevelopment Promissory Note in full or December 31, 20___. The principal balance and interest thereon shall be due and payable to the Holder of this Redevelopment Promissory Note as and at such time as any excess ad valorem taxes generated by the Redevelopment Project as set forth in Redevelopment Contract are collected by the Borrower and available for the retirement of this debt.

In the event of default under this Redevelopment Promissory Note, all sums secured by this Redevelopment Promissory Note or any other agreement securing this Redevelopment Promissory Note shall bear interest at a rate equal to five percent (5%) above the prime rate as published by the Wall Street Journal from time-to-time; however, in the event said interest rate exceeds the maximum rate allowable by law, then such rate of interest shall equal the highest legal rate available.
The Borrower may prepay the principal amount outstanding in whole or in part, without penalty or the prior consent of the Holder.

Pursuant to Sections 18-2124 and 18-2150, R.R.S. Neb. 2012, said portion of taxes has been pledged for the payment of this Redevelopment Promissory Note, both principal and interest as the same fall due or become subject to mandatory redemption. This Redevelopment Promissory Note shall not constitute a general obligation of the Borrower and the Borrower shall be liable for the payment thereof only out of said portion of taxes as described in this paragraph. This Redevelopment Promissory Note shall not constitute an obligation of the State of Nebraska or of the City of Fremont (except for such receipts as have been pledged pursuant to said Sections 18-2124 and 18-2150 R.R.S. Neb. 2012) and neither the State of Nebraska nor the City of Fremont shall be liable for the payment thereof from any fund or source including but not limited to tax monies belonging to either thereof (except for such receipts as have been pledged as described above in this paragraph). Neither the members of the Holder's governing body nor any person executing this Redevelopment Promissory Note shall be liable personally on this Redevelopment Promissory Note by reason of the issuance hereof.

This Redevelopment Promissory Note is transferable by the registered owner or such owner's attorney duly authorized in writing at the office of the Borrower upon surrender of this Redevelopment Promissory Note for notation of transfer as provided on the reverse hereof.

In the event the monies collected and held in that special fund established under Section 18-2147 of the Nebraska Revised Statutes and pursuant to the Redevelopment Contract are insufficient to pay in full all amounts due and owing after all excess ad valorem taxes generated by the Redevelopment Project, as set forth in the Redevelopment Contract, have been collected by the Borrower and paid, immediately upon being available, towards the retirement of the amounts due hereunder, then the Holder shall waive any unpaid portion of the principal and interest due.

In the event this Redevelopment Promissory Note is referred to an attorney for collection the Holder shall be entitled to reasonable attorney fees allowable by law and all court costs and other expenses incurred in connection with such collection.

The Borrower shall be in default in the event the Borrower shall fail to pay, when due, any amount required hereunder.

IN THE EVENT THAT THIS REDEVELOPMENT PROMISSORY NOTE IS RECALLED OR OTHERWISE TERMINATED DUE TO AN "EVENT OF DEFAULT" UNDER
THE REDEVELOPMENT CONTRACT, SUCH EVENT OF DEFAULT SHALL NOT CONSTITUTE A CROSS DEFAULT OF ANY OTHER NOTE OR NOTES ISSUED TO HOLDER WITH RESPECT TO OTHER PHASES (AS DEFINED IN THE REDEVELOPMENT CONTRACT) OF THE REDEVELOPMENT PROJECT.

Demand, presentment, protest and notice of nonpayment under this Redevelopment Promissory Note are hereby waived.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Redevelopment Promissory Note shall operate as a waiver of such remedy, right or option. In any event, a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion.

Any notice provided for in this Redevelopment Promissory Note to the Borrower or the Holder shall be in writing and shall be given by regular mail to the Holder or Borrower, or at such other address as either party may designate by notice in writing.

This Redevelopment Promissory Note shall be governed by and construed in accordance with the Laws of the State of Nebraska. All payments hereunder shall be payable in lawful money of the United States of America and shall be legal tender for public and private debts at the time of payment.

COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF FREMONT, NEBRASKA

By: ____________________________
    Chairperson (Council President)

ATTEST:

______________________________
Secretary (City Clerk)
PROVISION FOR REGISTRATION

The ownership of this Redevelopment Promissory Note shall be registered as to both principal and interest on the books and records of the Community Development Agency of the City of Fremont, Nebraska, kept by the City Treasurer, as paying agent and registrar, who shall make notation of such registration in the registration blank below, and the transfer of this Redevelopment Promissory Note may thereafter be registered only upon an assignment duly executed by the registered owner or such owner's attorney or legal representative, in such form as shall be satisfactory to said Treasurer, such registration of transfer to be made on such books and endorsed hereon by said Treasurer.

<table>
<thead>
<tr>
<th>Date of Registration</th>
<th>Name of Registered Owner</th>
<th>Signature of Treasurer (Paying Agent and Registrar)</th>
</tr>
</thead>
<tbody>
<tr>
<td>____________________</td>
<td>Fremont Enterprises, LLC</td>
<td></td>
</tr>
</tbody>
</table>

DOCS/2288471.3
MEMORANDUM OF REDEVELOPMENT CONTRACT

This Memorandum of Redevelopment Contract ("Memorandum") is made this ___ day of __________, 2019, by and between City Council of the City of Fremont, Nebraska, as the governing body of the Community Development Agency of the City of Fremont, Nebraska (the "City"), and Fremont Enterprises, LLC, a Nebraska limited liability company ("Redeveloper").

1. Redevelopment Contract. City and Redeveloper have entered into that certain Redevelopment Contract dated as of ________________, 2019 ("Redevelopment Contract"), describing the public and private improvements being made by the Redeveloper in the Redevelopment Project Area, including the real property owned by Redeveloper and legally described as:

[Insert Legal Description of parcel]

2. Tax Increment Financing. The Redevelopment Contract provides for the capture of the tax-increment financing ("TIF") revenues by the City of the improvements to be made by the Redeveloper for a period not to exceed fifteen (15) years after the effective date (as defined in the Nebraska Community Development Law) for each applicable Phase. The TIF revenues so captured by the City shall be used to reimburse the Eligible Costs incurred by Redeveloper, as described in the Redevelopment Contract.

3. Redevelopment Project Valuation. Redeveloper intends to create an aggregate taxable real property valuation of the Redevelopment Project Area of $19,656,375 by January 1, 2022 (the "Minimum Valuation"). During the period that any TIF Note is outstanding, Redeveloper, its successors and assigns, including subsequent purchasers of land within the Redevelopment Project Area, will not protest a real estate property valuation, as determined by the appropriate assessing and taxing officials of Dodge County, Nebraska, for purposes of local ad valorem real estate taxes at or below the Minimum Valuation; provided that if the aggregate real property valuation of the Redevelopment Project Area exceeds the Minimum Valuation, Redeveloper may protest such valuation down to, but not below, the Minimum Valuation.

4. Remaining Terms. The rest and remaining terms of the Redevelopment Contract are hereby incorporated into this Memorandum as if they were set forth in full. All capitalized terms in this Memorandum that are not otherwise defined herein shall have the same meaning as set forth in the Redevelopment Contract. A full and correct copy of the Redevelopment Contract may be inspected at the City offices in Fremont, Nebraska.

5. Termination of Memorandum. Unless terminated sooner in accordance with the terms of the Redevelopment Contract, this Memorandum shall be deemed to automatically terminate and be released from the above-described real property upon the earlier of payoff of all TIF Notes or maturity of the TIF Note for Phase Three.
MAYOR AND CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA, as governing body of the Community Development Agency of the City of Fremont, Nebraska

By: ________________________________
   Mayor

ATTEST:

______________________________
City Clerk

STATE OF NEBRASKA )
   ) ss.
COUNTY OF DODGE )

The foregoing instrument was acknowledged before me this ___ day of _____________, 2019, by ________________, Mayor, and ________________, City Clerk, of the governing body of the Community Development Agency of the City of Fremont, Nebraska on behalf of such agency.

(S E A L)

______________________________
Notary Public
FREMONT ENTERPRISES, LLC, a Nebraska limited liability company

By: ________________________________
Name: Brian M. Zubert
Title: Manager

STATE OF _____________ )
COUNTY OF __________ ) ss.

The foregoing instrument was acknowledged before me this ___ day of __________, 2019, by Brian M. Zubert, the Manager of Fremont Enterprises, LLC, a Nebraska limited liability company, on behalf of the company.

(S E A L)

______________________________
Notary Public
Exhibit "G"
Subdivision Agreement

(See attached)
Site Statistics: (Approximately 11.35 Acres Total or 494,406 sf)

Roofs
9 buildings x 10632 sf = 95,688 sf
7 garages x 3224 sf = 22,568 sf
2 garages x 6448 sf = 12,896 sf
1 office x 720 sf = 720 sf
95,688 sf + 22,568 sf + 12,896 sf + 720 sf = 131,872 sf

Hard Surface
North parking lot = 60,809 sf
South parking lot = 55,170 sf
6 porches x 9 buildings x 80 sf = 4,320 sf
Sidewalks = 3,777 sf + 5,654 sf + 582 sf + 2,216 sf + 2,316 sf + 3,665 sf + 3,566 sf + 1,899 sf + 94 sf = 21,403 sf
3 Dumpsters x 200 sf = 600 sf
60,809 sf + 55,170 sf + 4,320 sf + 21,403 sf + 600 sf = 142,102 sf

Grass, Drainage & Pervious Surface
92,228 sf property size - 131,872 sf (roof) - 142,102 sf (hard surface) = 218,254 sf (44% Pervious)

Parking Facility
110 Garage Stalls of which 22 are HC
286 Surface Stalls of which 19 are HC
FOUNTAIN SPRINGS APPARTMENTS
SUBDIVISION AGREEMENT

THIS SUBDIVISION AGREEMENT (hereinafter referred to as “Agreement”) is made this ______day of _________ 2019, by and between Fremont Enterprises, LLC, a Nebraska limited liability Company (hereinafter referred to as “Developer”) and the City of Fremont, a Nebraska municipal corporation (hereinafter referred to as “City”).

RECITALS:

Developer owns and intends to develop a parcel of land legally described in the legal description, attached as Exhibit “A”, which area is fully within City’s zoning and platting jurisdiction; and

Developer desires to provide for the construction, installation, and location of certain improvements within the “Development Area”, as defined in Section 1; and

Developer and City desire to agree on the method of installation and the allocation of expenses for the “Public Improvements”, as defined in Section 1; and

City and Developer desire to set forth in this Agreement their respective understandings and agreements with regard to the development of the Development Area.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND OF THE PROMISES HEREIN CONTAINED, IT IS MUTUALLY AGREED THAT THE FOLLOWING TERMS SHALL GOVERN:

SECTION 1 DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

A. “Cost(s)” of each Private Improvement or Public Improvement shall mean all construction costs, engineering fees, design fees, attorneys’ fees, inspection fees, testing expenses, publication costs, financing costs (which shall include interest), and all other related or miscellaneous costs or expenses incurred by Developer and/or City in connection with said Private Improvements or Public Improvements.

B. “Dedicated Street(s)” shall mean those public streets, if any, including curbing and turn lanes, to be constructed, modified, or improved within: (1) that portion of the Development Area designated as “dedicated right-of-ways” in Exhibit “C”, and (2) any other areas to be dedicated as right-of-ways pursuant to any future replat(s) of the Development Area. This definition shall not be construed to obligate Developer to dedicate any additional public right-of-ways beyond what is explicitly depicted on Exhibit “C” nor shall it obligate Developer to replat any
portion of the Development Area in the future.

C. “Development Area” shall mean the real property situated within the area identified or depicted in Exhibit “A” and all Dedicated Streets.

D. “Final Plat” shall mean the final plat for administrative consolidation and/or subdivision of the Development Area prepared for filing or recording, at the Developer's expense, in accordance with applicable regulations.

E. “Lead Agency” shall mean the entity, or entities, responsible for designing, preparing plans for, bidding, installing, or constructing the “Public Improvements”, as defined in this Section, or, alternatively, responsible for engaging a qualified contractor or subcontractor to perform such responsibilities. In the event one entity designs a particular Public Improvement and another entity constructs or installs said Public Improvement, both entities shall be considered Lead Agencies for the purposes of this Agreement.

F. “Party”, when capitalized, shall mean City or Developer, individually, and “Parties”, when capitalized, shall mean City and Developer, collectively.

G. “Private Improvement(s)” shall mean those improvements or betterments required by Developer, or otherwise undertaken by Developer, pursuant to that certain Redevelopment Contract dated August 13, 2019, and this Agreement between City and Developer, on, to, or otherwise benefiting the Development Area other than those improvements identified as Public Improvements in Section 1(H).

H. “Public Improvement(s)” shall mean:

(1) All installations, modifications, or improvements of Dedicated Streets and improvements constructed and installed within the boundaries of or immediately adjacent to the Development, as shown on Exhibit "C".

(2) All stormwater detention facilities as shown on Exhibit "B";

(3) All fire hydrants as shown on Exhibit "B";

(4) All Dedicated Street signage and traffic control signage required by, and meeting the standards of, the “Manual of Uniform Traffic Control Devices” but only if first approved in writing by City’s Public Works Department and only if located at a Dedicated Street intersection or related to the Development Area, as shown on Exhibit "C";

(5) All “Sanitary and Wastewater Sewers” to be constructed and installed within the boundaries of the Development Area or other area specifically approved by the City. Sanitary and Wastewater Sewers shall include all necessary sanitary and wastewater sewer mains, manholes, lines, pipes, and related
appurtenances, as shown on the plans and drawings in Exhibit “B”; 

(6) The “Water Distribution System” that is or will be constructed and installed within the boundaries of the Development Area or other areas specifically approved by the City as shown on the plans and drawings in Exhibit “B”; 

(7) All “Storm Sewers” which are or will be constructed within the boundaries of the Development Area or other areas specifically approved by the City, including all necessary storm sewers, inlets, manholes, lines, pipes, and related appurtenances; as shown on the plans and drawings in Exhibit “B”; 

(8) The electrical utility lines, public street lighting, and other devices or facilities that are or will be constructed and installed by the City within the boundaries of the Development Area (the “Electric Power System”). The Electric Power System shall include all electrical utility lines and other devices (defined in Section 4.A.(1) below) so constructed and installed for the benefit of the Development Area, as approved by the City; 

(9) The natural gas main lines and other devices or facilities that are or will be constructed and installed by the City within the boundaries of the Development Area (the “Natural Gas System”). The Natural Gas System shall include all natural gas main lines and other devices so constructed and installed for the benefit of the Development Area, as approved by the City; and 

(10) The west one-half of Yager Road and the south one-half of 32nd Street immediately adjacent to the Development Area as shown on Exhibit “C,” as approved by the City.

SECTION 2 STANDARDS, AUTHORITY, AND DOCUMENTATION

I. Standards for Private Improvements and Public Improvements. If Developer is the Lead Agency for a Public Improvement and for all Private Improvements, Developer shall cause all such Private Improvements and Public Improvements undertaken by Developer, its agents, contractors, or subcontractors to be constructed and installed in accordance with this Agreement and all applicable laws.

J. Prior to Commencing Work on the Public Improvements. Prior to commencing any work in connection with any individual Public Improvement for which Developer is the Lead Agency or is responsible to construct, Developer shall first:

(1) Obtain initial approval from City, as applicable, for the specifications and technical terms of any other agreement(s) or plan(s) for, or relating to, the construction or installation of said individual Public Improvement(s) prior to Developer’s execution of any such agreement(s) or plan(s). Once Developer obtains approval from City, as applicable, Developer shall deliver to the City
Clerk duly executed copies of any agreement(s) or plan(s) for work required for, or otherwise entered into, in connection with said individual Public Improvement. Such agreement(s) or plan(s) shall include, but not be limited to, any required bonds, insurance certifications, and all plans for said individual Public Improvement(s). Any such agreement(s) or plan(s) shall include details describing the manner and means of any additional connections required by or for Public Improvement(s), as applicable, prepared by Developer’s engineer;

(2) Obtain and file of record any permanent easements reasonably required by City, as applicable, for said individual Public Improvement. Public Improvements which may invoke this requirement may include, but are not limited to, sanitary and wastewater sewer lines, storm sewer, water, electric and natural gas lines, and post-construction stormwater management, including all appurtenances, as reasonably determined by the City Engineer. Said easements shall be prepared and filed in a form satisfactory to the City and Developer shall provide a copy of such recorded easements to the City Clerk;

(3) Obtain general liability insurance and performance bonds equivalent to the total construction costs for said individual Public Improvement, and provide a copy of such general liability insurance and performance bonds to the City Clerk; and

(4) Obtain final approval from City and other entities, as applicable, for the construction and installation of said individual Public Improvement and obtain all necessary agreements, permits, and approvals related to the same and provide proof of such final approval from such entities other than City, as applicable, to the City Clerk.

K. No Recourse against City. Any contract(s) entered into by Developer for the construction or installation of any Public Improvement(s) shall provide that the contractor or subcontractor constructing or installing said Public Improvement(s) shall have no recourse against City for any Costs, claims, or matters arising out of, or related to in any way whatsoever, said construction or installation including, without limitation, the Cost for said Public Improvement(s), construction oversight of said Public Improvement(s), the design or preparation of plans and specifications for said Public Improvement(s), or the construction of said Public Improvement(s).

L. All Necessary Agreements, Permits, and Approvals. Prior to commencing any work within any public right-of-way for any Public Improvement for which Developer is Lead Agency or responsible to construct, excluding sidewalks and trails, Developer shall enter into all necessary right-of-way agreements and obtain all necessary permits and approvals from the requisite governmental entities exercising authority over said right-of-ways. If City requests copies of any such
agreements, permits, or approvals, Developer shall provide said copies to City in a timely manner.

M. City Review and Approval. Developer shall submit to City all plans, designs, and materials for the Public Improvements for which the Developer is the Lead Agency or responsible to construct for review prior to the construction of the Public Improvements to ensure the same will meet City’s requirements. City may require Developer, at Developer’s sole cost and expense, to modify said plans, designs, and materials to ensure compliance with City requirements. To the degree any such plans, designs and materials approved by the City conflict with those shown on Exhibit "B" and “C", the plans, designs and materials approved by the City shall supersede Exhibit "B" and “C", as applicable.

SECTION 3 REPRESENTATIONS AND ACKNOWLEDGEMENTS

A. Developer Representations and Acknowledgments. Developer represents and warrants to City as follows:

(1) Developer is incorporated under the laws of the State of Nebraska. Developer is duly authorized to transact business under the laws of the State of Nebraska.

(2) Developer is or will be the owner of record of the Development Area and possesses or will possess the rights and authority necessary to make decisions affecting the Development Area.

(3) Developer has full power and authority to enter into, deliver, and perform its obligations under this Agreement and each of the documents related hereto.

(4) Developer has taken all necessary action to authorize Developer’s execution, delivery of, and performance under this Agreement, and as such, this Agreement constitutes Developer’s valid and binding obligation, enforceable against Developer in accordance with its terms.

(5) Developer agrees to reasonably cooperate with City, as applicable, for the timely and orderly installation of the Public Improvements as required under the terms of this Agreement, or any other agreement with a third party for the construction and installation of a Public Improvement, as applicable, following the execution of this Agreement and submittal of required documents.

(6) Developer shall comply with the terms of this Agreement, and the provisions of any agreement submitted to City pursuant to this Agreement in relation to the Public Improvements, which agreements shall not be assigned without prior written approval from City.

(7) Developer shall comply with performance and maintenance securities requirements specified in Subsection 11-315.06.G of the City of Fremont,
Nebraska Municipal Code ("Code") and as otherwise required by applicable law. Developer shall cause City to be named as an additional insured under any policy of insurance, including all payment and performance bonds obtained by Developer, or any other person, (whether or not required by this Agreement) in connection with the construction, installation, or operation of any Public Improvement for which Developer will be the Lead Agency or responsible to construct.

(8) Developer shall ensure that all documents, contracts, and instruments prepared or entered into by or on behalf of Developer, its agents, contractors, or subcontractors pursuant to the terms of this Agreement, shall, in all material respects, be fully authorized, valid, binding, and enforceable in accordance with their terms.

(9) Developer shall cause all delinquent personal property and real estate taxes and assessments levied on the Development Area to be paid prior to City's approval of the Final Plat.

(10) Except for damages or claims resulting solely from the negligence or malfeasance of Developer or any of its officers, agents, or employees, Developer shall not be liable to any person as a result of any act undertaken by City or Developer to date, or at any time in the future in furtherance of this Agreement, and, to the maximum extent permitted by law, City hereby waives for itself, its employees, agents, and assigns any such right, remedy, or recourse it may have against Developer, its officers, agents, or employees, and in no event shall Developer or any of its officers, agents, or employees be liable for consequential, incidental or indirect damages.

B. City Representations and Acknowledgments. City represents and warrants to Developer as follows:

(1) City agrees to reasonably cooperate with Developer, its agents, contractors, and subcontractors for the timely and orderly installation of the Public Improvements following the execution of this Agreement and submittal of required documents.

(2) City shall pay the Cost for any oversizing of Dedicated Streets (above those specifications shown on Exhibit "C" or the sizes listed in Table 11-713.02.01 of the Fremont Unified Development Code) and any oversizing of Public Improvements, if any, approved and authorized by the City.

(3) City represents and warrants that Developer shall have no responsibility for any costs for future improvements to Dedicated Streets so long as the Dedicated Streets are constructed to City specifications and in accordance with this Agreement. Neither City nor any of its officers, agents, or employees:
i. Is acting as attorney, architect, engineer, or otherwise in the interest or on behalf of Developer in furtherance of this Agreement; or

ii. Owes any duty to Developer or any other person because of any action City or Developer has undertaken, or in the future will undertake in furtherance of this Agreement, including any City inspection or City approval of any matter related to the same.

iii. Except for damages or claims resulting solely from the negligence or malfeasance of City or any of its officers, agents, or employees, shall be liable to any person as a result of any act undertaken by City or Developer to date, or at any time in the future in furtherance of this Agreement, and, to the maximum extent permitted by law, Developer hereby waives for itself, its employees, agents, and assigns any such right, remedy, or recourse it may have against City, its officers, agents, or employees, and in no event shall City or any of its officers, agents, or employees be liable for consequential, incidental or indirect damages.

SECTION 4 APPORTIONMENT OF COSTS, CONSTRUCTION OF IMPROVEMENTS AND RESPONSIBILITIES

A. Apportionment of Costs and Construction of Private Improvements and Public Improvements. Developer, at its sole cost and expense, shall be responsible for constructing and privately financing and paying for the Cost of all Private Improvements. The Parties shall be responsible for the construction and Cost of the Public Improvements as follows:

1) Electric Power System. City shall be responsible to construct and pay the cost, except as provided for herein, of an Electric Power System within the Development Area. The City shall construct, own, operate and maintain all electric distribution lines, including service lines to the single-family residence in the Development Area.

   Residential: Before City commences construction of an underground Electric Power System, Developer shall pay the City $750 per each residential multi-family apartment building (9 anticipated).

   Commercial and Multifamily (apartment) Buildings: The City shall construct and install overhead and underground primary (8000-volt & 13,800-volt) electric service, devices, and facilities.

   For the Fountain Springs Adult Apartment Properties Development, the following costs shall be paid by Developer:

   i. The cost difference between overhead and underground construction;
i.e., a cost of $3,146 per apartment building (assuming nine buildings).

ii. The Developer will provide and install two – 2-inch PVC conduits, for electric primary cables, from the transformer location to nearest power pole or sectionalizer location as determined by the City; this conduit will be transferred by warranty bill of sale to the City and thereafter operated and maintained by the City.

iii. The Developer will provide and install all secondary conduits, wire, and meterbank enclosures that will feed each apartment building; this equipment will not be owned nor maintained by the City.

iv. The Developer shall reimburse City for the Cost of the public street lighting at the applicable RES1 or DES1 rates ($750 and $2,700), consisting of five (5) such structures along all Dedicated Streets per City specifications, as shown on Exhibit "B".

Upon completion of the public street lighting, City shall invoice such Cost, and Developer shall pay such invoice within thirty (30) days after City sends such invoice. All other costs of the Electric Power System not listed above shall be paid by the City.

(1) **Water Distribution System.** Developer shall be the Lead Agency and shall be responsible to construct and pay for the Cost of a Water Distribution System and water main system as designed by a licensed engineer up to the Development Area boundaries as shown on Exhibit "B". This includes the main line, taps, and line to a stop box at edge of City right-of-way, in accordance with City specifications (the “Water Distribution System”). The Water Distribution System will be designed to serve all lots within the Development Area and shall be sized as specified in the plans and drawings in Exhibit “B”. Upon completion of the Water Distribution System and after having passed all necessary chemical and pressure testing requirements, Developer shall, at no cost to the City, transfer by warranty bill of sale, ownership of the Water Distribution System to the City for operation and maintenance.

For the Fountain Springs Adult Apartment Properties Development, the below costs shall be paid by Developer. All other costs of the Water Distribution System not listed below shall be paid by the City.

   i. The cost of $2,000 per apartment building (assuming nine buildings). The Water Connection District No. WC-903-06 connection fee will be waived for the connection to the City’s Water Distribution System.

(2) **Natural Gas System.** City shall be responsible to construct and pay for the Cost of the construction of a Natural Gas System and individual service lines
that serve each platted lot inside the Development Area. The City shall construct, own, operate, and maintain all main gas lines and secondary lines up to each metering point in the Development Area.

(3) Sanitary and Wastewater Sewers and Storm Sewers. Developer shall be the Lead Agency and shall be responsible to construct and pay the Cost of the construction of a sanitary and wastewater sewers and storm sewers designed by a licensed engineer (including main line, tap, and line to edge of City right-of-way) in accordance with City specifications. The sanitary and wastewater sewer system and storm sewers shall be designed to serve all lots within the Development Area and shall be sized as specified in the plans and drawings in Exhibit "B". Upon completion of the sanitary and wastewater sewer system and storm sewers and after having passed all testing requirements, Developer shall, at no cost to the City, transfer by warranty bill of sale ownership of the sanitary and wastewater system and storm sewers to City for operation and maintenance.

(4) Dedicated Streets and Other Streets. Developer shall be the Lead Agency and shall be responsible to construct all internal private roadways within the Development Area as shown on Exhibit "C".

a. Dedicated Streets. The City shall be the Lead Agency and shall be responsible to construct the Dedicated Streets within the Development Area as shown on Exhibit "C", consisting exclusively of the west one-half of Yager Road and the south one-half of 32nd Street immediately adjacent to the Development Area. Developer shall reimburse the City for one-half of the City’s Cost to construct, not to exceed $375,000, the west one-half of Yager Road and the south one-half of 32nd Street immediately adjacent to the Development Area as shown on Exhibit “C” upon the City completing construction of the aforementioned Dedicated Streets and delivering an invoice for such costs to Developer. In consideration of the representations and warranties of the City and Developer in this Section 4(a), Developer shall not object to the creation of a street improvement district or the levy of a special assessment with respect to construction of the Dedicated Streets, and the City shall not levy any special assessment upon the real property owned by Developer in the Development Area with respect to the construction of the Dedicated Streets.

(5) Sidewalks. Developer shall be responsible to construct and pay the Cost of sidewalks along both sides of all Dedicated Streets. Developer shall provide dropped curbs for ADA ramps at all intersections with sidewalks within the Development Area as shown on Exhibit “C”.

(6) Trails. Developer shall be responsible to construct and pay the Cost of trails throughout the development, per Exhibit “C”. Trails shall be constructed eight (8) feet in width and be shown on Exhibit “C”.

9
(7) **Dedicated Street Signage and Traffic Controls.** Developer shall be responsible to construct and pay the Cost of any Dedicated Street signage, traffic control or signals required. Upon completion of the Public Improvements, Developer shall invoice City for its share of such Cost, and City shall pay such invoice within thirty (30) days after City receives such invoice.

(8) **Construction Stormwater Management.** Developer, its successors, or assigns shall be responsible for stormwater management of the systems shown on Exhibit "B" during and after construction of Public Improvements per City requirements.

(9) **Stormwater Detention Facilities.** Developer shall be the Lead Agency and shall be responsible to construct and pay for the Cost of stormwater detention facilities. Developer shall own and maintain all stormwater detention facilities, as shown on Exhibit "B".

(10) **Fire Hydrants.** Pursuant to the Code, Developer shall be the Lead Agency and shall be responsible to construct, install and pay for the construction and installation Costs of fire hydrants for the protection of the Development Area. City shall approve the fire hydrant (i.e. Mueller A423 fire hydrant with a direct bury 5¼' or vertical shoe riser) and control valves before being installed by the Developer. The location of the hydrants must also be approved by City.

i. **Other Developer Responsibilities.**

(1) **Review Fee.** To cover engineering, legal and other miscellaneous expenses incurred by City in connection with City’s review of plans and specifications in connection with the construction of certain Public Improvements, Developer shall pay City a one-time fee of $1,000 prior to City’s approval of the plans and specifications for Public Improvements.

(2) **Grading.** Developer shall pay for the Cost of all grading of the Development Area, including all right-of-ways as shown in Exhibit “B”.

(3) **Entrance Signs.** Developer shall be responsible to construct, install and pay for the Cost of entrance signs or related fixtures and any median landscaping and related fixtures, if any. Plans for such proposed improvements that are to be located in public right-of-ways and a proposed maintenance agreement for the improvements must be submitted to the City for review and approval prior to the installation of improvements. Entrance signs shall be owned and maintained by the homeowner’s association.

(4) **No Wells.** Developer shall not design, construct, install, or expand any potable wells or potable well components within the Development Area (except wells
for de-watering for construction of Public Improvements) without obtaining City’s approval, as required by Code. Furthermore, Developer shall remove all wells and well system components existing within the Development Area at the time of this Agreement’s execution prior to making a connection to the Water Distribution System. Developer shall obtain all requisite approvals from City and the State of Nebraska necessary to comply with this provision.

(5) **No Septic Systems.** Developer shall remove all septic systems, septic system components, and other onsite sewage retention systems existing within the Development Area at the time of this Agreement’s execution prior to making a connection to the Sanitary and Wastewater Sewer. Developer shall obtain all requisite approvals from City and State of Nebraska necessary to comply with this provision.

(6) **Subsequent Replatting.** If Developer wishes to replat any portion of the Development Area, such replat must be approved in accordance with Uniform Development Code (“Code”). If City approves such replat(s), such approval shall be contingent upon, but not limited to, Developer dedicating and filing of record all permanent easements necessary to provide additional access to the subdivided lots. All such easements must meet City’s approval prior to dedication.

(7) **Easements/Dedicated Right-of-Way.** Developer shall be responsible for granting easements and dedicated right-of-ways to City and memorializing such easements and dedicated right-of-ways on the Final Plat, as contemplated herein, if any. All such instruments shall include a prescription outlining the rights, terms, and maintenance responsibilities of the corresponding easements.

(8) **Plat.** Developer shall file or record the Final Plat with Dodge County and provide City with three executed paper copies and with a digital file in CAD/GIS format.

(9) **Compliance with Laws, Statutes, and Ordinances.** Developer, in performing its obligations under this Agreement, shall comply with all applicable federal, state, and local laws. The terms of this provision shall apply equally to Developer and any third party leasing any portion of the Development Area from Developer, and any party working for or on behalf of Developer.

**SECTION 5 MISCELLANEOUS**

A. **Incorporation of Recitals.** The recitals set forth above are, by this reference, incorporated into and deemed part of this Agreement.

B. **Agreement Binding.** The provisions of this Agreement, and all exhibits and
documents attached or referenced herein, shall run with the land and shall be binding upon, and shall inure to the benefit of, the Parties, their respective representatives, successors, assigns, heirs, and estates, including all successor owners of the property described in the attached Exhibit “A”. Every time the phrase “successors or assigns”, or similar language, is used throughout this Agreement, it is to be attributed the same meaning as provided in this “Agreement Binding” provision. No special meaning shall be attributed to any instance herein in which the name of a Party is used without the phrase “successors and assigns” following immediately thereafter, unless expressly stated otherwise.

C. Termination of Agreement. This Agreement shall not be terminated except by: (1) written notice of termination by Developer to City, to be effective upon City’s receipt of the notice of termination, but only so long as no construction or installation of any of the Public Improvements or Private Improvements has yet commenced or (2) written agreement between Developer and City in the event any construction or installation of any of the Public Improvements or Private Improvements has commenced. In the event the construction or installation of any of the Public Improvements or Private Improvements has commenced, Developer shall be required by City to complete the applicable Public Improvements and Private Improvements to a reasonable point of termination, as determined by City, to ensure the Development Area does not negatively impact public health, safety, and welfare. Notwithstanding the foregoing, City may suspend its performance under this Agreement upon the recurrence of any breach or default upon which City has given a notice to Developer specifying such breach or default (“Notice to Cure”) in the preceding one hundred eighty (180) days. City shall have no obligation to resume performance under this Agreement until such time as Developer has remedied the default specified in the Notice to Cure. Developer’s obligation to complete Public Improvements and Private Improvements that have commenced prior to termination of this Agreement to a reasonable point of termination, as determined by City, shall survive the expiration or termination of this Agreement.

D. Indemnity. Developer agrees to defend, indemnify, and hold City and its respective employees, agents, and assigns (each, a “City Indemnatee”) harmless from and against any and all responsibility, claims, liability, obligation, judgments, actions, loss, damage, or injury of any nature whatsoever arising from any act or omission constituting a breach of duty of the Developer in connection with the Final Plat, this Agreement, Development Area, and development, including payment of reasonable attorney’s fees; provided, that City must notify Developer in writing of the facts or underlying circumstances giving rise to an indemnification claim hereunder within two (2) years of the date that such City Indemnatee first obtains knowledge of such facts or circumstances giving rise to such claim.

E. Assignment. Developer may not assign all or any portion of this Agreement nor delegate any of its obligations hereunder without the express prior written consent of City, which consent shall not be unreasonably withheld.
F. **No Waiver of Regulations.** Nothing herein shall be construed to imply any waiver of any provision of the Code.

G. **No Continuing Waivers.** A waiver by any Party of any default, breach, or failure of another shall not be construed as a continuing waiver of the same or of any subsequent or different default, breach, or failure.

H. **Severability.** In the event that any provision of this Agreement proves to be invalid, void, or illegal by a court of competent jurisdiction, such decision shall in no way affect, impair, or invalidate any other provisions of this Agreement, thus such other provisions shall remain in full force and effect as if the invalid, void, or illegal provision was never part of this Agreement.

I. **Governing Law.** Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law, except to the extent such provisions may be superseded by applicable federal law, in which case the latter shall apply.

J. **Forum Selection and Personal Jurisdiction.** Any dispute arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by the courts located in Dodge County, Nebraska. Accordingly, the Parties agree to exclusive personal jurisdiction in the courts located in Dodge County, Nebraska.

K. ** Entire Agreement.** This Agreement and all exhibits and documents attached or referenced herein, which are hereby incorporated and specifically made a part of this Agreement by this reference, express the entire understanding and all agreements of the Parties. Specifically, this Agreement supersedes any prior written or oral agreement or understanding between or among any of the Parties, whether individually or collectively, concerning the subject matter hereof.

L. **Modification by Agreement.** This Agreement may be modified or amended only by a written agreement executed by both Parties. In the event a party to this Agreement or subsequent amendment(s) dissolves, or ceases to exist by some other means, without any valid successors or assigns, said party shall be deemed to be without signing authority and, accordingly, the signature of said party shall not be required in order to validly execute subsequent modifications or amendments to this Agreement. Any modifications or amendments to this Agreement shall conform to the requirements of any applicable laws, rules, regulations, standards, and specifications of any governmental agency with jurisdiction over any such matter included in any modification or amendment of this Agreement without cost to City.

M. **Notices, Consents, and Approvals.** Unless expressly stated otherwise herein, all payments, notices, statements, demands, requests, consents, approvals, authorizations, or other submissions required to be made by the Parties shall be
in writing, whether or not so stated, and shall be deemed sufficient and served upon the other only if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

For Developer: Fremont Enterprises, LLC
1704 North Bell Street #134
Fremont, Nebraska 68025

With a Copy to: David C. Levy
Baird Holm LLP
1700 Farnam Street
Suite 1500
Omaha, NE 68102

For City: City Clerk
City of Fremont
400 E Military Ave
Fremont, NE 68025

Such addresses, names, or titles may be changed from time to time by written notice to the other Party.

N. Related Contract(s) Voidable. No elected official or any officer or employee of City shall have a financial interest, direct or indirect, in any City contract related to this Agreement. Any violation of this section with the knowledge of the person or corporation contracting with City or such elected official, officer, or employee shall render such contracts voidable by the Mayor or City Council.

O. Non-Discrimination. In the performance of this Agreement, the Parties, their agents, contractors, subcontractors, and consultants shall not discriminate, or permit discrimination, against any person on account of disability, race, color, sex, age, political or religious opinions or affiliations, or national origin in violation of any applicable laws, rules, or regulations of any governmental entity or agency with jurisdiction over any such matter.

P. Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define or limit the scope of any section.

Q. Approval of Annexation, Rezoning and Subdivision. Developer acknowledges that City’s approval of the annexation and rezoning of the Development Area, passed and approved by the Fremont City Council on August 13, 2019, by Resolution No. 2019-____ is specifically subject to and conditioned on Developer’s execution and compliance with this Agreement. The parties further acknowledge that consolidation and subdivision of the tax parcels within the Development Area will occur via administrative approval following execution of this Agreement.
R. **No Obligation to Construct or Operate.** It is expressly agreed that nothing contained in this Agreement shall be construed as an obligation, either expressed or implied, incumbent upon Developer to: (1) commence the construction of any Public Improvement (2) commence the operation of a business, or (3) thereafter continuously operate a business on the Development Area. City recognizes and agrees that Developer may, at Developer’s sole discretion, elect not to develop the Development Area or, if developed, cease the operation of its business on the Development Area. If Developer does not develop the Development Area pursuant to this Agreement or ceases operation of the Development Area, City shall have the right to vacate the Final Plat and/or terminate this Agreement pursuant to the termination provisions provided for in this Agreement.

S. **Compliance Letter.** At any time, and from time to time, Developer may deliver written notice to City requesting that City provide a written Compliance Letter which provides that, to the knowledge of City: (1) this Agreement is in full force and effect and a binding obligation of the Parties, (2) this Agreement has not been amended, or if amended, the resolution number of each amendment, and (3) City has not notified Developer of a violation in relation to this Agreement, or, if a notification of violation has been provided to Developer, a brief description of said notification. The City Administrator, or his or her designee, shall be authorized to execute, on behalf of City, any Compliance Letter requested by Developer, which complies with this Section. City acknowledges that a Compliance Letter may be provided to transferees or successors in interest to Developer or to a mortgagee or beneficiary under a deed of trust holding an interest in the Development Area. City reserves the right to modify or amend any such Compliance Letter issued by City in the event City’s knowledge regarding the contents of such letter changes to an extent that the representations contained therein are no longer accurate.

T. **Additional Remedies of City; Cross-Default.** The Parties acknowledge that Developer and the City have entered into that certain "Redevelopment Contract (The Fountain Springs Redevelopment Project) dated on or about August 13, 2019 (the "Redevelopment Contract"). If Developer materially violates any term of this Agreement or the Redevelopment Contract, the City shall have the authority, after first giving ten (10) days written notice to the Developer, to discontinue the issuance of building and/or utility connection permits for the Development Area until such time as the violation is corrected.

U. **Term.** The Developer shall install all Public Improvements, that it is responsible to construct, within a two (2) years after the signing of this Agreement. The City Engineer may approve any extension of this time period.

**ATTEST:**

**CITY:**
City of Fremont, a Nebraska municipal corporation
Tyler Ficken, City Clerk  

Scott Getzschman, Mayor
DEVELOPER:

Fremont Enterprises, LLC,
a Nebraska limited liability company

By: _______________________________

Name: Brian M. Zubert

Title: Manager

STATE OF __________________________) ss.
COUNTY OF ____________________________

Before me, a notary public, in and for said county and state, personally came
Brian M. Zubert, Manager of Fremont Enterprises, LLC, a Nebraska limited liability
company, known to me to be the identical person who executed the above instrument
and acknowledged the execution thereof be his voluntary act and deed on behalf of said
limited liability company.

Witness my hand and Notarial Seal this ___ day of ____________, 2019.

_____________________________
Notary Public
EXHIBIT "A"

Development Area

Legal Description:

Lot 1, Fountain Springs Second Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Second Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Third Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 1, Fountain Springs Fourth Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

AND

Lot 2, Fountain Springs Fourth Subdivision, an Addition to the City of Fremont, Dodge County, Nebraska,

TOGETHER WITH

All public rights-of-way contiguous thereto.

* Subsequent to the execution of this Subdivision Agreement, Redeveloper intends to administratively consolidate and further subdivide the Development Area. Subsequent to said administrative consolidation and subdivision, the above legal description shall be replaced with the legal description provided in the administrative consolidation and subdivision, as applicable, of the Development Area approved by the City.
EXHIBIT "B"

Site Plans

(See attached)
EXHIBIT "C"

Dedicated Public Streets

(See attached)
July 31, 2019

To: Honorable Mayor Scott Getzschman
Fremont City Council
Brian Newton, City Administrator

During recent Planning Commission and City Council meetings the School District's position in regard to the utilization of Tax Increment Financing (TIF) has been discussed on both sides of the issue of economic development and residential growth in Fremont. At a recent City Council meeting, consideration for a 55+ apartment building development in Fountain Springs and the utilization of TIF was discussed.

In January of 2017, the Board of Education passed a resolution regarding the utilization of TIF for residential development (see next page). Since that time we have been consistent with our message in this regard. We have had discussions with at least four developers related to the District's position relative to TIF for residential development and have voiced our opposition to the City, County, Chamber and GFDC. The only exceptions to this very strong opposition have been in cases of 55+ housing development and the redevelopment of the 505 Building on Main Street.

Residential development for people who are 55+ rarely house students and meets a need the City continues to struggle with in finding available housing for this demographic of population. In our discussions with developers, for the most part, they have been understanding of the District's position in regard to residential development for people under 55 years of age and have moved on with their projects without the use of TIF.

As the City continues to grow and develop there will certainly be additional developers interested in utilizing TIF for residential development. This letter will serve as a statement of the Fremont School District's opposition to utilizing this financing tool for residential development designated for people under 55 years of age.

Respectfully submitted,

Mark Shepard
Superintendent
Fremont Public Schools
WHEREAS, the Fremont Public Schools Board of Education recognizes the value of re-development of commercial and industrial sites within the community to bolster the economy and broaden the tax base; and,

WHEREAS, the Fremont City Council has elected to allow private entities to utilize Tax Increment Financing under the “Community Development Law” (§§ 18-2101 to 18-2144, R.R.S.) to strengthen their financial packages for re-development; and,

WHEREAS, the Community Development Laws and local ordinances are being followed in pursuit of such re-development.

NOW, THEREFORE BE IT RESOLVED, that the Board of Education of Dodge County School District No. 1, a/k/a Fremont Public Schools understands the value of the use of Tax Increment Financing as a tool for re-development for commercial and industrial sites; provided that such re-development does not include the expansion of residential dwelling units within such commercial and industrial re-development sites since the expansion of residential dwelling units without the increased taxable property values could have a detrimental effect on the District's finances.

BE IT FURTHER RESOLVED, that the Board of Education of Dodge County School District No. 1, a/k/a Fremont Public Schools does not support the use of Tax Increment Financing for development or re-development of residential dwelling sites or areas due to the possible negative effects of such utilization on District financing and housing needs.
RESOLUTION NO. 2019-119
Redevelopment Agreement for the Fountain Springs 55+ Apartment (Fremont Enterprises, LLC) Redevelopment Project

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA APPROVING THE REDEVELOPMENT AGREEMENT AND SUBDIVISION AGREEMENT FOR THE FOUNTAIN SPRINGS 55+ APARTMENT REDEVELOPMENT PROJECT AND AUTHORIZING THE ISSUANCE OF TAX INCREMENT FINANCING INDEBTEDNESS.

WHEREAS, the Community Development Agency of the City of Fremont, Nebraska (the “CDA”) via Resolution No. 2014-137, dated July 29, 2014, approved and adopted a Redevelopment Plan. On July 9, 2019 the CDA held a public hearing and failed to make a recommendation on Resolution 2019-005 to amend the 23rd & Bell Street Redevelopment Plan, pursuant to the Nebraska Community Development Law codified at Neb. Rev. Stat. §§ 18-2101 et seq. (the “Act”);

WHEREAS, a copy of the Redevelopment Agreement by and between the CITY OF FREMONT and Fremont Enterprises, LLC, a Nebraska limited liability company, that will implement and govern the project identified as the Fountain Springs 55+ Apartment Redevelopment Project (“Project”) is attached as Attachment “A” and incorporated herein by this reference;

WHEREAS, on August 13, 2019, a meeting of the CITY OF FREMONT was held at the Fremont City Council Chambers, 400 East Military Avenue, in Fremont, Nebraska in order to determine whether the Redevelopment Agreement AND Subdivision Agreement should be approved;

WHEREAS, the Redevelopment Plan and the Redevelopment Agreement will, in accordance with the present and future needs of the City of Fremont, promote the health, safety, morals, order, convenience, prosperity and the general welfare of the community in conformance with the legislative declarations and determinations set forth in the Act;

WHEREAS, the Redevelopment Plan is feasible and is in conformance with the general plan for development of the City and its objectives are being accomplished in the Redevelopment Agreement for the Project;

WHEREAS, the Project as described in the Redevelopment Agreement would not be economically feasible as designed without the use of tax increment financing; and the Project as designed would not occur in the North Broad Street Redevelopment Area without the use of tax increment financing; and the Project is in the long-term best interests of the community;
WHEREAS, the CITY OF FREMONT has reviewed the Redevelopment Agreement and has found it to be in conformity with the Act and the general plan for development of the City of Fremont, and in the best interests of the City of Fremont; and

WHEREAS, pursuant to the provisions of the Act and in light of the foregoing findings and determinations, the CITY OF FREMONT desires to approve the Redevelopment Agreement and to approve TIF Indebtedness in an amount not to THREE MILLION NINE HUNDRED FOURTY NINE THOUSAND ONE HUNDRED DOLLARS (3,949,100) in the form of the TIF Note attached to the Redevelopment Agreement;

WHEREAS, a Subdivision Agreement is associated with the Redevelopment Agreement;

NOW, THEREFORE, BE IT RESOLVED, that the City of Fremont, Nebraska does hereby approve and adopt the Redevelopment Agreement in substantially the form attached hereto as Attachment “A”; and the associated Subdivision Agreement Attachment “B”;

BE IT FURTHER RESOLVED, that the City of Fremont hereby authorizes its legal counsel to finalize the terms and conditions of the Redevelopment Agreement on behalf of the City of Fremont, and that any and all actions previously taken by its legal counsel to fulfill this resolution are hereby ratified and approved, except that the amount of the TIF Indebtedness and the use of the TIF proceeds shall not be modified without the consent and approval of the CDA;

BE IT FURTHER RESOLVED, that the City of Fremont is hereby authorized, following the lapse of thirty (30) days after the approval of the Redevelopment Agreement, issue indebtedness in an amount not to exceed THREE MILLION NINE HUNDRED FOURTY NINE THOUSAND ONE HUNDRED DOLLARS (3,949,100) in the form of the TIF Note attached to the Redevelopment Agreement, with such TIF Indebtedness to be repaid solely from the Tax Increment created by the Project and does not represent the general obligation of the City of Fremont; and

BE IT FURTHER RESOLVED, that the City of Fremont hereby authorizes its Mayor to execute and deliver the Redevelopment Agreement and to take all such other actions contemplated and required by the Redevelopment Agreement and to fulfill the resolutions set forth above.

DATED THIS 13th DAY OF AUGUST 2019.

THE CITY OF FREMONT, NEBRASKA

By: __________________________
Scott Getzschman, Mayor

ATTEST: _______________________
Tyler Ficken, Secretary
ATTACHMENT “A”

Redevelopment Agreement

[See Attached]
ATTACHMENT “B”

Subdivision Agreement

[See Attached]
STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Jody Sanders, CPA, Director of Finance
DATE: August 13, 2019
SUBJECT: Claims

Recommendation: Move to approve July 31 through August 13, 2019 claims, as well as subsequent claims due and payable before the next meeting of the City Council, and authorize checks to be drawn on the proper accounts.

Background: Council will review claims via email August 9, 2019. In addition, Staff is requesting approval by the Council to pay claims that will become due and payable (by virtue of contractual agreements or regulatory requirements) before the next City Council meeting.

The amount due is not known as of this staff report, but the related vendors are listed below. These approved claims will still be presented as claims at the next City Council meeting and included in the total requested by Council for approval.

- Direct deposit of employee payroll on August 22, 2019, and related withholdings remitted to pension plans, federal and state tax withholdings, and garnishments.
- Nebraska Department of Revenue – sales & lodging tax collected by the City at various facilities.
- Health and dental claims paid by the City’s third-party administrator Blue Cross and Blue Shield, as well as Health care reinsurance premiums payable.
- Life and Disability (ST & LT) premiums payable to UNUM monthly
- Workers compensation claims paid by the City’s third-party administrator Tri-Star.
- Transmission and energy purchases payable to Southwest Power Pool, every Tuesday.
- Construction, transmission and energy purchases payable to Omaha Public Power District.
- Natural gas purchases from Northern Natural Gas/US Energy, BP, Cargill, Central Plains Energy Project (CPEP) and Public Energy Authority of Kentucky (PEAK).
- Coal purchases from Cloud Peak Energy Resources, Peabody coal, and freight charges to Union Pacific.
- UPS weekly invoice for shipping costs, due within ten days or late fees are incurred.

There are a limited number of agencies that debit the City’s bank account for credit card processing fees, kiosk fees, bank analysis fees and occasionally NSF fees from our Ambulance Billing contractor. These are based on a fee schedule.

Fiscal Impact:

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PAYMENT TYPES
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  EFTs ................................................ Y
  ePayables ........................................... Y

VOUCHER SELECTION CRITERIA
  Voucher/discount due date ...................... 07/31/2019
  All banks .......................................... A

REPORT SEQUENCE OPTIONS:
  Vendor .............................................. One vendor per page? (Y,N) ............... N
  Bank/Vendor ....................................... X One vendor per page? (Y,N) ............... N
  Fund/Dept/Div ...................................... Validate cash on hand? (Y,N) ........... N
  Fund/Dept/Div/Element/Obj ......................... Validate cash on hand? (Y,N) ........... N
  Proj/Fund/Dept/Div/Elm/Obj ....................... 

This report is by: Bank/Vendor
  Process by bank code? (Y,N) ..................... Y
  Print reports in vendor name sequence? (Y,N) .. Y
  Calendar year for 1099 withholding ............. 2019
  Disbursement year/per ........................... 2019/10
  Payment date ...................................... 07/31/2019
The $9,117 check was voided to Yong Construction and reissued for the correct amount invoiced of $85,076. This was the result of an error in processing, and was no fault of the contractor, who submitted the $85,076 invoice timely. This is the third payment on the 2019 pavement rehab project. The contract has $38,739.20 remaining to be paid.
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**VENDOR TOTAL**: 2,305.28

**BANK TOTAL**: 2,305.28

**HAND ISSUED TOTAL**: 6,811.72

**EFT/EPAY TOTAL**: 321,357.50

**TOTAL EXPENDITURES**: 85,076.10

**GRAND TOTAL**: 399,621.88
PAYMENT TYPES
Checks ........................................... Y
EFTs ................................................ Y
ePayables ......................................... Y

VOUCHER SELECTION CRITERIA
Voucher/discount due date ................. 08/08/2019
All banks ................................. A

REPORT SEQUENCE OPTIONS:
Vendor .................................................. N
Bank/Vendor ......................................... N
Fund/Dept/Div ......................................... N
Fund/Dept/Div/Element/Obj ......................... N
Proj/Fund/Dept/Div/Elm/Obj ......................... N
This report is by: Bank/Vendor
Process by bank code? (Y,N) ................. Y
Print reports in vendor name sequence? (Y,N) ... Y
Calendar year for 1099 withholding ........... 2019
Disbursement year/per .......................... 2019/11
Payment date ................................. 08/07/2019
City of Fremont
General Fund

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**City of Fremont**

**Employee Benefits**

**BANK: 01**

**Program: GM339L**

**As of: 08/08/2019**

**Payment Date: 08/07/2019**

**Bank Total:** 115,014.39
Pay Date 8/08/19

Direct Deposit Register

Primary FIRST NATIONAL BANK Program PR530L

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All banks .......................................... A

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Proj/Fund/Dept/Div/Elm/Obj ......................

This report is by: Bank/Vendor
Process by bank code? (Y,N) ....................... Y
Print reports in vendor name sequence? (Y,N) .. Y
Calendar year for 1099 withholding ............ 2019
Disbursement year/per ............................ 2019/11
Payment date ....................................... 08/14/2019
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As of: 08/14/2019  
Payment date: 08/14/2019

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<th>EFT, EPAY OR HAND-ISSUED</th>
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<tr>
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<td>0719PI5656 038212 09 08/14/2019</td>
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**VENDOR TOTAL:** 1,146.22

**EFT/EPAY TOTAL:** 34,684.09

**TOTAL EXPENDITURES:** 290,955.20

**GRAND TOTAL:** 391,949.77
Electric Fund – 051
Water Fund – 053
Sewer Fund – 055
Gas Fund – 057
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<thead>
<tr>
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<th>SEQ#</th>
<th>VENDOR NAME</th>
<th>INVOICE NO</th>
<th>VOUCHER P.O. NO</th>
<th>BNK CHECK/DUE DATE</th>
<th>ACCOUNT NO</th>
<th>ITEM DESCRIPTION</th>
<th>CHECK NO</th>
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</tr>
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<tbody>
<tr>
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<td>UPS</td>
<td>5E9752309</td>
<td>00</td>
<td>07/29/2019</td>
<td></td>
<td>Serv Chrg Share</td>
<td>7/27/19</td>
<td>7.25</td>
</tr>
<tr>
<td>5E9752309</td>
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<td>5E9752309</td>
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<td>07/29/2019</td>
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<td>Serv Chrg Share</td>
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<tr>
<td>5E9752309</td>
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<td>Ohio Lumex Co</td>
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<td>00</td>
<td>07/29/2019</td>
<td>051-5001-940.60-79</td>
<td>Ohio Lumex Co</td>
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<tr>
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<td>UPS</td>
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<td>Water Samples</td>
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VENDOR TOTAL * 122.38

TOTAL EXPENDITURES **** 122.38

GRAND TOTAL ****************** 122.38
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<th>GROUP NO</th>
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<th>DATE</th>
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<th>ITEM DESCRIPTION</th>
<th>AMOUNT</th>
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<tbody>
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<td>08/05/19</td>
<td>051-5001-903-60-77</td>
<td>CREDIT CARD FEES</td>
<td>1,802.70</td>
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TOTAL EXPENDITURES: 9,229.16
PAYMENT TYPES

Checks .................................. Y
EFTs ........................................ Y
ePayables .................................. Y

VOUCHER SELECTION CRITERIA

Voucher/discount due date .................. 08/05/2019
All banks .................................. A

REPORT SEQUENCE OPTIONS:

Vendor ..................................... X One vendor per page? (Y,N) ............... N
Bank/Vendor ................................ One vendor per page? (Y,N) ............... N
Fund/Dept/Div .............................. Validate cash on hand? (Y,N) ............... N
Fund/Dept/Div/Element/Obj .............. Validate cash on hand? (Y,N) ............... N
Proj/Fund/Dept/Div/Elm/Obj ..............

This report is by: Vendor
Process by bank code? (Y,N) ............. Y
Print reports in vendor name sequence? (Y,N) .. Y
Calendar year for 1099 withholding ........ 2019
Disbursement year/per ........................ 2019/11
Payment date .............................. 08/05/2019
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<thead>
<tr>
<th>VEND NO</th>
<th>SEQ#</th>
<th>VENDOR NAME</th>
<th>CHECK/DATE</th>
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<td>051-5001-940.60-79</td>
<td>8/03/19 Serv Chrg Share</td>
<td>7.25</td>
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<tr>
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<td>UPS</td>
<td>08/05/2019</td>
<td>051-5001-940.60-79</td>
<td>8/03/19 Serv Chrg Share</td>
<td>7.25</td>
</tr>
<tr>
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**Natural gas purchase**

VENDOR TOTAL * 66,510.00

TOTAL EXPENDITURES **** 66,666.94

GRAND TOTAL ******************* 66,666.94
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<th>Deposit Amount</th>
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</tbody>
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**Final Total**: 281,128.55  
**Count**: 175
PAYMENT TYPES
Checks ................................................. Y
EFTs ................................................... Y
ePayables ........................................... Y

VOUCHER SELECTION CRITERIA
Voucher/discount due date ..................... 08/08/2019
All banks ............................................. A

REPORT SEQUENCE OPTIONS:
Vendor ................................................ X  One vendor per page? (Y,N)............... N
Bank/Vendor ........................................ One vendor per page? (Y,N)............... N
Fund/Dept/Div ........................................ Validate cash on hand? (Y,N)........... N
Fund/Dept/Div/Element/Obj ..................... Validate cash on hand? (Y,N)........... N
Proj/Fund/Dept/Div/Elm/Obj .....................

This report is by: Vendor
Process by bank code? (Y,N) ................. Y
Print reports in vendor name sequence? (Y,N) ..... Y
Calendar year for 1099 withholding .......... 2019
Disbursement year/per ............................. 2019/11
Payment date ................................. 08/08/2019
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<thead>
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<th>VEND NO</th>
<th>SEQ#</th>
<th>VENDOR NAME</th>
<th>VOUCHER P.O.</th>
<th>BNK CHECK/DUE DATE</th>
<th>ACCOUNT NO</th>
<th>ITEM DESCRIPTION</th>
<th>CHECK AMOUNT</th>
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<td>08/08/2019</td>
<td>051-0000-241.00-00</td>
<td>PAYROLL SUMMARY</td>
<td>EFT: 143,400.08</td>
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<td>08/08/2019</td>
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<td>08/08/2019</td>
<td>051-0000-241.00-00</td>
<td>PAYROLL SUMMARY</td>
<td>VENDOR TOTAL: 35.00</td>
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<tr>
<td>0004192</td>
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<td>PAYROLL EFT DEDUCTIONS</td>
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<td>08/08/2019</td>
<td>051-0000-241.00-00</td>
<td>PAYROLL SUMMARY</td>
<td>VENDOR TOTAL: 40.00</td>
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<td>EFT/EPAY TOTAL ***</td>
<td>176,943.80</td>
<td>143,400.08</td>
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<td>TOTAL EXPENDITURES ****</td>
<td>177,018.80</td>
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<td>GRAND TOTAL **************</td>
<td>320,418.88</td>
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# Nebraska and Local Sales and Use Tax Return

**Tax Cat.** | **Nebr. I.D. Number** | **Rpt. Code** | **Tax Period** | **Due Date**  
--- | --- | --- | --- | ---  
1 | 55808 | 1 | 7/2019 | 08/20/2019

## NAME AND LOCATION
DEPARTMENT OF UTILITIES  
400 E MILITARY AVE  
FREMONT, NE 68025-5141

## NAME AND MAILING ADDRESS
DEPARTMENT OF UTILITIES  
400 E MILITARY AVE  
FREMONT, NE 68025-5141

- Check the box if your business has permanently closed, has been sold to someone else, or your permit is no longer needed. New owners must apply for their own sales tax permit.

## Gross Sales and Services in Nebraska

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Gross sales and services in Nebraska</td>
<td>5,915,232.00</td>
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</table>

## Net Nebraska Taxable Sales

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>2</td>
<td>Net Nebraska taxable sales</td>
<td>3,443,205.00</td>
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## Nebraska Sales Tax (Line 2 Multiplied by .055)

<table>
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<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Nebraska sales tax (line 2 multiplied by .055)</td>
<td>189,376.28</td>
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</table>

## Nebraska Use Tax

<table>
<thead>
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<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Nebraska use tax</td>
<td>6,219.72</td>
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</tbody>
</table>

## Local Use Tax from Nebraska Schedule I

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Local use tax from Nebraska Schedule I</td>
<td>1,695.98</td>
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</tbody>
</table>

## Local Sales Tax from Nebraska Schedule I

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>6</td>
<td>Local sales tax from Nebraska Schedule I</td>
<td>47,189.98</td>
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</table>

## Total Nebraska and Local Sales Tax (Line 3 Plus Line 6)

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Total Nebraska and local sales tax (line 3 plus line 6)</td>
<td>236,566.26</td>
</tr>
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</table>

## Sales Tax Collection Fee (Line 7 Multiplied by .025; Maximum Allowed $75.00 per Location)

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Sales tax collection fee (line 7 multiplied by .025; Maximum allowed $75.00 per location)</td>
<td>75.00</td>
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</table>

## Sales Tax Due (Line 7 Minus Line 8)

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Sales tax due (line 7 minus line 8)</td>
<td>236,491.26</td>
</tr>
</tbody>
</table>

## Total Nebraska and Local Use Tax (Line 4 Plus Line 5)

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Total Nebraska and local use tax (line 4 plus line 5)</td>
<td>7,915.70</td>
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</table>

## Total Nebraska and Local Sales and Use Tax Due (Line 9 Plus Line 10)

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
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</thead>
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<tr>
<td>11</td>
<td>Total Nebraska and local sales and use tax due (line 9 plus line 10)</td>
<td>244,406.96</td>
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</table>

## Previous Balance with Applicable Interest at 5.0% per Year and Payments Received Through

<table>
<thead>
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<th>Line</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>12</td>
<td>Previous balance with applicable interest at 5.0% per year and payments received through</td>
<td>244,406.96</td>
</tr>
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</table>

## Balance Due (Line 11 Plus or Minus Line 12)

<table>
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<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Balance due (line 11 plus or minus line 12)</td>
<td>244,406.96</td>
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</tbody>
</table>

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**NE Sales & Use Tax for the month of July 2019**

<table>
<thead>
<tr>
<th>Description</th>
<th>NE Tax Payable</th>
<th>NE Sales &amp; Use Tax</th>
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</thead>
<tbody>
<tr>
<td>Sales Tax Payable</td>
<td>051-0000-236-0000</td>
<td>$ 236,566.28</td>
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<tr>
<td>Sales &amp; Use Tax</td>
<td>051-0000-236-0100</td>
<td>$ 7,545.81</td>
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<tr>
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<td>051-0000-236-0100</td>
<td>$ 340.37</td>
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<tr>
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<td>057-0000-236-0100</td>
<td>$ 29.52</td>
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<tr>
<td>Collection Fee</td>
<td>051-5001-421-0000</td>
<td>$ 75.02</td>
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<tr>
<td>Cash/Total Due</td>
<td>051-0000-131-0000</td>
<td>$ 244,037.07</td>
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<td>053-0000-131-0000</td>
<td>$ 340.37</td>
</tr>
<tr>
<td></td>
<td>057-0000-131-0000</td>
<td>$ 29.52</td>
</tr>
</tbody>
</table>

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Under penalties of law, I declare that, as a taxpayer or preparer, I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is correct and complete.
PAYMENT TYPES
Checks ........................................... Y
EFTs .................................................. Y
ePayables .......................................... Y

VOUCHER SELECTION CRITERIA
Voucher/discount due date ....................... 08/14/2019
All banks ......................................... A

REPORT SEQUENCE OPTIONS:
Vendor .................................................. X One vendor per page? (Y,N) ..................... N
Bank/Vendor ......................................... One vendor per page? (Y,N) ..................... N
Fund/Dept/Div .................................... Validate cash on hand? (Y,N) ..................... N
Fund/Dept/Div/Element/Obj ................. Validate cash on hand? (Y,N) ..................... N
Proj/Fund/Dept/Div/Elm/Obj .................

This report is by: Vendor
Process by bank code? (Y,N) .................. Y
Print reports in vendor name sequence? (Y,N) . . Y
Calendar year for 1099 withholding ............ 2019
Disbursement year/per ......................... 2019/11
Payment date ..................................... 08/14/2019
<table>
<thead>
<tr>
<th>VEND NO</th>
<th>SEQ#</th>
<th>VENDOR NAME</th>
<th>VOUCHER P.O. NO</th>
<th>PAY DATE</th>
<th>ACCOUNT NO</th>
<th>ITEM NO</th>
<th>DESCRIPTION</th>
<th>CHECK AMOUNT</th>
<th>EFT, EPAY OR HAND-ISSUED</th>
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<td>0002981</td>
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<td>VENDOR TOTAL              *</td>
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**Department of Utilities**

**As Of:** 08/14/2019  
**Payment Date:** 08/14/2019

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**VENDOR TOTAL:**

- EAKES OFFICE SOLUTIONS: $1,737.40
- EHRECKE, MICHAEL J: $61.55
- ELECTRIC PUMP INC: $4,485.20
- ELEMETAL FABRICATION LLC: $59,438.55
- ELLIOTT EQUIPMENT CO: $9,579.20
- EMANUEL PRINTING INC: $380.22
- ENVIRONMENTAL ANALYSIS SOUTH INC: $366.80
- ERIKSEN CONSTRUCTION CO INC: $79,727.00
- FASTENAL CO: $69.26
- FIKES COMMERCIAL HYGIENE LLC: $69.26

**TOTAL:** $118,977.79
## EXPENDITURE APPROVAL LIST

**PROGRAM: GM339L**  
**DATE: 08/14/2019**  
**PAYMENT DATE: 08/14/2019**

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| 0004833 | 00   | FREMONT AREA UNITED WAY | JUL'19 CARESHAR | 00 08/14/2019 | 055-0000-242.02-00 July 2019 Care & Share | EFT: 267.46 |

**VENDOR TOTAL**

0.00 267.46

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**VENDOR TOTAL**

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**VENDOR TOTAL**

102.85

| 0004065 | 00   | GALCO INDUSTRIAL ELECTRONICS | AE0446501 PI5684 | 00 08/14/2019 | 053-6105-502.50-35 PO NUM 051630 | 621.22 |

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**PROGRAM: GM339L**

**AS OF: 08/14/2019**

**PAYMENT DATE: 08/14/2019**

**DEPARTMENT OF UTILITIES**

---

1. **Utility Equipment Co.**
   - Invoice Date: 08/14/2019
   - P.O. No: 053-6001-950.80-50
   - Description: utility equipment
   - Amount: 5,733.86

2. **Vessco Inc.**
   - Invoice Date: 08/14/2019
   - P.O. No: 053-6105-502.50-35
   - Description: Vessco Inc.
   - Amount: 48,452.81

3. **Vess, Emily R.**
   - Invoice Date: 08/14/2019
   - P.O. No: 051-0000-143.00-00
   - Description: manual check
   - Amount: 46.79

4. **Vess, Kristy J.**
   - Invoice Date: 08/14/2019
   - P.O. No: 051-0000-143.00-00
   - Description: manual check
   - Amount: 158.93

5. **Vess, Luanne K.**
   - Invoice Date: 08/14/2019
   - P.O. No: 051-0000-143.00-00
   - Description: manual check
   - Amount: 112.15

6. **Walnut Radio LLC (KHUB).**
   - Invoice Date: 08/14/2019
   - P.O. No: 051-5001-903.60-78
   - Description: covering various services
   - Amount: 252.00

7. **Waste Connections of NE Inc.**
   - Invoice Date: 08/14/2019
   - P.O. No: 051-5001-932.50-49
   - Description: various services
   - Amount: 241.14

8. **Waterlink Inc.**
   - Invoice Date: 08/14/2019
   - P.O. No: 051-5001-950.80-50
   - Description: covering various services
   - Amount: 2,541.10

9. **Weiss Construction Co LLC.**
   - Invoice Date: 08/14/2019
   - P.O. No: 051-0000-154.00-00
   - Description: manual check
   - Amount: 392.48

10. **Wiese Plumbing & Excavating Inc.**
    - Invoice Date: 08/14/2019
    - P.O. No: 051-0000-154.00-00
    - Description: manual check
    - Amount: 392.48
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**VENDOR TOTAL**: 7,485.00

**HAND ISSUED TOTAL**: 110.15

**EFT/EPAY TOTAL**: 2,897,387.51

**TOTAL EXPENDITURES**: 863,108.31

**GRAND TOTAL**: 3,760,205.79
TO:      Honorable Mayor and City Council
FROM:    Jody Sanders, CPA, Director of Finance
DATE:    August 13, 2019
SUBJECT: Report of Treasury

Recommendation: Move to receive Report of the Treasury

Background: The City Council receives internally-produced quarterly financial statements in addition to the annual audited financial statements; however, reports are typically not available until mid-month each quarter. This statement reports the bank account balances at the end of the prior month, and is available by the first council meeting of each month. The Council will continue to receive the quarterly financial statements, but this snapshot gives the Council more timely information regarding cash reserve balances.

Fiscal Impact: None. The City's grand total did decrease substantially ($6 million) from the June 30 to the July 31 reports, due to the 2019 payment for the Southeast Beltway.

Please note at the bottom of the second page that the City has several CDARs investments. The Certificate of Deposit Account Registry Service (CDARS) is a program that allows the public to spread money around various banks. The purpose of CDARS is to help people who invest in certificate of deposits (CDs) to stay below the Federal Deposit Insurance Corporation (FDIC) insurance limits at any given bank. These are listed separately, as they are exclusively insured separate and apart from FDIC coverage provided at each bank. These investment amounts are not included in the totals on the worksheet.
REGULAR MEETING:
1. Meeting called to order. After Public Comment and the Pledge of Allegiance, the Mayor called the meeting of
the City Council to order and stated that a copy of the open meeting law is posted continually for public
inspection located near the entrance door by the agendas.

2. Roll call. Roll call showed Council Members McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus and Legband
present. Kuhns absent. 7 Councilmembers present.

3. Mayor comments

(There will be no discussion from the Council or the public regarding comments made by the Mayor. Should
anyone have questions regarding the comments, please contact the Mayor after the meeting)

UNFINISHED BUSINESS: requires individual associated action

26. Resolution 2019-100 Policy for Individual Sewer Connections. Council Member Legband moved,
seconded by Council Member McClain to continue the item to the first meeting in September 2019.

PUBLIC HEARINGS:

4. Resolution 2019-139 for conditional use permit for the Dodge County Historical Society to expand May
Museum for a carriage house exhibit building located at 1643 N. Nye Ave. Mayor Getzschman opened
the public hearing. Mayor Getzschman closed the public hearing after receiving comments from the
public. Council Member Yerger moved, seconded by Council Member Jacobus to approve Resolution

5. Resolution 2019-135 for conditional use permit for Myra Katherine Hale for a conditional use permit to
allow a child care center at 1949 E. Military Ave. Mayor Getzschman opened the public hearing. Mayor
Getzschman closed the public hearing after receiving comments from the public. Council Member
Jacobus moved, seconded by Council Member Legband to amend the Resolution to change the
address to 1949 E. Military and the purpose to expand existing daycare Pearl Academy. Ayes: McClain,
Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried. Council Member Jacobus moved,
seconded by Council Member Jensen to approve Resolution 2019-135 as amended. Ayes: McClain,
Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

Council President Jacobus opened the public hearing. Council President Jacobus closed the public
hearing after receiving comments from the public. Council Member Jensen moved, seconded by Council
CONSENT AGENDA:
Moved by Council Member Jacobus seconded by Council Member McClain to approve items 8, 9, 12, 16, 19, & 24 of the consent agenda. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

8. Dispense with and approve July 9, 2019 City Council and Community Development Agency Meeting Minutes, and July 23, 2019 Special City Council Meeting Minutes


12. Motion to approve excavation/asphalt/concrete license applications (staff report)

16. Motion authorizing Special Designated License Local Recommendation form for United Way Kick Off (staff report)

19. Resolution 2019-144 authorizing City staff to sign a lease agreement with NMC for a Caterpillar Compact Track Loader (staff report)

24. Resolution 2019-148 to authorize staff to execute a contract with JEO Consulting for evaluation of the Fremont, Farmland and Railroad Levee (staff report)

ITEMS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION:

18. Resolution 2019-143 for Final Acceptance of the Project for the Reconstruction of Luther Rd and Morningside Rd Intersection; and authorize Mayor to sign Pay Application No. 2 and Final Change Order. Council Member Jacobus moved, seconded by Council Member McClain to approve Resolution 2019-143. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

7. Motion to approve July 10, 2019 through July 30, 2019 claims and authorize checks to be drawn on the proper accounts. Council Member Jacobus moved, seconded by Council Member Jensen to move item number eighteen before item number seven for discussion. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried. Council Member Jensen moved, seconded by Council Member Jacobus to approve the July 10, 2019 through July 30, 2019 claims and authorize checks to be drawn on the proper accounts. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

10. Resolution 2019-136 approving the request of the Fremont Area Chamber of Commerce to use the upper level of the Ilgenfritz Parking lot, and approve the application for a Special Designated Permit. Council Member Jacobus moved, seconded by Council Member McClain to amend the location to be the David Kavich parking structure. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried. Council Member Yerger moved, seconded by Council Member Jacobus to approve Resolution 2019-136 as amended. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

11. Motion to approve payment agreement with Classic Enterprises for water loss. Council Member Jacobus moved, seconded by Council Member Legband to approve payment agreement with Classic Enterprises for water loss. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

13. Resolution 2019-137 approving the request of Keep Fremont Beautiful to use the Ilgenfritz Parking Lot at 4th and Park Avenue for the All Metals Market Drop site. Council Member Yerger moved, seconded by Council Member McClain to approve Resolution 2019-137. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

15. Motion to approve use of Clemmons Park by Fremont High School to host Junior Varsity Cross Country Meet. Council Member Yerger moved, seconded by Council Member Jensen to approve use of Clemmons Park by Fremont High School to host Junior Varsity Cross Country Meet. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

17. Resolution 2019-142 accepting and awarding contract of Saunders County Grading to Sawyer Construction Co. Council Member Jensen moved, seconded by Council Member Legband to receive into the record a map showing do not disturb, primary grading area and future range. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried. Council Member McClain moved, seconded by Council Member Legband to receive into the record a zoning map and Saunders County Zoning Regulations. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried. Council Member Yerger moved, seconded by Council Member Legband to receive into the record three maps of property in Saunders County showing parcels. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried. Council Member McClain moved, seconded by Council Member Legband to continue the item to the last meeting in October 2019. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.


22. Motion authorizing Special Designated License Local Recommendation form for Taco Smack Anniversary. Council Member Jensen moved, seconded by Council Member Bechtel to approve Special Designated License Local Recommendation form for Taco Smack Anniversary. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.


25. Resolution 2019-140 approving the request of Dan Layman to use the grassy area between East Military Avenue and the ditch on the south side of the Fremont Nazarene parking lot located at 960 N. Johnson Road for a Car Show. Council Member Yerger moved, seconded by Council Member McClain to approve Resolution 2019-140. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

NEW BUSINESS: requires individual associated action

28. Resolution 2019-150 to approve the recommendation from the July 30, 2019 Joint Water Management Advisory Board to authorize City Staff to assist the recommended engineering firm in submitting a HMGP application and if awarded, contract with the firm to develop a flood mitigation and resiliency plan to reduce the impacts of flooding on public and private infrastructure in Dodge County. Council Member Jacobus moved, seconded by Council Member Legband to approve Resolution 2019-150. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

29. Resolution 2019-151 to approve a financial commitment for a portion of the local match required by the Hazard Mitigation Grant Program. Council Member Jensen moved, seconded by Council Member McClain to approve Resolution 2019-151. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

30. Resolution 2019-152 to authorize City Staff to assist JEO Consulting in submitting a HMGP application and if awarded, contract with JEO to develop, execute, and administer a flood mitigation construction program. Council Member Legband moved, seconded by Council Member Jensen to approve Resolution 2019-152. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.

31. Resolution 2019-153 to authorize City Staff to assist JEO Consulting in submitting a HMGP application and if awarded, contract with JEO to develop, execute, and administer a voluntary flood acquisition and demolition program. Council Member Legband moved, seconded by Council Member Jensen to approve Resolution 2019-153. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried.


33. Ordinance 5497 amending Ordinance 5270 correcting the legal description of the approve planned unit development on property generally located at 1615 E. Military Ave. (first reading). Council Member Jacobus moved, seconded by Council Member Legband to introduce and hold first reading of Ordinance 5497. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried. City Clerk provided first reading.

34. Ordinance 5498 to amend Section 5-902, Storage of Dismantled, Wrecked, Junked and Inoperable Motor Vehicle (first reading). Council Member Legband moved, seconded by Council Member Jensen to introduce and hold first reading of the Ordinance. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried. City Clerk provided first reading.


38. Executive Session to discuss personnel matters. Moved by Council Member Ellis, seconded by Council Member Jensen to go into executive session for the purpose of discussing personnel matters and for the
The Mayor stated a motion had been made and seconded to go into executive session for the purpose of discussing personnel matters and for the further reason that the executive session is necessary for the protection of the public interest. There being none, the Mayor stated the pending motion was to go into executive session for the purpose of discussing personnel matters and for the further reason that the executive session is necessary for the protection of the public interest. Ayes: McClain, Ellis, Jensen, Bechtel, Yerger, Jacobus, Legband. Motion carried. The Mayor stated that there was a motion to go into executive session for the purpose of discussing personnel matters and for the further reason that the executive session is necessary for the protection of the public interest had been approved. Discussion will be limited personnel matters. No official actions or votes will be taken during the executive session. The Mayor stated that the executive session should include the City Attorney, Assistant City Administrator – City, and the Human Resources Director. Time in: 10:40 p.m. Moved by Council Member Jensen, seconded by Council Member Legband to come out of executive session where no official actions or votes were taken. Ayes: McClain, Ellis, Jacobus, Jensen, Bechtel, Yerger, Legband. Motion carried. Time out: 11:46 p.m.

### Adjournment

Moved by Council Member Jacobus seconded by Council Member McClain to adjourn the meeting. Ayes: McClain, Ellis, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried. Meeting adjourned at 11:47 p.m.

I, Tyler Ficken, the undersigned City Clerk, hereby certify that the foregoing is a true and correct copy of the proceedings had and done by the Mayor and Council; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the Clerk; that such agenda items were sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting; that such subjects were contained in said agenda at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by the members of the public; that the said minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that this meeting was preceded by publicized notice in the Fremont Tribune and the agenda, including notice of study session, were displayed in the Municipal Building and distributed to the Mayor and Council on July 26, 2019 and is open to the public; that all news media requesting notification concerning meeting and the subjects to be discussed at said meeting and that a current copy of the Nebraska Open Meetings Act was available and accessible to members of the public, posted during such meeting in the room in which such meeting was held.

STUDY SESSION:

1. Meeting called to order. After Pledge of Allegiance, the Mayor called the Study Session of the City Council to order and stated that a copy of the open meeting law is posted continually for public inspection located near the entrance door by the agendas.

2. Roll call. Roll call showed Council Members McClain, Ellis, Kuhns, Bechtel, Yerger, Jensen, Jacobus and Legband present. 8 Councilmembers present.

3. Budget overview in Summary of fiscal years 2019-20 and 2020-21. The City Finance Director provided a presentation. The City Council had discussion and no action was taken.

4. Review Projected Revenues of City, including Utility Departments. No action was taken.

5. Review Proposed Operating Expenditures of City, including Utility Departments. No action was taken.

6. Adjournment. Moved by Council Member Jensen seconded by Council Member Legband to adjourn the meeting. Ayes: McClain, Ellis, Kuhns, Bechtel, Yerger, Jensen, Jacobus, Legband. Motion carried. Meeting adjourned at 7:48 p.m.

I, Tyler Ficken, the undersigned City Clerk, hereby certify that the foregoing is a true and correct copy of the proceedings had and done by the Mayor and Council; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the Clerk; that such agenda items were sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting; that such subjects were contained in said agenda at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by the members of the public; that the said minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that this meeting was preceded by publicized notice in the Fremont Tribune and the agenda, including notice of study session, were displayed in the Municipal Building and distributed to the Mayor and Council on August 2, 2019 and is open to the public; that all news media requesting notification concerning meeting and the subjects to be discussed at said meeting and that a current copy of the Nebraska Open Meetings Act was available and accessible to members of the public, posted during such meeting in the room in which such meeting was held.


Tyler Ficken, City Clerk

Scott Getzschman, Mayor
Staff Report

TO: Mayor and City Council
FROM: Jennifer McDuffee, Director of Human Resources
DATE: August 9, 2019
SUBJECT: Appointment of Fire Lieutenants

Recommendation: Move to promote Zachary Klein and Brian Monaghan to Fire Lieutenant per recommendation of the Mayor.

Background:
Positions are open due to the departures of Dana Leland and Doug Backens.
July 26, 2019

Honorable Mayor and City Council
City of Fremont
Fremont, NE 68025

Dear Mayor and City Council:

The Civil Service Commission certifies the following candidates are eligible for appointment to the Firefighter Lieutenant vacancy in the Fremont Fire Department.

LeeVonn Alley
Zachary Klein
Terry Luthy II
Brian Monaghan

Fremont, NE
Winslow, IA
Valley, NE
Fremont, NE

Relevant experience, education, and training were evaluated to assess the suitability of the applicants for the vacancy.

Sincerely,

Stephen F Tellatin
Civil Service Commission
Staff Report

TO: Mayor and City Council
FROM: Jennifer McDuffee, Director of Human Resources
DATE: August 9, 2019
SUBJECT: Appointment of Firefighter/EMTs

Recommendation: Move to appoint James Bazer and Zachary Toole as Firefighter/EMTs per recommendation of the Mayor.

Background:
Positions are open due to the departures of Dana Leland and Doug Backens and the promotion of Zachary Klein and Brian Monaghan.
July 29, 2019

Honorable Mayor and City Council
City of Fremont
Fremont, NE 68025

Dear Mayor and City Council:

The Civil Service Commission certifies the following candidates are eligible for appointment to the Firefighter/EMT vacancy in the Fremont Fire Department.

- James Bazer  
  - Bennington, NE
- Jordon Cave  
  - Glenwood, IA
- Michael Robb  
  - Springfield, NE
- Zacharty Toole  
  - Valley, NE

Relevant experience, education, and training were evaluated to assess the suitability of the applicants for the vacancy.

Sincerely,

[Signature]

Stephen F Tellatin
Civil Service Commission
STAFF REPORT

TO: Honorable Mayor and City Council

FROM: Tina Walker, Library Director

DATE: August 13, 2019

SUBJECT: Keene Memorial Library Board Appointment

Recommendation: Move to approve the recommendation of the Mayor to appoint Tom Adamson to a term on Library Board ending July 2022.

Background: Lori Dahl resigned from the Library Board on July 5, 2019.

Background: Appointment will be for three-year terms.
STAFF REPORT

TO:           Honorable Mayor and City Council
FROM:        Tyler Ficken, City Clerk
DATE:     August 13, 2019
SUBJECT:   Cement/Asphalt/Excavate Work License Application

Recommendation: Move to approve the Cement/Asphalt/Excavation worker license application as presented subject to fulfillment of all licensing requirements

Background: Cement/Asphalt/Excavation workers are required to apply for their first license with the City Council as there is not an examination given. There is no need to reapply with the City Council as long as the applicant keeps their license in force every year. Licensed cement/asphalt/excavate workers have a 60-day grace period to renew their license after April 1st of every year.

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<td>Mike Grefe Excavating</td>
<td>Mike Grefe</td>
<td>Cement/Asphalt/Excavation</td>
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TO THE FREMONT MAYOR AND COUNCIL:

The undersigned does hereby make application for license as Cement Work/Asphalt/Excavate. License should be issued to Mike Grefe Excavating. License shall be used by applicant as the sole owner of business, which will be conducted under the name of ______________________________________________________________________ at ______________________________________________________________________

(Applicant telephone number at place of business or where can be reached) 402-720-2507

To enable the Mayor and Council to determine whether an applicant possesses the necessary qualifications to obtain said license, applicant, under oath does hereby state:

I have had 25 years of practical experience in this type of work at the following places (Cover the last five years)

Mike Grefe Excavating

I have the following technical education: Associates Degree

I give you the following references: Kent Adams, Kelly Thompson

Applicant agrees to comply with all licensing requirements should Council approve this application. Applicant agrees to comply with and is willing to be governed, in all respects, by the ordinances and laws now in effect or to be hereafter adopted by the City of Fremont.

IMPORTANT! After obtaining your license, please go to the 3rd floor of Municipal Building to obtain the rules and regulations concerning concrete work.

Dated 8/1/2019

Signature

Marie
STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM Tyler Ficken, City Clerk

DATE: August 13, 2019

SUBJECT: Muscular Dystrophy Association donation collection request

Recommendation: Approve Request

Background: Fremont Firefighters Union Local 1015 requests Council approval to collect donations at the corner of 23rd Street and Bell Street between the hours of 9:00 a.m. and 6:00 p.m. on August 31, 2019 & September 1, 2019 for the Muscular Dystrophy Association.
To Whom it May Concern,

Fremont Professional Firefighters Local 1015 would like to submit an applications for Roadway Solicitation on the days of August 31st and September 1st at the corner of 23rd street and Bell Street, between the hours of 0900-1800 MDA Fill the Boot campaign. Attached is the Insurance and Documentation required by the City. City of Fremont and Fremont Professional Firefighters have had a long standing history with this fundraiser to help kids in need and we hope to keep this partnership going for years to come. Thank you for your time and consideration.

Sincerely

[Signature]

Blake Wagner MDA Coordinator L1015
**Certificate of Liability Insurance**

**Producer:** USI Insurance Services LLC  
2375 E. Camelback Rd, Suite 250  
Phoenix, AZ 85016

**INSURED:** Muscular Dystrophy Association, Inc.  
11 East 44 Street, 17th Floor  
New York, NY 10017-3208

**Certificate Number:** PHPK1963231  
**Policy Number:** PHPK1963231

**Coverage:**

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<th>Insured</th>
<th>Type of Insurance</th>
<th>Admitted Sub</th>
<th>Policy</th>
<th>Policy Eff</th>
<th>Policy Exp</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Commercial General Liability</td>
<td>BI/PD Ded: 15000</td>
<td>04/01/2019</td>
<td>04/01/2020</td>
<td></td>
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<td></td>
<td></td>
<td>EACH OCCURRENCE: $1,000,000</td>
<td></td>
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<td>DAMAGE TO RENTED PREMISES (EA occurrence): $1,000,000</td>
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<td>MED EXP (Any one person): $20,000</td>
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<td>PERSONAL &amp; ADV INJURY: $1,000,000</td>
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<td>GENERAL AGGREGATE: $2,000,000</td>
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<td>PRODUCTS - COMPO情 AGG: $2,000,000</td>
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<tr>
<td>A</td>
<td>Automobile Liability</td>
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<td>04/01/2019</td>
<td>04/01/2020</td>
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<td>COMBINED SINGLE LIMIT (EA accident): $1,000,000</td>
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<td>BODILY INJURY (Per person): $</td>
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<td>BODILY INJURY (Per accident): $</td>
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<td>PROPERTY DAMAGE (Per accident): $</td>
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<td>EACH OCCURRENCE: $</td>
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<td>AGGREGATE: $</td>
<td></td>
<td></td>
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<tr>
<td>B</td>
<td>Workers Compensation and Employers' Liability</td>
<td></td>
<td>01/01/2019</td>
<td>01/01/2020</td>
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<td>E.L. EACH ACCIDENT: $1,000,000</td>
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<td>E.L. DISEASE - EA EMPLOYEE: $1,000,000</td>
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<td>E.L. DISEASE - POLICY LIMIT: $1,000,000</td>
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</tr>
</tbody>
</table>

**Certificate Holder:** Fremont L1015 Fire Department & City of Fremont  
415 E 16th Street  
Fremont, NE 68025

**Cancellation:** Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

**Authorized Representative:** William M. Rehbein

**Date:** 7/11/2019
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
Any entity reported to the Insured, with an Insurable Interest with Insured's operation required by signed contract

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
   1. In the performance of your ongoing operations; or
   2. In connection with your premises owned by or rented to you.

However:
   1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
   2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:
   If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
   1. Required by the contract or agreement; or
   2. Available under the applicable Limits of Insurance shown in the Declarations;

   whichever is less.

   This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
Roadway Solicitation

§ 209, Soliciting Rides or Business

No person shall stand in a roadway for the purpose of soliciting a ride, employment, contributions or business from the occupant of any vehicle.

No person shall stand on or in the proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

3. Exception to items one and two above may be allowed by the city council for the purposes of soliciting contributions which are to be devoted to charitable or community betterment purposes, from any occupant of any vehicle when stopped by traffic control devices or traffic control signals, within a roadway which is not part of the state highway system; provided, that such person and the charity shall first comply with subsection below.

1. A charity or community betterment organization and its solicitors, seeking to solicit contributions for those using a roadway shall comply with the following:

1. At least thirty days prior to the date of the proposed solicitation, the charity or organization shall file a request for roadway solicitation with the City Clerk. The request shall state the date, time and location of the proposed solicitation, and the names of all solicitors. All requests must include a Certificate of Insurance for the solicitation, naming the City of Fremont, and the solicitors as additional insureds, in the minimum amount of one million dollars. Copies of the request shall be forwarded to the Chief of Police and placed on the agenda for consideration at the next meeting of the Fremont City Council.

2. Each person who will be engaging in roadway solicitation shall sign an information/waiver form, which shall be available through the office of the City Clerk. The form shall waive any claims against the City of Fremont arising as a result of the solicitation and set forth the conditions under which the roadway solicitation may be conducted.

3. A roadway solicitor shall be at least eighteen years of age. All roadway solicitors shall wear an optically bright yellow or orange safety vest while soliciting in the area of the roadway.

4. City employees engaging in roadway solicitation may do so during off-duty time only and may not be identified, in any way, as a city employee during such solicitation. No City employee shall be eligible for worker's compensation benefits for any injury sustained as a part of any roadside solicitation.

5. A charity or organization may engage in roadway solicitation only two times in twelve consecutive calendar months and for a duration of no greater than two consecutive days each time.

6. Any solicitor must have documentation of having completed instruction regarding safe roadway operations as developed by the Fremont Police Department. Such documentation shall be provided upon request.
I certify that the above named have partaken in a street safety class in order to solicit their charity in the roadway.
I certify that the above named have partaken in a street safety class in order to solicit their charity in the roadway.
I certify that the above named have partaken in a street safety class in order to solicit their charity in the roadway.

[Signature]
I certify that the above named have partaken in a street safety class in order to solicit their charity in the roadway.

[Signature]
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

1. Alex Enigorz, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of ________, 20___

(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

1. Jamie Meyer (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this _ day of __________, 20__

(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Zackery Klein, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of _____, 20__

__________________________

(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, [Name], (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of ________, 20__

(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, ______ Alley ______, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. __________________________________________
   __________________________________________

2. __________________________________________
   __________________________________________

3. __________________________________________
   __________________________________________

Dated this ___ day of ________, 20__

________________________________________
(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Jesse Vincent, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of ______, 20___

(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, ____________________________, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. ____________________________________________________________

2. ____________________________________________________________

3. ____________________________________________________________

Dated this ___ day of _________, 20___

________________________________________

(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

1. [Print Name], in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 
   
2. 
   
3. 
   

Dated this 21 day of May, 2019

[Signature]

/signature of solicitor/
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, ________________, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. ________________________________

2. ________________________________

3. ________________________________

Dated this 21 day of ________________, 2019

________________________
(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Blake Wagner, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of __________, 20__

(Signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

1. Rich Osterloh, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of ________, 20___

______________________________
(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, ___________ (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of _______, 20__

[Signature]

(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Nick Morris, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of ________, 20___

Signature of Solicitor
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, [NAME], (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of __________, 20__

[Signature] 

(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Alan Atkinson (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of ________, 20___

(abbreviation of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, ____________________________, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. ____________________________

2. ____________________________

3. ____________________________

Dated this ___ day of _________, 20___

______________________________
(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Peter Kabonick, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of ________, 20__

__________________________
(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, _______ (print name), in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. ____________________________
   ____________________________

2. ____________________________
   ____________________________

3. ____________________________
   ____________________________

Dated this ___ day of ________, 20__

____________________________________
(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, [print name], in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of ________, 20__

[Signature]

(signature of solicitor)
CITY OF  
FREMONT  
NEBRASKA PATHFINDERS

WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, ________________, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. ________________________________________________

2. ________________________________________________

3. ________________________________________________

Dated this ___ day of ________, 20__

______________________________
(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Brian Monaghan (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of ______, 20___

(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Mike Schuler, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this ___ day of __________, 20__

____________________________
(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Dark Schuler, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 
   
2. 
   
3. 

Dated this ___ day of ______, 20__

______________________________
(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Christian McKenzie, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

2. 

3. 

Dated this 21 day of May, 2019

__________________________________________
(signature of solicitor)
WAIVER OF CLAIMS AND ACKNOWLEDGEMENT

I, Richard Schutt, (print name) in return for being permitted to participate in a roadway solicitation, do hereby waive any and all claims, of any kind or nature, arising from said solicitation which could be asserted directly or indirectly against the City of Fremont, Nebraska.

I also certify that I have completed the instruction regarding safe roadway operations as developed by the Fremont Police Department.

I also acknowledge that the City Council has required that the roadway solicitation be conducted under following conditions.

1. 

   

2. 

   

3. 

   

Dated this ___ day of ________, 20___

(signature of solicitor)
Staff Report

TO: Mayor and City Council
FROM: Jennifer L. Dam, Planning Director
DATE: August 9, 2019
SUBJECT: Voluntary Annexation Lot 2, Fountain Springs 4th Subdivision

Recommendation: Hold final reading and approve Ordinance No. 5496

Background:
A Voluntary Annexation Petition has been received for Lot 2, Fountain Springs 4th Subdivision. This request is associated with a request for a comprehensive plan amendment and a request for a conditional use permits for apartments.

One lot in the proposed development is still outside of the City limits.

Annexation will allow the City to receive the property tax revenues from the development on the property as well as sales taxes on the materials used on the development.

Based on the proposed site plan, the improvement value of between 3 and 4 of the apartment buildings and 5 of the garage structures would be added to the tax base. Additionally the sales taxes from the construction materials for these facilities would benefit the City. This offsets the marginal cost of providing services to the site.

Additions laid out contiguous or adjacent to the corporate limits may be included within the corporate limits and become a part of such municipality for all purposes whatsoever if approved by the legislative body of the city or village under Nebraska Revised Statutes § 19-916(3) following notice of the time and place of the hearing on the inclusion of the addition within the corporate limits and a vote of the legislative body to approve the inclusion of the addition within the corporate boundaries of the municipality in a separate vote from the vote approving the addition.

According to Nebraska Revised Statutes § 19-929, “The municipal governing body shall not take final action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, the annexation of territory, or zoning until it has received the recommendation of the planning commission if such commission in fact has been created and is existent.

Annexation of the subject property is consistent with the policies of the Comprehensive Plan (“Plan”) and the priorities for accommodating new development – specifically, annexing land that is immediately abutting the corporate limits and contiguous to existing infrastructure thereby allowing efficient and ready extension of streets, utilities, and police and fire protection services, and annexing land that is presently removed from the corporate limits but for which there are strategic benefits for economic development purposes.
Area of proposed annexation
ORDINANCE NO. 5496

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, ANNEXING BY VOLUNTARY PETITION 3.49 ACRES OF PROPERTY DESCRIBED AS LOT 2 FOUNTAIN SPRINGS 4TH SUBDIVISION LOCATED IN SECTION 11, TOWNSHIP 17 NORTH, RANGE 8 EAST DODGE COUNTY, NEBRASKA, AND EXTENDING THE CORPORATE LIMITS TO INCLUDE SAID REAL ESTATE; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a voluntary petition for annexation was filed with the offices of the Department of Planning, City of Fremont (City); and

WHEREAS, the City has determined that the subject property is contiguous with the corporate limits, and is urban or suburban in character and not rural in character; and

WHEREAS, the City has determined that it is able to provide certain essential services, such as utilities, police and fire protection, for the subject property so that the inhabitants of said territory shall receive substantially the same services as other inhabitants of the City; and

WHEREAS, a public hearing on the proposed annexation was held by the Planning Commission on May 20, 2019, at which time the Commission unanimously recommended in favor of the proposed annexation; and

WHEREAS, the City has determined that it is in compliance with pertinent annexation requirements of Neb. Rev. Stat. § 16-117;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA, AS FOLLOWS:

SECTION I: ANNEXATION. That the following described real estate, contiguous and adjacent to the City of Fremont, Nebraska, urban or suburban in character and not rural in character, receiving material benefits and advantages from annexation to said City, to-wit

Lot 2, Fountain Springs 4th Subdivision containing 3.49 acres more or less, for annexation into the City of Fremont’s corporate limits be and the same is hereby included within the boundaries and territory of the City of Fremont, Nebraska and shall be included within the corporate limits of said City and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and be subject to all the laws, ordinances, rules and regulations of said City, conditioned on the purchase of the property by Fremont Enterprises, LLC.

SECTION 2. REPEALER. All ordinances made in conflict with this Ordinance are hereby repealed.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.
SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after its passage, approval, and publication as required by law.

PASSED AND APPROVED THIS 13th DAY OF AUGUST 2019.

______________________________
Scott Getzschman, Mayor

ATTEST:

______________________________
Tyler Ficken, City Clerk
Staff Report

TO: Honorable Mayor and City Council
FROM: Jennifer L. Dam, AICP, Planning Director
DATE: August 13, 2019
SUBJECT: Request for Conditional Use Permit to Expand a Non-Standard Use to allow subdivision of a parcel on property legally described as the N 66’ of Lots 3 & 4, Block 34, Chase’s Addition, generally located at 315 East Linden Ave. and 1250 N. D Street.

Recommendation: Continue Request until draft language of changes to FMC §11-324 (E) can receive the review and recommendation of the Planning Commission.

Background:

At the June 11 City Council meeting, the City Council directed the Planning Director to research other communities and develop language that could 1) allow this proposed subdivision to legally take place and 2) to allow lots that are non-conforming in terms of size to be allowed to be developed for single family uses if the existing structures were demolished for some reason.

Attached is draft language that has been reviewed with the City Attorney that will accomplish both of those objectives.

The language has not been heard by the Planning Commission. If the City Council is satisfied with this proposal, the text change will be placed on the September 16, 2019 Planning Commission agenda. It would come before the City Council on October 8th, 29th and November 12, 2019 for the three readings.

Staff recommends that the initial request be continued until the third reading so that it can be legally approved under the UDC.

The original analysis follows below:

The City Attorney has provided a memo regarding the legal ramifications of this request. It is attached.

This is a request for a Conditional Use Permit to “expand a nonstandard use” to allow the subdivision of a parcel that contains two separate dwelling units. The property is described as the north 66 feet of lots 3 and 4, Block 34, Chase’s Addition to Fremont, generally located at 315 East Linden Ave. and 1250 N. D St.

The property is non-conforming in that it has two houses constructed upon it. The property does not meet the definition of non-standard as it did not become nonconforming because of the adoption of the UDC. A non-standard use is defined as:

…the category of nonconformance consisting of Premises occupied by buildings, structures or uses which existed immediately prior to the effective date of this UDC or becomes nonconforming through a change in this UDC or district boundaries, which fails to comply with the minimum requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which it is located, even though the use of the Premises conforms to the Permitted Uses within the district as set out in this UDC.
The applicant has provided a copy of a plat that appears to have the area originally subdivided into smaller lots this could not be found with the Register of Deeds nor is it reflected on the current plat map. Additionally, the north 66' of Lots 3 and 4 were deeded as a parcel by Charles Morse to Julius Morgan in 1901 leading to the current parcel configuration.

It was not uncommon to sell portions of lots and file the deed with the Register of Deeds prior to the adoption of subdivision regulations.

The lot contains 9,240 square feet, which would be classified as a Standard 1 lot in the AR zoning district.

A duplex would require a 6,500 square foot lot, so could be placed on this parcel.

A single family Standard II lot in the AR Auto-Urban Residential district is a minimum of 5,750 square feet. The proposed lot split would result in lots of 4,356 and 4,884 both of which are smaller than the minimum size required resulting in non-conforming lots. The proposal would increase the extent of the existing non-conformity.

A building permit was issued in 1970 to move the second house onto the site. The parcel was zoned R-2 two-family residential at the time.

It is not clear why the building permit was issued to allow a second house on the lot. It seems that it must have been due to a misinterpretation of the zoning ordinance.

The existing units appear to conform to the setback requirements of the district.

The intent of the ordinance to allow the expansion of non-standard uses was to promote the economic vitality of the community by allowing structures which might not otherwise be maintained and repaired to be continued, altered or expanded, it was not intended to create non-conforming uses. Approval of this request would create two non-conforming lots.

This property is unique in that the houses are not attached. However, it is in actuality no different than a lot developed with a duplex that could not be subdivided due to the parcel size or construction method. Both houses can continue to be occupied.

Approval of the request would encourage additional non-standard or non-conforming subdivisions, which is contrary to the criteria for approval of a conditional use permit listed in 11-316.05(B)(1) and (4). The lot across the street to the west has three houses constructed on it.

This parcel has a history of previous requests to allow it to be subdivided. The requests were denied.

In 1978 the City of Fremont passed Ordinance 2980 listing conditions for approval to subdivide lots of record or portions of lots of record which do not meet the minimum requirements.

On May 19, 1980 a request to subdivide the north 66-feet of Lots 3 and 4, Block 34, Chase’s Addition into two lots was presented to the Planning Commission. The Planning Commission voted unanimously to get the City Attorney’s opinion to determine if the request could legally be granted.

On May 27, 1980 the City Council unanimously voted to continue consideration of Resolution permitting Ila Andrews to subdivide north 66 feet of Lots 3 and 4, Block 34, Chases Addition into two lots for recommendation of Planning Commission.
On June 10, 1980 the City Council unanimously voted to continue consideration of Resolution to permit Ila D. Andrews to subdivide north 66 feet of Lots 3 and 4, Block 34, Chases Addition into two lots.

On June 16, 1980 the Planning Commission heard the continued consideration of request of Ila Andrews to subdivide the north 66-feet of Lots 3 and 4, block 34, Chase’s Addition into two lots. After discussion and comments from the City Attorney, the Planning Commission voted unanimously to recommend denial of the request.

On June 24, 1980, a Resolution was presented to the City Council requesting permission to subdivide north 66 feet of Lots 3 and 4, Block 34, Chase’s Addition into two lots. Since this was denied by the Planning Commission, the City Council unanimously voted nay and the Resolution failed.
Plat of Block 34 showing parcel lines and platted lot numbers:
Current Parcel Layout from Dodge County Assessor
Sec. 11-324.03. - Nonconforming lots; combination and construction.

A. Nonconforming Lots.
   1. Construction on Nonconforming Lots. A nonconforming lot that does not meet district requirements with respect to area, lot width, or frontage may be built upon if:
      a. The lot is a lot of record;
      b. The use is permitted in the district in which the lot is located;
      c. The lot has sufficient frontage on a public street to provide access that is appropriate for the proposed use;
      d. All yards or height standards are complied with.
   2. Re-subdivision. A nonconforming lot shall not be made more nonconforming through the process of re-subdivision.

B. Combination of Lots to Increase Conformity.
   1. Where a landowner owns several abutting lots that do not conform to the dimensional requirements of the district in which they are located, they shall be combined to create fully conforming lots or, if full conformity is not possible, they shall be combined if the combination will increase the degree of conformity.
   2. The city will not require the combination of lots if:
      a. The combination of lots would not address a nonconformity; and
      b. Two or more of the lots are developed with principal buildings, and the combination of lots would require that one or more of the buildings be torn down in order to comply with this UDC.

Sec. 11-324.04. - Additions, alterations, and repairs.

A. Generally. Repairs and modifications to nonconforming buildings, structures, and signs are permitted as provided by this subsection.

B. Expansion of Nonconforming Uses.
   1. Major Nonconforming Uses. Major nonconforming uses shall not be expanded, enlarged, extended, increased, or moved to occupy an area of land or building that was not occupied on the effective date of this UDC or any amendment that made the use a major nonconforming use.
   2. Minor Nonconforming Use. No minor nonconforming use shall be expanded or extended in such a way as to:
      a. Occupy any open space or landscaped surface that is required by this UDC;
      b. Exceed building cover, impervious cover, intensity, or height limitation of the district in which the use is located;
      c. Occupy any land beyond the boundaries of the property or lot as it existed on the effective date of this UDC; or
      d. Displace any conforming use in the same building or on the same lot or tract.

C. Alterations and Repairs.
   1. Buildings Containing Major Nonconforming Uses. No building or structure that contains a major nonconforming use shall be enlarged unless the major nonconforming use is permanently discontinued.
2. **Structural Alterations.** Structural alterations to nonconforming buildings, structures, and signs are permitted only if it is demonstrated that the alteration will eliminate the nonconformity or reduce it in accordance with the standards of Section 11-325, *Compliance Thresholds*.

3. **Maintenance and Repair.** Routine maintenance of nonconforming buildings and structures is permitted, including necessary non-structural repairs, paint, and incidental alterations which do not extend or intensify the nonconforming buildings or structures or materially extend their life. This standard also applies to buildings or structures that house nonconforming uses if they are designed in a way that is not suitable for re-use as a conforming use. If the building is conforming and could be re-used for a conforming use, there is no limitation on its maintenance.

4. **Signs.** Routine maintenance of nonconforming signs is permitted, including necessary non-structural repairs, paint, and incidental alterations which do not extend or intensify the nonconforming sign or materially extend its life. This standard applies to changing the message of a sign by replacing or repainting the sign face.

D. **Expansion of Nonstandard Uses.** Notwithstanding any provision contained in this UDC to the contrary, in all zoning districts, a conditional use permit may be granted to authorize (1) the enlargement, extension, structural alteration, conversion, or reconstruction of a building or structure located upon a premises with a nonstandard use; and/or (2) decreased minimum requirements upon a premises with a nonstandard use provided that the city council finds that such decrease in minimum requirements (i) would not adversely affect the surrounding area; and (ii) the decrease is necessary in order for a building or structure located upon a premises to practicably be enlarged, extended, structurally altered, converted, or reconstructed, or such decrease is otherwise necessary to allow an existing premises to be subdivided.

The conditional use permit shall be granted pursuant to the procedures set forth in section 11-316.05(c) for conditional use permits and shall comply with the standards for conditional use permits set forth in Section 11-316.05(B)(1-6). In consideration of applications for the conditional use permits under this Section 11-324.04(D), the following criteria shall be given specific consideration:

1. Effects on adjacent property, safety, traffic, city utility service needs;
2. Density of land use zoning for the subject property and adjacent property; and
3. Economic impact for the city.

E. **Exceptions to the Minimum Lot Requirements Residential:**

1. In the R, SR, AR and UR zoning districts if a vacant lot or tract of land has less area or width or both less area and width than herein required and its boundary lines along their entire length abutted lands under other ownership on date, and have not since been changed, such lot or tract of land may be used for a single-family dwelling provided that:
   - A side yard of at least five feet shall be provided when located in the R district.
2. where a vacant lot or tract of land has less area or width or both less area and width than herein required and its boundary lines along their entire length abutted lands under other ownership on date, and have not since been changed, the lot or tract of land may be used for a single-family dwelling use permitted in this chapter.
3. If a vacant lot or tract of land under (c)(1) or (c)(2) above comes under common ownership with an abutting lot or tract of land, such vacant lot or tract of land may be used for a single-family dwelling provided said abutting lot or tract of land was occupied by a dwelling on the date such contiguous properties came under common ownership.
F. Enlargement, Extension, or Reconstruction of Nonstandard Single-Family Dwellings Into Required Yards:

1. In the R, SR, AR and UR districts, the enlargement, extension, or reconstruction of a nonstandard main building used as a single-family into a required yard is allowed under the following conditions:

   a. The proposed building enlargement, extension, or reconstruction shall not extend further into any required yard than the furthest extension of an existing exterior wall of the building, not including a bay window or any other projection allowed by 11-616(B) or any wall of less than ten feet in length, and shall maintain a minimum required setback of three feet for a side yard and twenty feet for a front or 3 feet for a rear yard.

   b. The use of the main building shall remain a single-family dwelling.

   c. This does not allow for the enclosure of front porches that encroach into the front yard setback.

G. Lots or tracts of land containing more than one single family residence prior to January 1, 1971, may be subdivided to provide one lot per residence provided that no such lot contains less area than 4,000 square feet in the SR, AR and UR districts. In the R district lots or tracts of land containing more than one single family residence prior to January 1, 1971, may be subdivided into lots smaller than 1 acre but larger than .75 acre provided that the subdivider can first receive approval from the State of Nebraska regarding the size, spacing and design of septic systems and water wells or receive approval to connect to city sewer and water services.
MEMORANDUM OF LAW

TO: Planning Director – Jennifer L. Dam
FROM: Travis Jacott - Adams & Sullivan, P.C., L.L.O.
DATE: June 5, 2019
SUBJECT: Legal Analysis Concerning Request for Conditional Use Permit at 315 East Linden Ave. and 1250 N D.

This Memorandum is being provided at the request of the Planning Director to decipher the legal significance and ramifications stemming from the approval or disapproval by the Fremont City Council of a Request for Conditional Use Permit to Expand and Subdivide Non-Standard Use of property generally located at 315 East Linden Ave. The author reserves the right to supplement opinions and conclusions stated herein should any new information evolve.

Legal Conclusion: The request for Conditional Use Permit in this case should be denied based upon the plain language of the UDC and the potential legal ramifications concerning nonconforming uses.

Background

On May 20, 2019, the Planning Commission approved the Request for a Conditional Use Permit to Expand and Subdivide Non-Standard Use on property legally described as the N 66’ of Lots 3 & 4, Block 34, Chase’s Addition, generally located at 315 East Linden Ave. and 1250 D (hereinafter “Request”). The Commission’s vote for approval went against the recommendation of the Planning Director, who determined that such request should be denied. Such determination of denial was based, in part, upon the reality that granting the request would result in the property at issue being subdivided into two non-conforming lots, thus would encourage additional creation of non-standard or non-conforming subdivisions.

Pertinent Legal Authority

11-316.05. Conditional Use Permit

A. ...The designation of a conditional use means that it is only allowed in a proposed location if all of the conditions applicable to the use set out in § 11-504, Limited and Conditional Uses, the criteria of Subsection B., below, and all of the other applicable requirements of this UDC or conditions of the planning commission are met. (emphasis added).

B. Criteria for Approval. In addition to the applicable standards of this UDC, including those set out in Section 11-504, Limited and Conditional Uses, all conditional uses shall comply with the following standards:

1. The conditional use shall not be of a type that would tend to undermine the implementation of an adopted plan that includes the lot or tract proposed for development.
4. The approval of the conditional use will not create a critical mass of similar conditional uses that is likely to discourage permitted uses by making the vicinity less desirable for them.

Zoning regulations are enforced based upon the plain meaning of the regulation. Ordinances which limit and plan for the elimination of nonconforming uses are generally considered a proper exercise of a municipality’s power. *Mossman v. City of Columbus*, 234 Neb. 78, 449 N.W.2d 214 (1989). Zoning laws should be given a fair and reasonable construction in light of the manifest intention of the municipal body, the objects sought to be attained, the natural import of the words used in common and accepted usage, the setting in which they are employed, and the general structure of the zoning law as a whole. *City of Lincoln v. Bruce*, 221 Neb. 61, 375 N.W.2d 118 (1985).

The right to maintain a legal nonconforming use “runs with the land,” meaning it is an incident of ownership of the land, and is not a personal right. Therefore, a change in the ownership or tenancy of a nonconforming business or structure which takes advantage of the nonconforming right does not affect the current landowner’s right to continue the nonconforming use. *The Lamar Co., LLC v. City of Fremont*, 278 Neb. 485, 771 N.W.2d 894 (2009).

It is obvious that if the right to continue a nonconforming use were not considered one of the “bundle of rights” which together constitute the attributes of ownership of the land, exercisable by a landowner who had the possessory interest therein, it would prevent a purchaser of the land from using the land for any purpose other than one permitted by the ordinance in effect at the time of transfer. The owner of the land would be unable to sell all of his rights in the land and in the use thereof, and, being out of possession of the land, could not exercise the right to the nonconforming use. *Id.* Citing Rathkopf’s “The Law of Zoning and Planning” § 72:20 at 72-56.

A claim that a regulation “goes too far” and deprives an individual or entity of a vested property right should be analyzed under the Takings Clause of the Fifth Amendment of the United States Constitution and the Nebraska Constitution. *Scafied v. State*, 276 Neb. 215, 753 N.W.2d 345 (2008); U.S. Const. amend. V.; Neb. Const. art. 1, § 21. To establish a takings claim under either the U.S. or Nebraska Constitution, it is axiomatic that the claimant must have been deprived of some property right. *The Lamar Co., LLC v. City of Fremont*, 278 Neb. 485, 771 N.W.2d 894 (2009).

**Analysis**

This request is the second time on record that the Fremont City Council has considered the subdivision of the subject property to create two separate lots. That being said, there is no legal restriction on making the same request multiple times.

The facts and history concerning the current Request is thoroughly laid out in the May 20, 2019 Planning Staff Report, attached hereto as Exhibit “A” and incorporated herein by reference. In order for the Request to be approved, the conditional use must comply with the standards
provided in the UDC. As it stands now, there are two main criterions, among others, in which the Request does not comply: 1) the proposed conditional use would undermine development on the proposed lots that would be created; and 2) this Request would result in two non-legal, non-conforming lots, which would tend to lead to future conditional uses that would discourage permitted uses.

Based upon the plain meaning of 11-316.05, the Request does not comply with subsections B(1) and B(4). Moreover, subdividing the property into non-conforming lots would create such UDC violations that would “run with the land” and would remain long after the current owners of the property are gone, possibly creating liability for the City of Fremont in the form of Constitutional violations.

Conclusion

This specific Request for Conditional Use Permit in this case would constitute a violation of section 11-316.05 of the UDC. If the Request were to be granted, the City of Fremont could be exposed to future liability and could discourage future permitted uses.
Staff Report

TO: Planning Commission
FROM: Jennifer L. Dam, AICP, Planning Director
DATE: May 20, 2019
SUBJECT: Request for Conditional Use Permit to Expand and Subdivide Non-Standard Use on property legally described as the N 66’ of Lots 3 & 4, Block 34, Chase’s Addition, generally located at 315 East Linden Ave. and 1250 N D. St.

Recommendation: Denial of Request

Background:

This is a request for a Conditional Use Permit to “expand a nonstandard use” to allow the subdivision of a parcel that contains two separate dwelling units. The property is described as the north 66 feet of lots 3 and 4, Block 34, Chase’s Addition to Fremont, generally located at 315 East Linden Ave. and 1250 N. D St.

The applicant has provided a copy of a plat that appears to have the area originally subdivided into smaller lots. However, the north 66’ of Lots 3 and 4 were deeded as a parcel by Charles Morse to Julius Morgan in 1901.

It was not uncommon to sell portions of lots and file the deed with the Register of Deeds prior to the adoption of subdivision regulations.

The lot contains 9,240 square feet, which would be classified as a Standard 1 lot in the AR zoning district.

A duplex would require a 6,500 square foot lot, so could be placed on this parcel.

A single family “Standard II lot in the AR Auto-Urban Residential district is a minimum of 5,750 square feet. The proposed lot split would result in lots of 4,356 and 4,884 both of which are smaller than the minimum size required.

The existing units appear to conform to the setback requirements of the district.

A building permit was issued in 1970 to move the second house onto the site. The parcel was zoned R-2 two-family residential at the time.

It is not clear why the building permit was issued to allow a second house on the lot. It seems that it must have been due to a misinterpretation of the zoning ordinance.

In 1978 the City of Fremont passed Ordinance 2980 listing conditions for approval to subdivide lots of record or portions of lots of record which do not meet the minimum requirements.
On May 19, 1980 a request to subdivide the north 66-feet of Lots 3 and 4, Block 34, Chase’s Addition into two lots was presented to the Planning Commission. The Planning Commission voted unanimously to get the City Attorney’s opinion as to if we can legally grant this request.

On May 27, 1980 continued consideration of Resolution permitting Ila Andrews to subdivide north 66 feet of Lots 3 and 4, Block 34, Chases Addition into two lots for recommendation of Planning Commission. The City Council voted unanimously to continue the matter.

On June 10, 1980 continued consideration of Resolution to permit Ila D. Andrews to subdivide north 66 feet of Lots 3 and 4, Block 34, Chases Addition into two lots. The City Council voted unanimously to continue the matter.

On June 16, 1980 the Planning Commission heard the continued consideration of request of Ila Andrews to subdivide the north 66-feet of Lots 3 and 4, block 34, Chase’s Addition into two lots. After discussion and comments from the City Attorney, the Planning Commission voted unanimously to recommend denial of the request.

On June 24, 1980, a Resolution was presented to the City Council requesting permission to subdivide north 66 feet of Lots 3 and 4, Block 34, Chase’s Addition into two lots. Since this was denied by the Planning Commission, the City Council unanimously voted nay and the Resolution failed.

The existing houses do not meet the definition of a non-standard use as the houses comply with the minimum setbacks and lot area for a duplex. A “Non-standard Use” is defined as “...the category of nonconformance consisting of Premises occupied by buildings, structures or uses which existed immediately prior to the effective date of this UDC or becomes nonconforming through a change in this UDC or district boundaries, which fails to comply with the minimum requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which it is located, even though the use of the Premises conforms to the Permitted Uses within the district as set out in this UDC.”

The intent of the ordinance to allow the expansion of non-standard uses was to promote the economic vitality of the community by allowing structures which might not otherwise be maintained and repaired to be continued, altered or expanded, it was not intended to create non-conforming uses. Approval of this request would create two non-conforming lots.

This property is unique in that the houses are not attached. However, it is in actuality no different than a lot developed with a duplex that could not be subdivided due to the parcel size or construction method. Both houses can continue to be occupied.

Approval of the request would encourage additional non-standard or non-conforming subdivisions, which is contrary to the criteria for approval of a conditional use permit listed in 11-316.05(B)(1) and (4). The lot across the street to the west has three houses constructed on it.
Copy of Chase's Addition.
To
The Town of Fremont

Filed the 29th day of January, A.D., at 9 o'clock P.M. and pasted in Book of Deeds at page 101
By request of Dr. E. Chase

G. J. Boug
County
Dodge Co., N
ORDINANCE NO. 2980

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, AMENDING SECTION IV OF ORDINANCE NO. 2770, RELATING TO LOTS OF RECORD OR PORTIONS OF LOTS OF RECORD, WHICH DO NOT MEET THE MINIMUM REQUIREMENTS OF PARAGRAPHS 2 AND 5, BY ADDING PARAGRAPH 8 TO SECTION IV; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FREMONT, NEBRASKA.

SECTION I. AMENDMENT. That Paragraph 8, be added to Section IV to read as follows:

8. Notwithstanding any other provision of this ordinance, the City Council may, after receiving a recommendation of the Planning Commission, approve the subdivision of lots of record or portions of lots of record, into parcels which do not meet the minimum requirements of Paragraphs 2 and 5 of this section. Such subdivision may only be approved when it can be shown that:

a. The majority of lots within 300 feet of the proposed subdivision are of equal size or smaller, in both dimension and area, than the smallest lot that would result from the subdivision.

b. The subdivision will not adversely alter the character of the neighborhood.

c. In no case shall the width of a lot be less than 40-feet or the total area be less than 4000 square feet.

d. Where, by reason of exceptional narrowness, shallowness, or shape of specific piece of property, the strict application of any enacted regulation under this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property.

SECTION II. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASSED AND APPROVED THIS 25th DAY OF April, 1978

[Signature]

JOHN M. LICK, MAYOR
MINUTES
PLANNING COMMISSION
7:30 P.M.
COUNCIL CHAMBERS

Present: Folsom, Gifford, Miller, McDonald, Peterson, Praumer and Warner; also Director of Public Works Derril Marshall,
Building Inspector Ray Coday and Engineer Grant Eklund
Absent: Hansen and Swanson

Chairman McDonald read a statement that a public notice of this meeting was given in advance by publicized notice in the Fremont Tribune, a copy of which is attached to these minutes and made a part thereto and on Radio KHUB; and the agenda displayed in the lobby of the Municipal Building, Fremont Police Station and the Dodge County Courthouse on May 14, 1980; and is open to the public. Moved by Praumer, seconded by Miller to approve the Chairman's statement that this meeting is now determined to be a legal meeting. Roll Call Vote showed all members voting aye - 7 aye. Motion Carried. The Chairman then declared the meeting duly convened.

Moved by Gifford to dispense with the reading of the minutes of the Special May 5th meeting and the April 21 regular meeting.

Folsom asked that the condensed version of the minutes of the Special Meeting be amended to reflect more clearly the reason for his request at 849 North "D" Street. After some discussion, Chairman McDonald stated this item would be considered later in the meeting and would now consider Item No. 3.

Request of Jack G. and Janice E. Davis to subdivide the east 208.25 feet of Lot 1, except the south 33-feet, all in Block 1, Meierhenry Subdivision, into two (2) Tracts of Land

Jack Davis was present. Moved by Miller, seconded by Warner to recommend approval of this request. Roll Call Vote showed all members voting aye - 7 Aye. Motion Carried.
Meeting reconvened at 8:47 p.m.

Because of lack of quorum, there was no Development and Improvement Committee meeting, thereupon Councilman Row moved, seconded by Councilman Sixta to continue sidewalk installations on south side of Empire Avenue west of Broad Street and east of North Drive. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the motion carried.

Upon recommendation of the Resources Committee, Councilman Edwards moved, seconded by Councilman Sixta to approve the request of the Parks and Recreation Director to employ a Park Maintenance II employee at Range 32, Step E. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the motion carried.

The City Clerk read a resolution offered by Councilman Edwards, seconded by Councilman Mussack authorizing amendments to Bylaws for Sick Bank of Fremont employees. Moved by Councilman Sixta, seconded by Councilman Mussack to add the word "shift" between the words "Fire Department" and "personnel." Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the motion carried. Roll call vote on the amended resolution showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman McIntosh, seconded by Councilman Row granting a $25/month Training and Proficiency Increase, Phase I to police officers Craig L. Ganzel and Steven L. Lutes retroactive to March 1, 1980. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Hoppel, seconded by Councilman Sixta granting a $25/month Training and Proficiency Increase, Phase I to Firefighters Roger N. Charette and Richard A. Schinstock effective June 1, 1980. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Edwards, seconded by Councilman Row granting Jack G and Janice E. Davis permission to subdivide the east 208.25 feet of Lot 1, except the south 33 feet, Block 1, Meierhenry Subdivision into two (2) tracts of land. This was approved by the Planning Commission. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Row, seconded by Councilman Edwards granting William R and Patricia L. Legler permission to subdivide the south 137 feet of Lot 1, Block 4, Davenport Second Subdivision into two (2) lots. This was approved by the Planning Commission. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.

Moved by Councilman McIntosh, seconded by Councilman Row to continue the resolution permitting Ila D. Andrews permission to subdivide north 66 feet of Lots 3 and 4, Block 34, Lakes Addition into two (2) lots for recommendation of Planning Commission. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the motion carried.

The City Clerk read a resolution offered by Councilman Hoppel, seconded by Councilman Sixta to accept and award bid for Pierce Street Storm Sewer to Carlestron Brothers, Inc., in amount of $31,193.08. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.
The City Clerk gave the third reading, by title only, of an ordinance amending snow routes. Roll call vote showed all Councilmen voting aye - 8 ayes. Thereupon the Mayor declared Ordinance No. 3083 passed.

Moved by Councilman Sixta, seconded by Councilman McIntosh to continue until a recommendation is received from the Planning Commission the request of Ila D. Andrews to subdivide north 66 feet of Lots 3 and 4, Block 34, Chase's Addition, into two lots. Roll call vote showed all Councilmen voting aye - 8 ayes. Thereupon the Mayor declared the motion carried.

The City Clerk read a resolution offered by Councilman Edwards, seconded by Councilman McIntosh accepting Right-of-Way Dedication from NF Industries, Inc. at 23rd and Nye Avenue. Roll call vote showed all Councilmen voting aye - 8 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk gave the first reading, by title only, of an ordinance amending Ordinance No. 3069 as it pertains to patching of City streets.

The City Clerk gave the first reading, by title only, of an ordinance amending Ordinance No. 3081 as it pertains to Fast Food Restaurants. Moved by Councilman Sixta, seconded by Councilman Lemons to suspend the rules and place on final reading. Roll call vote showed all Councilmen voting aye - 8 ayes. Thereupon the Mayor declared the motion carried. The City Clerk then gave the second and third readings, by title only. Roll call vote showed all Councilmen voting aye - 8 ayes. Thereupon the Mayor declared Ordinance No. 3084 passed.

Moved by Councilman Lemons, seconded by Councilman McIntosh authorizing the Mayor and City Clerk to execute an agreement with the Nebraska Department of Roads covering the cost of lane marking on City streets. Roll call vote showed all Councilmen voting aye – 8 ayes. Thereupon the Mayor declared the motion carried.

Moved by Councilman McIntosh, seconded by Councilman Lemons, to instruct the City Attorney to draft an Inter-Local Cooperative Agreement with the Village of Greenwood covering water service based on guidelines explained by Mr. Sutton, and bring back to the next Council meeting. Roll call vote showed all Councilmen voting aye - 8 ayes. Thereupon the Mayor declared the motion carried.

The Mayor announced there will be a special meeting on Budget for the General Fund on Tuesday, June 17, 1980. The next regular meeting of the Council will be on June 24, 1980 at 7:30 p.m.

Jack Sutton also announced he would like the full Council to see the film prepared by Bob Meyer on the stop light situation at Military and D Streets. He suggested perhaps a date of July 8th or the meeting on June 17th. He will check into the availability of the film and advise.

Moved by Councilman Lemons, seconded by Councilman McIntosh to adjourn the meeting. Roll call vote showed all Councilmen voting aye - 8 ayes. Thereupon the Mayor declared the meeting adjourned.
Chairman McDonald read a statement that a public notice of this meeting was given in advance by publicized notice in the Fremont Tribune, a copy of which is attached to these minutes and made a part thereto and on Radio KHUB; and the agenda displayed in the lobby of the Municipal Building, Fremont Police Station and the Dodge County Courthouse on June 11, 1980; and is open to the public. Moved by Prauner, seconded by Peterson to approve the Chairman's statement that this meeting is now determined to be a legal meeting. Roll Call Vote showed all members voting aye - 9 aye. Motion Carried. The Chairman then declared the meeting duly convened.

Report on minutes of May 5, Meeting

Derril Marshall explained that the recording had been reviewed on the action taken on the request at 849 North "D" Street; and that the minutes as originally prepared were accurate. Moved by Folsom, seconded by Prauner to accept the report. Roll Call Vote showed all members voting aye - 9 aye. Motion Carried.

Reading of Minutes of May 19 Meeting

Moved by Swanson, seconded by Peterson to dispense with the reading of the May 19 meeting and approve as distributed. Roll Call Vote showed all members voting aye - 9 aye. Motion Carried.

Continued consideration of request of Ila D. Andrews to subdivide the north 66-feet of Lots 3 and 4, Block 34, Chase's Addition, into two (2) lots

Attorney Avis Andrews was present, representing Ila D. Andrews, and stated that in 1969 permission was received from the City to move a second house onto this property. The question was raised at the last meeting whether or not there was any authority for the Planning Commission to approve this request. Miss Andrews felt the Planning Commission had the authority to approve as these properties fit into the character of the neighborhood - one for rental and the other the owners home. Not being able to subdivide presents an unreasonable hardship - first it presently restricts her ability to transfer the property; and second this situation existed at the time the ordinance was adopted and now is considered non-compliance.

Attorney Lyle Gill explained that the City Council passed Ordinance No. 2980 and set forth requirements before a request of this nature could be granted. This ordinance binds everyone in city government, the City Council as well as the Planning Commission. The request does not comply with the requirements of the Ordinance. Moved by Hansen, seconded by Gifford to recommend denial of the request. Roll Call Vote showed all members voting aye - 9 aye. Motion Carried.
Moved by Councilman Sixta, seconded by Councilman McIntosh to continue the Ordinance to rezone NE4-NE4, Section 27, T17N, R8E of 6th P.M. from R-3 Multiple Family Residential District to PS-1 Planned Suburban District, except that portion which is Marcella Road. Roll call vote showed all Councilmen present voting aye - 6 ayes. Thereupon the Mayor declared the motion carried.

The City Clerk gave the first reading, by title only, of an Ordinance to create Paving District in that portion of PIERCE STREET from north margin of Military Avenue to south margin of Tenth Street.

The City Clerk gave the first reading, by title only, of an Ordinance amending Ordinance No. 2770 pertaining to allowing churches Permitted Conditional Uses in S-1, R-1, R-2 and R-3 Zoning Districts.

The City Clerk read a resolution offered by Councilman Mussack, seconded by Councilman Row permitting Ila D. Andrews permission to subdivide north 66 feet of Lots 3 and 4, Block 34, Chase's Addition into two lots. Avis Andrews, Attorney for Mrs. Andrews spoke in favor of this subdivision. This was denied by the Planning Commission. Roll call vote showed all Councilmen present voting nay - 6 nays. Thereupon the Mayor declared the resolution failed.

The City Clerk read a resolution offered by Councilman Row, seconded by Councilman McIntosh to approve payment No. 2, in amount of $71,450.54, in favor of Carlstrom Brothers, Inc. for work completed in Paving District No. 498, FIFTH STREET from Clarmar Avenue to Luther Road. Roll call vote showed all Councilmen present voting aye - 6 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Mussack, seconded by Councilman Lemons approving payment No. 2, in amount of $15,416.12, in favor of Hass Industries, Inc. for work completed for Water Main Installation in Clarkson Street from 23rd Street north approximately 1200 feet. Roll call vote showed all Councilmen present voting aye - 6 ayes. Thereupon the Mayor declared the resolution approved.

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The City Clerk read a resolution offered by Councilman McIntosh, seconded by Councilman Row to approve payment No. 1, in amount of $16,475.37, in favor of Carlstrom Brothers, Inc. for work completed on Lift Station Installation, 19th and Garden City Road. Roll call vote showed all Councilmen present voting aye - 6 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Mussack to approve plans, specifications and estimate of cost for Sanitary Sewer Replacement at various locations and granted permission to advertise for bids on same. Moved by Councilman Sixta, seconded by Councilman McIntosh to amend the resolution by changing "FIRST STREET from Somers" to "FIRST STREET from Morrell" and delete "this Sewer Reconstruction and add "bids" Roll call vote showed all Councilmen present voting aye - 6 ayes. Mayor declare motion carried. Roll call vote on amended resolution showed all Councilmen present voting aye - 6 ayes. The Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Mussack, seconded by Councilman McIntosh to approve the lease agreement for Electrical Substation Site. Roll call vote showed all Councilmen present voting aye - 6 ayes. Thereupon the Mayor declared the resolution approved.
Copy of Chase's Addition.
To.
The Town of Fremont.

Filed the 29th day of January, A.D. 1869.
at 9 O'clock A.M. and pasted in Book O
of Deeds at page 101.
By request of Dr. E. Chase.

A. J. Bough,
County Clerk.
Dodge Co. Neb.
<table>
<thead>
<tr>
<th>ADDRESS</th>
<th>LOT SIZE</th>
<th>DATE</th>
</tr>
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<tbody>
<tr>
<td>510 E. LINDEN</td>
<td>50 X66</td>
<td></td>
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<tr>
<td>LINDEN &amp; IRVING</td>
<td>58 X 66</td>
<td>OCT OF 2014</td>
</tr>
<tr>
<td>LINDEN &amp; PEBBLE</td>
<td>60 X 72</td>
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<tr>
<td>1215 N. IRVING</td>
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<td>516 E. 14TH.</td>
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</table>
We the Neighbors of 315 E. Linden and 1250 North D Sts wish to show their support for Myron Andrews in splitting the two homes into individual properties.

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Address</th>
<th>Phone</th>
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<tr>
<td>2-18-11</td>
<td>Lunda Anderson</td>
<td>1233 N D St</td>
<td>(402) 751-4052</td>
</tr>
<tr>
<td>2-18-11</td>
<td>Sherrill Andrews</td>
<td>336 E 14th St</td>
<td>721-2377</td>
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<tr>
<td>2-19-11</td>
<td>Linda Gerlach</td>
<td>350 E 12th</td>
<td>721-8278</td>
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<td>Darla B.</td>
<td>1235 N 8th</td>
<td>727-5477</td>
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<td>Linda Marsteller</td>
<td>315 E Linden</td>
<td>674-0601</td>
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<td>2-21-11</td>
<td>Beth Melby</td>
<td>1325 N D St</td>
<td>753-6886</td>
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<td>2-19-11</td>
<td>Narelle W.</td>
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<td>2-19-11</td>
<td>Yolanda Cotton</td>
<td>220 E Linden</td>
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<td>2-19-11</td>
<td>Martha Germon</td>
<td>233 E Linden Ave</td>
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<td>David G.</td>
<td>1240 N D</td>
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<td>D.</td>
<td>234 E 12th St</td>
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<td>E.</td>
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<td>2-23</td>
<td>Herb  M.</td>
<td>226 E 12th St</td>
<td>(402) 536-7717</td>
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<td>Mike</td>
<td>1233 C St</td>
<td>(402) 620-2387</td>
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<td>2-23</td>
<td>Ernie Martin</td>
<td>1335 D. 7th St</td>
<td>461-212-253</td>
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<tr>
<td>2-28</td>
<td>Art Acorn</td>
<td>637 E 5th</td>
<td>(402) 721-0387</td>
</tr>
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</table>
AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, AMENDING SECTION IV OF ORDINANCE NO. 2770, RELATING TO LOTS OF RECORD OR PORTIONS OF LOTS OF RECORD, WHICH DO NOT MEET THE MINIMUM REQUIREMENTS OF PARAGRAPHS 2 AND 5, BY ADDING PARAGRAPH 8 TO SECTION IV; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FREMONT, NEBRASKA.

SECTION I. AMENDMENT. That Paragraph 8, be added to Section IV to read as follows:

8. Notwithstanding any other provision of this ordinance, the City Council may, after receiving a recommendation of the Planning Commission, approve the subdivision of lots of record or portions of lots of record, into parcels which do not meet the minimum requirements of Paragraphs 2 and 5 of this section. Such subdivision may only be approved when it can be shown that:

a. The majority of lots within 300 feet of the proposed subdivision are of equal size or smaller, in both dimension and area, than the smallest lot that would result from the subdivision.

b. The subdivision will not adversely alter the character of the neighborhood.

c. In no case shall the width of a lot be less than 40-feet or the total area be less than 4000 square feet.

d. Where, by reason of exceptional narrowness, shallowness, or shape of specific piece of property, the strict application of any enacted regulation under this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property.

SECTION II. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASSED AND APPROVED THIS 25th DAY OF April, 1978

JOHN M. DICK, MAYOR

ATTEST:

A. Earl Neuring
City Clerk
MINUTES
PLANNING COMMISSION
7:30 P.M.
COUNCIL CHAMBERS

Present: Folsom, Gifford, Miller, McDonald, Peterson, Prauner and
Warner; also Director of Public Works Derrill Marshall,
Building Inspector Ray Coday and Engineer Grant Eklund

Absent: Hansen and Swanson

Chairman McDonald read a statement that a public notice of this meeting
was given in advance by publicized notice in the Fremont Tribune, a copy
of which is attached to these minutes and made a part thereto and on
Radio RHUB; and the agenda displayed in the lobby of the Municipal
Building, Fremont Police Station and the Dodge County Courthouse on
May 14, 1980; and is open to the public. Moved by Prauner, seconded
by Miller to approve the Chairman's statement that this meeting is
now determined to be a legal meeting. Roll Call Vote showed all
members voting aye - 7 aye. Motion Carried. The Chairman then de-
clared the meeting duly convened.

Moved by Gifford to dispense with the reading of the minutes of the
Special May 5th meeting and the April 21 regular meeting.

Folsom asked that the condensed version of the minutes of the Special
Meeting be amended to reflect more clearly the reason for his request
at 849 North "D" Street. After some discussion, Chairman McDonald stated
this item would be considered later in the meeting and would now consider
Item No. 3.

Request of Jack G. and Janice E. Davis to subdivide the east 208.25 feet
of Lot 1, except the south 33-feet, all in Block 1, Meierhenry Sub-
division, into two (2) Tracts of Land

Jack Davis was present. Moved by Miller, seconded by Warner to recom-
mand approval of this request. Roll Call Vote showed all members voting
aye - 7 Aye. Motion Carried.

Request of Ila D. Andrews to subdivide the north 66-feet of Lots 3 and 4,
Block 34, Chase's Addition, into two (2) lots

Attorney Avis R. Andrews was present, representing Ila D. Andrews and
stated that in 1969 permission was received from the City to move a second
house onto this property. There are separate drives and sewer taps for
each property. The hardship is that it restricts the owner in the sale
of her property. Derrill Marshall explained the request did not meet the
requirements of Ordinance No. 2980 and could not therefore be recom-
pended for approval. Miss Andrews disagreed. Moved by Prauner, seconded
by Miller to get the City Attorney's opinion as to if we can legally grant
this request. Roll Call Vote showed all members voting aye - 7 aye.
Motion Carried.
Meeting recessed at 8:37 p.m.

Meeting reconvened at 8:47 p.m.

Because of lack of quorum, there was no Development and Improvement Committee meeting, thereupon Councilman Row moved, seconded by Councilman Sixta to continue sidewalk installations on south side of Empire Avenue west of Broad Street and east of North Drive. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the motion carried.

Upon recommendation of the Resources Committee, Councilman Edwards moved, seconded by Councilman Sixta to approve the request of the Parks and Recreation Director to employ a Park Maintenance II employee at Range 32, Step E. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the motion carried.

The City Clerk read a resolution offered by Councilman Edwards, seconded by Councilman Mussack authorizing amendments to Bylaws for Sick Bank of Fremont employees. Moved by Councilman Sixta, seconded by Councilman Mussack to add the word "shift" between the words "Fire Department" and "personnel". Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the motion carried. Roll call vote on the amended resolution showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman McIntosh, seconded by Councilman Row granting a $25/month Training and Proficiency Increase, Phase I to police officers Craig L. Ganzel and Steven L. Lutes retroactive to March 1, 1980. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Hoppel, seconded by Councilman Sixta granting a $25/month Training and Proficiency Increase, Phase I to Firefighters Roger N. Charette and Richard A. Schintz effective June 1, 1980. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Edwards, seconded by Councilman Row granting Jack G and Janice E. Davis permission to subdivide the east 208.25 feet of Lot 1, except the south 33 feet, Block 1, Matherhen Subdivision into two (2) tracts of land. This was approved by the Planning Commission. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Row, seconded by Councilman Edwards granting William R and Patricia L. Legler permission to subdivide the south 137 feet of Lot 1, Block 4, Davenport Second Subdivision into two (2) lots. This was approved by the Planning Commission. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.

Moved by Councilman McIntosh, seconded by Councilman Row to continue the resolution permitting Ila D. Andrews permission to subdivide north 66 feet of Lots 3 and 4, Block 34, Chases Addition into two (2) lots for recommendation of Planning Commission. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the motion carried.

The City Clerk read a resolution offered by Councilman Hoppel, seconded by Councilman Sixta to accept and award bid for Pierce Street Storm Sewer to Carlstrom Brothers, Inc., in amount of $81,193.08. Roll call vote showed all Councilmen present voting aye - 7 ayes. Thereupon the Mayor declared the resolution approved.
The City Clerk gave the third reading, by title only, of an ordinance amending
snow routes. Roll call vote showed all Councilmen voting aye - 8 ayes. There-}
upon the Mayor declared Ordinance No. 3083 passed.

Moved by Councilman Sixta, seconded by Councilman McIntosh to continue until a
recommendation is received from the Planning Commission the request of Ila D.
Andrews to subdivide north 66 feet of Lots 3 and 4, Block 34, Chase's Addition,
into two lots. Roll call vote showed all Councilmen voting aye - 8 ayes. There-
upon the Mayor declared the motion carried.

The City Clerk read a resolution offered by Councilman Edwards, seconded by
Councilman McIntosh accepting Right-of-Way Dedication from NF Industries, Inc.
at 23rd and Nye Avenue. Roll call vote showed all Councilmen voting aye - 8
ays. Thereupon the Mayor declared the resolution approved.

The City Clerk gave the first reading, by title only, of an ordinance amending
Ordinance No. 3069 as it pertains to patching of City streets.

The City Clerk gave the first reading, by title only, of an ordinance amending
Ordinance No. 3081 as it pertains to Fast Food Restaurants. Moved by Councilman
Sixta, seconded by Councilman Lemons to suspend the rules and place on final
reading. Roll call vote showed all Councilmen voting aye - 8 ayes. Thereupon
the Mayor declared the motion carried. The City Clerk then gave the second and
third readings, by title only. Roll call vote showed all Councilmen voting aye-
8 ayes. Thereupon the Mayor declared Ordinance No. 3084 passed.

Moved by Councilman Lemons, seconded by Councilman McIntosh authorizing the
Mayor and City Clerk to execute an agreement with the Nebraska Department of
Roads covering the cost of lane marking on City streets. Roll call vote showed
all Councilmen voting aye - 8 ayes. Thereupon the Mayor declared the motion
carried.

Moved by Councilman McIntosh, seconded by Councilman Lemons, to instruct the
City Attorney to draft an Inter-Local Cooperative Agreement with the Village of
Inglewood covering water service based on guidelines explained by Mr. Sutton,
and bring back to the next Council meeting. Roll call vote showed all Council-
men voting aye - 8 ayes. Thereupon the Mayor declared the motion carried.

The Mayor announced there will be a special meeting on Budget for the General
Fund on Tuesday, June 17, 1980. The next regular meeting of the Council will
be on June 24, 1980 at 7:30 p.m.

Jack Sutton also announced he would like the full Council to see the film pre-
pared by Bob Meyer on the stop light situation at Military and D Streets. He
suggested perhaps a date of July 8th or the meeting on June 17th. He will
check into the availability of the film and advise.

Moved by Councilman Lemons, seconded by Councilman McIntosh to adjourn the
meeting. Roll call vote showed all Councilmen voting aye - 8 ayes. Thereupon
the Mayor declared the meeting adjourned.

Meeting adjourned at 9:50 p.m.

ATTEST:
A. Earl Heuring
City Clerk

John M. Dick, Mayor
Chairman McDonald read a statement that a public notice of this meeting was given in advance by publicized notice in the Fremont Tribune, a copy of which is attached to these minutes and made a part thereto and on Radio KHUB; and the agenda displayed in the lobby of the Municipal Building, Fremont Police Station and the Dodge County Courthouse on June 11, 1980; and is open to the public. Moved by Prauner, seconded by Peterson to approve the Chairman's statement that this meeting is now determined to be a legal meeting. Roll Call Vote showed all members voting aye - 9 aye. Motion Carried. The Chairman then declared the meeting duly convened.

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Attorney Avis Andrews was present, representing Ila D. Andrews, and stated that in 1969 permission was received from the City to move a second house onto this property. The question was raised at the last meeting whether or not there was any authority for the Planning Commission to approve this request. Miss Andrews felt the Planning Commission had the authority to approve as these properties fit into the character of the neighborhood - one for rental and the other the owners home. Not being able to subdivide presents an unreasonable hardship - first it presently restricts her ability to transfer the property; and second this situation existed at the time the ordinance was adopted and now is considered non-compliance.

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Moved by Councilman Sixta, seconded by Councilman McIntosh to continue the ordinance to rezone NE^4-NE^4, Section 27, T17N, R8E of 6th P.M. from R-3 Multiple Family Residential District to PS-1 Planned Suburban District, except that portion which is Marcella Road. Roll call vote showed all Councilmen present voting aye - 6 ayes. Thereupon the Mayor declared the motion carried.

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Roll call vote showed all Councilmen present voting aye - 6 ayes. Mayor declare Roll call vote showed all Councilmen present voting aye - 6 ayes. The Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Mussack, seconded by Councilman McIntosh to approve the lease agreement for Electrical Substation Site. Roll call vote showed all Councilmen present voting aye - 6 ayes. Thereupon the Mayor declared the resolution approved.

The City Clerk read a resolution offered by Councilman Lemons, seconded by Councilman Mussack approving the Change Authorization Request of Martin K. Eby Construction Co. on Contract 79-A3, Construction of Ash System Improvements. Roll call vote showed all Councilmen present voting aye - 6 ayes. Thereupon the Mayor declared the resolution approved.

The Mayor announced the next regular Council meeting to be July 8, 1980 at 7:30 p.m.

Moved by Councilman Sixta, seconded by Councilman McIntosh that the meeting adjourn. Roll call vote showed all Councilmen present voting aye - 6 ayes. Thereupon the Mayor declared the meeting adjourned. Adjourned at 10:24 p.m.

ATTEST:
A. Earl Heuring, City Clerk

John M. Dick, Mayor
RESOLUTION NO. 2019-095

A RESOLUTION OF THE CITY OF FREMONT, NEBRASKA, AUTHORIZING THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 315 E. LINDEN AVE. AND 1250 N. D ST FOR THE PURPOSES OF EXPANDING A NONSTANDARD USE TO ALLOW SUBDIVISION OF A LOT CREATING TWO NONCONFORMING LOTS.

WHEREAS, a request for approval of a Conditional Use Permit to expand a nonstandard use by allowing a subdivision to create two nonconforming lots was filed with the offices of the Department of Planning, City of Fremont (City); and

WHEREAS, the City has determined that the subject property is currently zoned AR, Auto Urban Residential; and

WHEREAS, expansion of a nonstandard use requires a Conditional Use Permit; and

WHEREAS, a public hearing on the proposed Conditional Use Permit was held by the Planning Commission on May 20, 2019, and subsequently by the City Council on June 11, 2019; and

WHEREAS, the City has determined that such proceedings were in compliance with Neb. Rev. Stat. §19-904 pertaining to zoning regulations and restrictions;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA, AS FOLLOWS: Issuance of a Conditional Use Permit for the purpose of subdividing the north 66’ of Lots 3 and 4 Block 34 Chase’s Addition into two nonconforming lots, subject to the following conditions: All new development must meet the setback and coverage requirements of the zoning regulations in place at the time of construction.

PASSED AND APPROVED THIS ____ DAY OF _______ 2019.

________________________________________
Scott Getzschman, Mayor

ATTEST:

________________________________________
Tyler Ficken, City Clerk
Staff Report

TO: Honorable Mayor and City Council
FROM: Jennifer L. Dam, AICP, Planning Director
DATE: August 13, 2019
SUBJECT: Ordinance 5497 amending Ordinance 5270 to correct the legal description of a previously approved Planned Unit Development

Recommendation: Hold Second Reading

Background:

Ordinance 5166 for a Planned Unit Residential Development (PUD) was approved by the City Council on June 29, 2010 for 1615 East Military Avenue on property described as “Lot 6, excepting the south 114.12 feet thereof, together with the west 18.67 feet of Lot 2, the west 50.21 feet of Lot 3, and the east 76.49 feet of Lot 3 all in Wacek & Van Patten's Addition to the City of Fremont, Dodge County, Nebraska.”

That PUD consisted of two apartment buildings (one with 14 units and one with 12 units), 24 garage stalls, and 28 surface stalls.

Ordinance 5222 was approved by the City Council on September 27, 2011 to amend the PUD to add an addition to the clubhouse. The legal description was the same as above.

Ordinance 5270 was approved by the City Council on April 30, 2013. This expanded the area covered by the PUD to add two apartment buildings and additional garages. The legal description on the ordinance was Lots 2, 3, 6 and 7 Wacek & Van Patten’s Addition to the City of Fremont, Dodge County, Nebraska.

The above legal description covered an area larger than what was intended by the PUD, based on the map and site plan attached to the staff report. In addition, the zoning map was not adjusted to reflect the expanded PUD area, either as reflected on the site plan or as reflected by the legal description.

This ordinance, number 5497, is intended to confirm the correct legal description of the PUD, so that the zoning map can be updated to reflect the proper boundaries. The original conditions are repeated to ensure that they remain in effect.

The proper legal description is “Parts of Lots 2, 3, 6 and 7 all in Wacek and Van Patten’s addition to the City of Fremont, Dodge County, Nebraska, more particularly described as follows: The west 18.67 feet of Lot 2; all of Lot 3; Lot 6 except the west 25.09 feet of the south 114.12 feet and the east 70 feet of the south 114.2 feet; the
north 25.09 feet of Lot 7 except the east 129.04 feet; the west 76 feet of Lot 7 except the north 25.09 feet and the south 114.33 feet.”

Copy of area of original PUD (heavier black line)
First Amendment to PUD site plan
2013 Amendment to PUD Site Plan (Site Plan shows correct property, legal description incorrect)
Copy of vicinity map attached to 2013 amendment
Current parcel layout in same area. Area of correct PUD outlined in red, incorrect legal in blue
ORDINANCE NO. 5166

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, TO AMEND THE PLANNED UNIT DEVELOPMENT AT 1615 EAST MILITARY AVENUE, FREMONT, DODGE COUNTY, NEBRASKA, PROVIDING FOR CONDITION OF APPROVAL OF THE DEVELOPMENT PLAN; AND, PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA;

SECTION I. That a tract of land known as 1615 East Military Avenue, being Lot 6, excepting the south 114.12 feet thereof, together with the west 18.67 feet of lot 2, the west 50.21 feet of Lot 3, and the east 76.49 feet of lot 3 all in Wacek & Van Patten's Addition to the City of Fremont, Dodge County, Nebraska, is designated as a Planned Unit Residential Development District.

SECTION II. That the Planned Development described in Section 1 of this Ordinance be amended by adding an addition to the clubhouse and approved subject to the following:

1. That all construction on the site conform to the development plan submitted;
2. A 10 feet public utility easement shall be recorded on the parcel abutting side property lines and south of the 14 unit building traversing the site from east to west.
3. Create and record a public utility easement for gas service.
4. Align and locate the water and sanitary service lines along a north south axis with the eastern property line in the northern portion of the site and west of the 12 unit building per the Department of Utilities approval.
5. Prior to construction provide a detailed landscape plan with fencing.
6. Provide a fire hydrant south of the 12 unit building.
7. All fire turn arounds shall comply with local and state codes

SECTION III. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage, approval, and publication as required by law.

PASSED AND APPROVED THIS 29th DAY OF JUNE, 2010

Donald B. Edwards, Mayor

ATTEST:

Kimberly Volk, QMC
ORDINANCE NO. 5222

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, TO AMEND THE PLANNED UNIT DEVELOPMENT AT 1615 EAST MILITARY AVENUE, FREMONT, DODGE COUNTY, NEBRASKA, PROVIDING FOR CONDITION OF APPROVAL OF THE DEVELOPMENT PLAN; AND, PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA;

SECTION I. That a tract of land known as 1615 East Military Avenue, being Lot 6, excepting the south 114.12 feet thereof, together with the west 18.67 feet of lot 2, the west 50.21 feet of Lot 3, and the east 76.49 feet of lot 3 all in Wacek & Van Patten's Addition to the City of Fremont, Dodge County, Nebraska, is designated as a Planned Unit Residential Development District.

SECTION II. That the Planned Development described in Section 1 of this Ordinance be amended by adding an addition to the clubhouse and approved subject to the following:

1. That all construction on the site conform to the development plan submitted to the Planning Commission in May 2010 and the revised plan submitted in September 2011;
2. A 10 feet public utility easement shall be recorded on the parcel abutting side property lines and south of the 14 unit building traversing the site from east to west.
3. Create and record a public utility easement for gas service.
4. Align and locate the water and sanitary service lines along a north south axis with the eastern property line in the northern portion of the site and west of the 12 unit building per the Department of Utilities approval.
5. Prior to construction provide a detailed landscape plan with fencing.
6. Provide a fire hydrant south of the 12 unit building.
7. All fire turn arounds shall comply with local and state codes.

SECTION III. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage, approval, and publication as required by law.

PASSED AND APPROVED THIS 27th DAY OF September, 2011.

Scott Getzschman, Mayor

ATTEST:

Kimberly Volk, MMC City Clerk
ORDINANCE NO. 5270.

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, TO AMEND THE PLANNED UNIT DEVELOPMENT AT 1615 EAST MILITARY AVENUE, FREMONT, DODGE COUNTY, NEBRASKA, PROVIDING FOR CONDITION OF APPROVAL OF THE DEVELOPMENT PLAN; AND, PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA;

SECTION I. That a tract of land known as 1615 East Military Avenue, being Lots 2, 3, 6 and 7, Wacek & Van Patten's Addition to the City of Fremont, Dodge County, Nebraska, is designated as a Planned Unit Residential Development District.

SECTION II. That the Planned Development described in Section 1 of this Ordinance be amended by adding an addition to the clubhouse and approved subject to the following:

1. The applicant will provide additional screening between the 8 bay garage and adjacent properties (either thru landscaping or fencing).
2. The applicant will provide screening between the eastern building and the adjacent properties (either thru landscaping or fencing).
3. The applicant will ensure that all drainage will be contained on site and removed using the proposed drainage system and will not drain onto adjacent properties.

SECTION III. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage, approval, and publication as required by law.

PASSED AND APPROVED THIS 30th DAY OF APRIL, 2013

Scott Getzschman, Mayor

ATTEST:

Lynne McIntosh, CMC, Deputy City Clerk
AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, AMENDING ORDINANCE NO. 5270, CORRECTING THE LEGAL DESCRIPTION OF THE APPROVED PLANNED UNIT DEVELOPMENT ON PROPERTY GENERALLY LOCATED AT 1615 EAST MILITARY AVENUE, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Fremont, Nebraska, seeks to promote the health, safety, morals, and the general welfare of the community; and

WHEREAS, the legal description of the property for which a PUD was approved in Ordinance 5270 has been determined to be incorrect; and

WHEREAS, the City has determined that a Planned Unit Development was approved on the subject property by Ordinance 5270; and

WHEREAS, a public hearing to correct the legal description was held by the City Council on July 30, 2019; and

WHEREAS, the City has determined that such proceedings were in compliance with Neb. Rev. Stat. §19-904 pertaining to zoning regulations and restrictions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA, AS FOLLOWS:

SECTION I. The tract of land known as 1615 East Military Avenue legally described as Parts of Lots 2, 3, 6 and 7 all in Wacek and Van Patten’s addition to the City of Fremont, Dodge County, Nebraska, more particularly described as follows: The west 18.67 feet of Lot 2; all of Lot 3; Lot 6 except the west 25.09 feet of the south 114.12 feet and the east 70 feet of the south 114.2 feet; the north 25.09 feet of Lot 7 except the east 129.04 feet; the west 76 feet of Lot 7 except the north 25.09 feet and the south 114.33 feet, is designated as a Planned Unit Residential Development District.

SECTION 2. That the Planned Development described in Section 1 of this Ordinance be amended by adding an addition to the clubhouse and approved subject to the following:

a) The property owner will provide additional screening between the 8 bay garage and adjacent properties (either through landscaping or fencing).

b) The property owner will provide screening between the eastern building and the adjacent properties (either through landscaping or fencing).

c) The property owner will ensure that all drainage will be contained on site and removed using the proposed drainage system and will not drain onto adjacent properties.

SECTION 3. REPEALER. That part of the official zoning map referred to in Ordinance No. 5270 or any other section of said ordinance in conflict with this ordinance is hereby
SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after its passage, approval, and publication as required by law.

PASSED AND APPROVED THIS 27th DAY OF AUGUST, 2019

ATTEST:

Scott Getzschman, Mayor

Tyler Ficken, City Clerk
STAFF REPORT

TO: Honorable Mayor and City Council

FROM: Shane Wimer, Assistant City Administrator

DATE: August 13, 2019

SUBJECT: Ordinance 5498 to amend Section 5-902 Storage of Dismantled, Wrecked, Junked and Inoperable Motor Vehicle

Recommendation: Approve amendments to FMC §5-902

Background: The City of Fremont has numerous junk or abandon vehicles stored on private property throughout the city that degrade surrounding properties and undervalue the property. These junk vehicles left unchecked become eyesores for the community and promote a habitat for rodents and noxious weed growth. Section 5-902 deals with the Storage of Dismantled, Wrecked, Junked, and Inoperable Motor Vehicles as a Nuisance. The police department and code enforcement are having a difficult time enforcing the ordinance due to the current wording. Staff along with Legal Counsel have changed and added wording to the ordinance to allow police and code enforcement greater latitude to enforce the ordinance.

Staff has provided a marked up version of the ordinance with the suggested changes that are deemed necessary to enforce it. Staff has also provided several photos to help council assess what code enforcement and the police department are trying to combat.

Fiscal Impact: None
ORDINANCE 5-902

Storage of Dismantled, wrecked, Junked and Inoperable Motor Vehicles as Nuisance.
Ordinance 5-902 that deals with Junk and Abandon vehicles has some flaws in it that hinder Code Enforcement and Law Enforcement to apply the ordinance.
Questions?
Sec. 5-902. - Storage of dismantled, wrecked, junked and inoperable motor vehicles as nuisance.

(a) It is expressly found and determined that the storage or accumulation of dismantled, partially dismantled, wrecked, junked, or inoperable motor vehicles, campers and trailers left upon private property, in places other than junk yards or other appropriate areas, tends to interfere with the enjoyment of property, reduce the value of private property, and invite plundering and vandalism, create fire hazards, and aggravate urban blight, and result in a serious hazard to the public health, safety, comfort, convenience, welfare and happiness of the residents of the City and is hereby declared to be a nuisance. No person shall park, store, leave, or permit the parking, storing or leaving of any motor vehicle, boat, camper or trailer of any kind which is dismantled, partially dismantled, wrecked, junked, or inoperable for a period of time in excess of thirty-five (30 1/2) days; provided, this section shall not apply to any vehicle located on private property within an enclosed building, or to any vehicle held in connection with a business enterprise lawfully operated within the City.

(b) The following words and phrases shall have the meanings respectively ascribed to them by this section:

1) Motor vehicle is any vehicle which is designed to travel along the ground and shall include, but not be limited to automobiles, buses, motor bikes, motorcycles, motor scooters, trucks, tractors, go carts, golf carts, all-terrain vehicles, boats, campers and trailers.

2) Camper is any motor vehicle with facilities for sleeping and/or cooking while camping.

3) Trailer is an unpowered motor vehicle towed by another.

4) Boat is a small vessel propelled on water by oars, sails, or an engine.

5) Junked motor vehicle is any motor vehicle which does not have lawfully affixed thereto an unexpired license plate or plates, or is in the condition of which is wrecked, dismantled, partially dismantled, inoperable, not towable, not drivable, abandoned or discarded.

6) Inoperable motor vehicle shall mean a motor vehicle which cannot be started and driven or towed legally upon the roadway.

(c) Whenever any owner or occupant of real property permits a nuisance to exist, such owner and any occupant shall be notified of the existence of such nuisance by the City, and if the nuisance is not abated within thirty-five (30 1/2) days from the service of the notice, the owner or occupant shall be guilty of creating a nuisance. The notice may be served by personally handing a copy thereof to each owner, or the owner's duly authorized agent, and to the occupant; or by leaving said notice at the usual place of residence, or in the event the owner is a nonresident of the City and his residence is known, notice may be served upon him by certified mail. Service of notice by certified mail shall be deemed complete when the notice is delivered to the owner by the United States mail.
2) Upon failure of the owner or occupant to so abate the nuisance within thirty-five (30-15) days of notice being given, in addition to or in lieu of filing charges for violation of this Chapter, the City may cause any junked motor vehicle to be towed from the property, at the expense of the owner of said motor vehicle. The City shall make a reasonable effort to contact the owner of the towed vehicle by sending a notice to the registered owner, if known; by sending an inquiry to the county it is registered in if the owner is unknown; or by contacting the Director of Motor Vehicles, if the vehicle is without license plates and the owner is unknown. If notified by the Director of Motor Vehicles that a lien or mortgage exists on said vehicle, notice shall also be sent to the lien holder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle. If the owner, lien holder or mortgagee, if known and does not claim the vehicle within five (5) days after the date when the notice was mailed, or upon receiving word from the Director of Motor Vehicles that the owner is unknown, title will immediately vest in the Municipality and the vehicle may be sold. Any proceeds from the sale of the vehicle less any expenses incurred by the Municipality in such removal, storage and sale shall be held without interest in a separate account for the benefit of the owner of such vehicle for a period of two (2) years. If not claimed within such period of time, the proceeds shall then be paid into the General Fund.

(Order No. 3997, 75-258-1902)
Ordinance No. 5498

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, AMENDING THE MUNICIPAL CODE OF THE CITY OF FREMONT, NEBRASKA, SECTION 5-902; AMENDING VARIOUS DEFINITIONS, REMOVING AND ADDING LANGUAGE TO ASSIST IN THE UNDERSTANDING AND ENFORCEMENT OF SUCH ORDINANCE: PROVIDING FOR AN EFFECTIVE DATE OF SUCH AMENDMENTS; AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND THE COUNCIL OF THE CITY OF FREMONT, NEBRASKA:

SECTION I. CHAPTER 5. ARTICLE 9 is hereby amended to read as follows:

Sec. 5-902. - Storage of dismantled, wrecked, junked and inoperable motor vehicles as nuisance.

(a) It is expressly found and determined that the storage or accumulation of dismantled, partially dismantled, wrecked, junked, or inoperable motor vehicles, campers and trailers left upon private property, in places other than junk yards or other appropriate areas, tends to interfere with the enjoyment of property, reduce the value of private property, and invite plundering and vandalism, create fire hazards, extend and aggravate urban blight, and result in a serious hazard to the public health, safety, comfort, convenience, welfare and happiness of the residents of the City and is hereby declared to be a nuisance. No person shall park, store, leave, or permit the parking, storing or leaving of any motor vehicle, motor boat, camper or trailer of any kind which is dismantled, partially dismantled, wrecked, junked, or inoperable for a period of time in excess of thirty (30) days; provided, this section shall not apply to any vehicle located on private property within an enclosed building, or to any vehicle held in connection with a business enterprise lawfully operated within the City.

(b) The following words and phrases shall have the meanings respectively ascribed to them by this section:

1) Motor vehicle is any vehicle which is designed to travel along the ground and shall include, but not be limited to automobiles, buses, motor bikes, motorcycles, motor scooters, trucks, tractors, go carts, golf carts, all-terrain vehicles, boats, campers and trailers.

2) Camper is any motor vehicle with facilities for sleeping and cooking while camping.

3) Trailer is an unpowered motor vehicle towed by another.

4) Boat is a small vessel propelled on water by oars, sails, or an engine.

5) Junked motor vehicle is any motor vehicle which does not have lawfully affixed thereto an unexpired license plate or plates, or is in the condition of which is
wrecked, dismantled, partially dismantled, inoperable, not towable, not drivable, abandoned or discarded.

6) Inoperable motor vehicle shall mean a motor vehicle which cannot be started and driven or towed legally upon the roadway.

(c) 1) Whenever any owner or occupant of real property permits a nuisance to exist, such owner and any occupant shall be notified of the existence of such nuisance by the City, and if the nuisance is not abated within thirty (30) days from the service of the notice, the owner or occupant shall be guilty of creating a nuisance. The notice may be served by personally handing a copy thereof to each owner, or the owner’s duly authorized agent, and to the occupant; or by leaving said notice at the usual place of residence, or in the event the owner is a nonresident of the City and his residence is known, notice may be served upon him by certified mail. Service of notice by certified mail shall be deemed complete when the notice is delivered to the owner by the United States mail.

2) Upon failure of the owner or occupant to so abate the nuisance within thirty (30) days of notice being given, in addition to or in lieu of filing charges for violation of this Chapter, the City may cause any junked motor vehicle to be towed from the property, at the expense of the owner of said motor vehicle. The City shall make a reasonable effort to contact the owner of the towed vehicle by sending a notice to the registered owner, if known; by sending an inquiry to the county it is registered in if the owner is unknown; or by contacting the Director of Motor Vehicles, if the vehicle is without license plates and the owner is unknown. If notified by the Director of Motor Vehicles that a lien or mortgage exists on said vehicle, notice shall also be sent to the lien holder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle. If the owner, lien holder or mortgagee, if known and does not claim the vehicle within five (5) days after the date when the notice was mailed, or upon receiving word from the Director of Motor Vehicles that the owner is unknown, title will immediately vest in the Municipality and the vehicle may be sold. Any proceeds from the sale of the vehicle less any expenses incurred by the Municipality in such removal, storage and sale shall be held without interest in a separate account for the benefit of the owner of such vehicle for a period of two (2) years. If not claimed within such period of time, the proceeds shall then be paid into the General Fund.

(Ord. No. ______7-25-19)

SECTION II. That the originals of all ordinances or parts of ordinances of the City of Fremont and sections of the Fremont Municipal Code amended herein, and all other ordinances in conflict herewith are hereby repealed.

SECTION III. That this ordinance shall be published in pamphlet form and shall take effect and be in force from and after its passage, approval and publication according to law.
PASSED AND APPROVED THIS 27TH DAY OF AUGUST, 2019

Scott Getzschman, Mayor

ATTEST:

Tyler Ficken, City Clerk
Staff Report

TO: Mayor and City Council
FROM: Jennifer McDuffee, Director of Human Resources
DATE: August 9, 2019
SUBJECT: Insurance Carrier/Administrator Change – Long Term Disability, Short Term Disability, Life and AD&D Coverage

Recommendation: Approve Resolution 2019-158 allowing staff to execute the Short Term Disability Advice to Pay agreement with Lincoln Financial.

Background:

The City has retained IMA Inc. as our insurance broker for a number of years. The attached letter from IMA Inc. outlines their recommendation to discontinue the current disability and life/AD&D coverage with Unum and move the City’s coverage to Lincoln Financial Group.

IMA has obtained quotes from Unum, Lincoln Financial, The Hartford, and The Standard for these coverages. Lincoln Financial provided the most competitive premium rate and were able to match our current rates for Life/AD&D coverage and claim administration for short term disability.

In order to begin the transition process and set up the administration for our self-funded short term disability plan, Lincoln Financial requires that the City submit a Short Term Disability Advice to Pay agreement before they can draft the contract.

Financial Impact: (For LTD, STD, and Life/AD&D renewal, Estimated Based on Enrollment at time of Quote)

Annual Estimated Premiums are $99,322, which is a 5.7% increase over the current rates.
August 8, 2019

Jennifer McDuffee  
Director of Human Resources  
400 E Military Avenue  
Fremont, NE 68025  

RE: Life and Disability Renewal

Jennifer,

The City of Fremont currently contracts with Unum for your life and disability coverage. This letter will summarize the details of the October 1, 2019 renewal.

Marketing Efforts

Upon receiving your renewal from Unum, IMA immediately sent it out to market, as Unum increased your long-term disability premium by 80%. They justified this course of action based on your four current long-term disability claims, which is over 3 times higher than the norm for a group your size. Upon receiving competitive quotes from other carriers, we went back to Unum and they brought the long-term disability quote down to a 70% increase. We also went back to Lincoln Financial, who had the most competitive quote, and asked if they would match the Unum life and accidental death and dismemberment rates, which they did. Your revised renewal with Unum was a 26.6% overall increase for both life and disability resulting in additional premium of $24,997 per year. Our recommendation is to move your life and disability coverage to Lincoln Financial where your increase will be 5.7% with $5,357 of additional premium.

Thank you for your continued partnership with IMA.

Sincerely,

Denise Dougherty  
Account Executive, IMA Financial Group
UTILIZE EXPERT CLAIMS SERVICES WITH...

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY
SHORT-TERM DISABILITY ADVICE TO PAY PROGRAM
FOR

City of Fremont

The Lincoln National Life Insurance Company can provide your company premier Advice to Pay services on Short-Term Disability (STD) claims.

Advice to Pay is ideal for the employer who self-insures their STD plan and is looking for consultation on STD claims. Advice to Pay services help to manage your company's STD claims and allow early claims involvement when an employee's Short-Term Disability becomes a Long-Term Disability. Advice to Pay is sold only in conjunction with Long-Term Disability and is not available on a stand-alone basis.

Services offered by the Lincoln Financial Group Advice to Pay program include:

- Short-Term Disability claim forms
- One dedicated Claim Rep to handle your Short-Term Disability claims submitted by your employees
- Establishment and maintenance of claim files and records for all Short-Term Disability claims submitted by your employees
- Lincoln Financial Group claims experts that analyze and investigate each claim in accordance with your particular plan provisions
- Expert advice on whether the claimant qualifies for benefits under the plan
- Continuous review of ongoing claims to determine if disability payments should be continued or terminated
- Processing of Short-Term Disability claims in accordance with applicable state and federal laws
- Payment of fees for medical records and reports
- Claims management services including Risk Management, Vocational Counseling, verification of applications for income from other sources, and monitoring of Rehabilitation Programs

The affordable Advice to Pay services from Lincoln Financial Group can help your company manage employee Short-Term and Long-Term Disability claims and ultimately, help manage benefit costs.

Program Administration Fees:

<table>
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<th>Rate Per Employee Per Month</th>
<th>Number of Employees</th>
<th>Monthly Fee</th>
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<tr>
<td>$2.25</td>
<td>301</td>
<td>$677.25</td>
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</table>

Short-Term Disability Advice to Pay Agreement

If you agree to accept this proposal, please sign and date both copies of the enclosed agreements and return to Lincoln Financial Group along with a complete copy of your current plan. We cannot handle claims until the agreement is executed and received at our home office.

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY
SERVICE OFFICE: 8801 INDIAN HILLS DRIVE, OMAHA, NE 68114
ADVICE TO PAY AGREEMENT

THIS AGREEMENT is entered into effective Tuesday, October 01, 2019 by and between City of Fremont, hereinafter referred to as "Plan Sponsor," and The Lincoln National Life Insurance Company, hereinafter referred to as "Consultant."

Plan Sponsor has adopted a Short-term Disability income plan agreement, hereinafter referred to as the "Plan", to provide benefits for certain of its employees. A copy of the Plan is attached to and forms a part of this Agreement.

Plan Sponsor has requested that Consultant furnish claim review services for the Plan in accordance with the terms and conditions set forth in this Agreement.

In consideration of the foregoing and the mutual promises and covenants contained in this Agreement, Plan Sponsor and Consultant agree as follows:

PART I - CLAIM REVIEW SERVICES

Consultant shall provide the following Claim Review Services for claims incurred on or after the effective date of this Agreement:

1. Review and investigate all claims and provide advice to Plan Sponsor as to whether a claimant is eligible for disability benefits based on the nature of the disability and the terms of the Plan. Consultant will apply customary definitions of terms, such as "total disability", "recurrent disability", etc., unless otherwise defined in the Plan or directed by Plan Sponsor.

2. Communicate the incurred date of the disability and the date through which Consultant has validated the disability.

3. Process claims in accordance with any applicable state or federal guidelines.

4. Provide claim management services including risk management, vocational counseling, verification of applications for (or receipt of) income from other sources, and monitoring of rehabilitation programs.

5. Review and provide final advice on one appeal of each claim that has been denied.

6. Provide the gross pay amount, any applicable reductions and/or deductions, and the net pay amount for each claimant for each validated period of disability.

7. In the event that the Plan Sponsor authorizes denial of a claim or an appeal in whole or in part, Consultant shall notify the Claimant in writing of such denial. Consultant's letter to the Claimant shall clearly state:

   a) the specific reason for the denial;
   b) the Plan provision(s) on which the denial is based;
   c) an explanation of the Claimant's right to appeal, and the claim review procedure, if applicable; and
   d) that the decision was made by Plan Sponsor, and Consultant is only providing consulting services.

8. Provide a regularly scheduled report listing:

   a) all claims received since the last reporting period
   b) all claims receiving ongoing review, with a notation of advice to pay approvals when given
   c) all claims that have been closed since the last reporting period
   d) any recommended claim pay out amounts
   e) detailed status information on all continuing claims
   f) recommended final payment.
PART II - OBLIGATIONS OF THE PLAN SPONSOR

A. Plan Sponsor shall:

1. Submit claims for benefits under the Plan to Consultant for review.

2. Collect and furnish all information reasonably required by Consultant to carry out its duties under this Agreement.

3. Provide eligibility information for each claimant at the time the claim is submitted, as well as any other information concerning the plan benefits and eligibility as may be reasonably required for the proper administration of the plan.

4. Approve or deny claims and appeals.

5. Make no use of Consultant’s name in connection with the plan which is not approved in writing by Consultant.

6. Make benefit payments and disseminate tax reporting and withholding information for benefits paid by Plan Sponsor to comply with federal, state, and local requirements.

7. Notify Consultant if Plan Sponsor determines that Consultant is not interpreting terms of the Plan as Plan Sponsor desires them to be interpreted, after receipt of which notice Consultant will adhere to Plan Sponsor’s directions.

B. Consultant shall not be considered to have failed to perform its obligations under this Agreement if any delay or nonperformance on its part is due, in whole or in part, to the Plan Sponsor’s failure to discharge its own obligations promptly.

C. Plan Sponsor shall provide Consultant in writing the names of individuals authorized to act for the Plan Sponsor in connection with this Agreement, together with a statement as to the extent of their authority. Consultant may rely upon such authorizations until receipt of written instructions changing such authorization.

D. Plan Sponsor shall not make any substantive change in the Plan without giving written notice and a copy of the modification to Consultant 30 days prior to the effective date of the change.

PART III - FINAL AUTHORITY; RELATIONSHIP OF THE PARTIES

Final authority and financial responsibility for the Plan and its administration and operations are vested solely in the Plan Sponsor. Consultant is empowered to act on behalf of Plan Sponsor in connection with the Plan only as expressly stated in this Agreement. In performing its obligations under this Agreement, Consultant is acting solely as a consultant and contractor of Plan Sponsor, not as an insurer or underwriter of the Plan. Consultant shall have no power or authority on behalf of Plan Sponsor to alter, modify or waive any terms or conditions of the Plan or to waive any breach of any such terms or conditions, or to bind Plan Sponsor. If the Employee Retirement Income Security Act of 1974 (ERISA) applies to the Plan, Plan sponsor shall serve as the Plan Administrator of the Plan and Consultant shall not be considered a fiduciary with respect to the Plan.

PART IV – HOLD HARMLESS; LEGAL PROCEEDINGS; STANDARD OF CARE

A. Hold Harmless.

Plan Sponsor agrees to indemnify and hold harmless Consultant and its officers, directors, employees, and any other persons retained by Consultant to discharge its duties under this Agreement, from any and all claims, demands or lawsuits brought against Consultant in relation to its provision of services with respect to the Plan.

B. Legal Proceedings.

Each party shall promptly notify the other in the event they become aware of any demand, threat, legal action or administrative proceeding involving the Plan or any activities related to this Agreement. Plan Sponsor shall settle or otherwise resolve any such demand, threat, legal action or administrative proceeding, or participate in the defense thereof. Consultant shall furnish Plan Sponsor any documentation it has which relates to the dispute, and will otherwise cooperate with Plan Sponsor in achieving a prompt resolution.
C. Standard of Care.

Consultant shall use ordinary care and reasonable diligence in the exercise of its powers and the performance of its duties hereunder. If any payment is made by Plan Sponsor to an ineligible person or in an incorrect amount, Consultant will so notify Plan Sponsor in order that Plan Sponsor may take such action as may be available to it.

PART V - CLAIM RECORDS

A. All records, reports, and other information maintained by Consultant pursuant to this Agreement shall be the sole property of Plan Sponsor and shall be made available to Plan Sponsor upon termination of this Agreement.

B. Plan Sponsor shall have the right to inspect any records, reports, and other information prepared and maintained by Consultant pursuant to this Agreement upon reasonable notice from Plan Sponsor. Consultant shall have the right to inspect any claim file and any other record or report which is prepared and maintained by Plan Sponsor pursuant to this Agreement upon reasonable notice to Plan Sponsor.

C. Consultant shall take reasonable steps to preserve the confidentiality of all records, reports and other information it maintains in connection with this Agreement, and will use such information only as provided in this Agreement. No individually identifiable information will be released except as permitted by this Agreement, as authorized in writing by the claimant to whom the information relates, or as compelled by law. Pursuant to Part II, Section C of this Agreement, Plan Sponsor shall designate employees or agents who are authorized to receive individually identifiable claim information on behalf of the Plan Sponsor.

PART VI - FEES AND EXPENSES

A. Administration Fee. Plan Sponsor agrees to pay $2.25 per covered employee per month.

B. Expenses. The Administration Fee includes expenses incurred by Consultant associated with all normal short-term disability claim validation and claim management processes typical in the industry. These expenses include those associated with obtaining medical records, independent medical exams, Home Office overhead expenses, etc., and adjudication of up to one appeal of each denial claim. Plan Sponsor may request additional claim management services and agrees to reimburse Consultant for expenses incurred by Consultant. Any expense anticipated to exceed $500 will require consent from the Plan Sponsor prior to the activity being initiated. Expenses subject to reimbursement may include costs of surveillance, on-site vocational rehabilitation and/or case management, legal fees, approved travel expenses, other expert fees, etc.

C. Consultant shall submit to Plan Sponsor within twenty (20) days after each calendar month that this Agreement is in effect an itemized statement showing the Administrative Fees and Expenses incurred for such month. Plan Sponsor shall pay Consultant such amounts within thirty (30) days of the invoice date.

D. Subject to any applicable rate guarantees specified by Consultant in writing, Consultant may change the Administrative Fee from time to time, upon giving at least thirty (30) days prior notice to Plan Sponsor.

PART VII - SUBCONTRACTING

Consultant may arrange for service bureaus, agencies, or other subcontractors to perform any portion of the services that Consultant has agreed to provide under this Agreement. Consultant shall remain liable to Plan Sponsor in accordance with terms of this Agreement for any such work performed by a subcontractor.

PART VIII - AMENDMENT

No modification or amendment to this Agreement shall be valid unless made in writing and signed by each party.

PART IX - MISCELLANEOUS PROVISIONS

A. Neither party may assign its rights under this Agreement without first obtaining the written consent of the other party. This Agreement shall be binding on any such successors or assigns.
B. Neither Consultant nor Plan Sponsor shall have any power or authority to act for or on behalf of the other except as herein expressly granted, and no other or greater power or authority shall be implied by the grant or denial of power or authority specifically mentioned herein.

C. Any notices required or provided for under this Agreement shall be in writing and sent by regular U.S. mail or air express to the addresses below:

If to Consultant:  
The Lincoln National Life Insurance Company  
Attn: Vice President of Claims  
8801 Indian Hills Dr.  
Omaha, NE 68114

If to Plan Sponsor:  
City of Fremont  
Attn: Human Resources Director  
400 E. Military Avenue  
Fremont, NE 68025

D. Captions of the Parts, Sections, and Paragraphs of this Agreement are for convenience and reference only, and the words contained in such captions shall in no way be employed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

E. This Agreement is governed by and shall be construed in accordance with the laws of the State of Indiana, without regard to conflict of laws principles.

F. If any provision of this Agreement is determined to be invalid in any respect, such determination shall not nullify any of the other terms of this Agreement.

PART X - TERM AND TERMINATION

A. This Agreement shall become effective as of the date first written above, and shall continue until terminated as permitted below.

B. Either party may terminate this Agreement as of its anniversary date by giving at least thirty (30) days prior notice to the other party.

C. Plan Sponsor may terminate this Agreement effective immediately if it determines that Consultant has failed to perform the required services in a satisfactory manner, and Consultant fails to cure such failure within thirty (30) days after receiving a detailed notice from Plan Sponsor identifying the nature of its dissatisfaction.

D. Plan Sponsor may also terminate this Agreement if it does not agree with any proposed adjustment in the Administrative Fee under Part VI, D, by delivering written notice to Consultant within thirty (30) days of receipt of notice of the proposed increase. Such termination shall be effective thirty (30) days following delivery of the notice of termination to Consultant.

E. Consultant may terminate this Agreement effective immediately upon delivery of notice of termination to Plan Sponsor if Plan Sponsor fails to pay Consultant any billed Administrative Fees or Expense reimbursements when due. Consultant may also terminate this Agreement effective immediately if Plan Sponsor breaches any other provision of this Agreement and fails to cure such breach within thirty (30) days following receipt of a detailed notice from Consultant.

F. If the in force Long Term Disability Policy issued by Consultant terminates, this Agreement will automatically terminate as of the same date.

G. Upon termination of this Agreement, Consultant shall cease to perform any and all activities and functions that are required of Consultant by this Agreement. As soon as practical after the termination date, Consultant shall transfer all ongoing and pending claims to the Plan Sponsor for further administration.

H. After the termination of this Agreement, Consultant shall have no further obligation of any nature or kind on any pending or ongoing claims which were received by Consultant prior to the termination date of this Agreement.

I. Notwithstanding any other provision of this Agreement to the contrary, the termination of this Agreement will not affect the responsibilities of either party under Part IV (Indemnification, etc.) or Part V (Claim Records), nor shall it discharge Plan Sponsor’s obligation to pay Consultant any amounts due.
IN WITNESS OF THE ABOVE, the parties hereto have caused this Agreement to be executed in duplicate by their respective officers duly authorized to do so.

The Lincoln National Life Insurance Company

By: ________________________________
Title: ______________________________

Date: _____________________________

City of Fremont

By: ________________________________

Date: _____________________________

Title: ______________________________
RESOLUTION NO. 2019-158

A Resolution of the City Council of the City of Fremont, Nebraska approving execution of the Short Term Disability Advice To Pay Agreement with Lincoln Financial.

WHEREAS, Lincoln Financial has provided the most competitive quote for coverage and administration rates for employee long term disability, short term disability, and life/AD&D; and,

WHEREAS, Lincoln Financial requires that a Short Term Disability Advice To Pay Agreement be executed prior to drafting of a contract,

NOW, THEREFORE BE IT RESOLVED, the Mayor and City Council authorize staff to execute the Short Term Disability Advice to Pay Agreement with Lincoln Financial for short term disability claim administration effective October 1, 2019.

PASSED AND APPROVED THIS 13th DAY OF AUGUST, 2019.

___________________________________________
Scott Getzschman, Mayor

ATTEST:

___________________________
Tyler Ficken, City Clerk
STAFF REPORT

TO: MAYOR AND CITY COUNCIL

FROM: Jan Rise, Administrative Services Director

DATE: August 13, 2019

SUBJECT: League Association of Risk Management (LARM) Insurance Proposal

Recommendation: Approve Resolution 2019-159 for one-year renewal commitment with LARM for general liability, errors and omissions, law enforcement liability, vehicle, and non-Utility property insurance coverage

BACKGROUND:

A copy of the LARM renewal letter and costs with contribution credit options is included with this staff report. The Interlocal Agreement for the Establishment and Operation of the League Association of Risk Management (LARM) provides that an insurance pool member may voluntarily terminate its participation in LARM by written notice of termination given to LARM and the Nebraska Director of Insurance.

It is staff’s recommendation that the City of Fremont renew its pool membership for one year with a 180-day notice prior to the October 1, 2020 termination date. This will give Fremont time to solicit, receive, and evaluate proposals for the policy year 2020-2021. With the annual renewal and 180-day notice, the City receives a two percent contribution credit.

The LARM renewal proposal totals $400,101.00. With the two percent discount, the renewal cost will be $392,098.88. The LARM insurance coverage renews on October 1, 2019 for one year.

FISCAL IMPACT: $392,098.88. Insurance is budgeted for 2019/2020, and it is split between Utility departments and the City.
July 19, 2019

Dear LARM Member,

Attached, please find your Renewal Coverage Proposal for the 2019-20 Pool Year. This proposal is itemized by line of coverage to represent your specific limits, deductibles, annualized contributions and to outline LARM’s contribution credit options available for the new term.

As always, LARM continues to seek certainty on upcoming Member commitments to allow us to accurately forecast our financial position. Requiring all Members to make annual elections by means of the Renewal Resolution affords us the fiscal confidence to structure a more stable program year-over-year. In return, LARM is able to translate this financial benefit to our Members in the form of corresponding contribution credits. Because predictability is strongest when estimates have future value, completing a new resolution each year delivers the best opportunity for this objective. In addition, members are able to elect a Renewal Resolution at the three (3) year commitment at each new Pool Year, by doing so, they are able to receive the maximum 5% contribution credit available on an annual basis.

**An important note regarding processing your annual Renewal Resolution if you are a Member that desires to competitively bid your coverage every three (3) years, or in the next three (3) years:**

- If you already have a three (3) year Renewal Resolution at the 5% discount;
  - Execute a two (2) year Renewal Resolution at the 4% discount at the upcoming.
- If you already have a two (2) year Renewal Resolution at the 4% discount;
  - Execute a one (1) year Renewal Resolution for either the 2% or 0% discount.
- If you already have a one (1) year renewal Resolution, you must provide written notice of termination in accordance with the necessary days identified in the Renewal Resolution prior to the desired termination date.

**An important note if you do not execute/return a Renewal Resolution for the new Pool Year:**

- You will automatically drop to the next lower commitment/contribution credit for that Pool Year (for example: If you were at a three (3) year commitment and do not execute/return a Renewal Resolution for the new Pool Year, you will automatically drop to a two (2) year commitment).
The enclosed Renewal Resolution form for the new term is made available for your use in designating the annual selection for the 2019-20 Pool Year. Once you have elected your contribution credit option, please authorize the Renewal Resolution and return to LARM to the address provided on the form. In order that LARM is able to issue process invoices as quickly as possible and prior to inception of the 2019-20 Pool Year, LARM requests that the fully executed Renewal Resolution be received no later than August 30, 2019. Once the Renewal Resolution has been received by LARM, complete renewal packet materials (invoices, coverage documents, auto ID cards, etc.) will be prepared and delivered to you. We are happy to review and discuss any questions or concerns you may have regarding this important process; therefore, we encourage you to contact your agent or LARM customer Service if you need assistance.

Finally, the information presented in this communication packet does not include any potential mono-line insurance placements that are not part of the formal LARM Property, General Liability or Workers’ Compensation coverages (such as Bonds, Special Events Coverage, Liquor Liability, etc.) Renewal details for such policies will continue to be provided under separate cover according to their respective effective dates. In addition, please be advised that your proposal may not reflect and endorsements recently processed, and bear in mind, that your final invoice amount may vary from the renewal packet based on such services that require contribution adjustment over the next several weeks.

As always, the LARM Board and staff are very pleased that your community will continue to support LARM as we move into our 24th year of unparalleled commitment to serving our Members. On behalf of each of us, I thank you for making our partnership a mutual success.

Sincerely,

LEAGUE ASSOCIATION OF RISK MANAGEMENT

Tracy Juranek
Customer Service Specialist
Important Postscript: As a LARM member, if the municipality or agency decides to voluntarily terminate its participation in LARM, the member must provide WRITTEN NOTICE to the Director of the Nebraska Department of Insurance and all other LARM members at least NINETY days prior to the desired termination date. The member’s decision to terminate participation in LARM is subject to the approval of the Director of the Nebraska Department of Insurance.
Proposal For: City of Fremont  
Effective Date: 10/01/2019

<table>
<thead>
<tr>
<th>COVERAGE</th>
<th>LIMITS AND APPLICABLE DEDUCTIBLES</th>
<th>CONTRIBUTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Liability</td>
<td>$5,000,000/$5,000,000 Per Occurrence/Aggregate $0 Deductible</td>
<td>$79,843</td>
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<tr>
<td>Errors &amp; Omissions</td>
<td>$5,000,000/$5,000,000 Per Occurrence/Aggregate $2,500 Deductible</td>
<td>$14,585</td>
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<tr>
<td>Law Enforcement Liability</td>
<td>$5,000,000/$5,000,000 Per Occurrence/Aggregate $2,500 Deductible</td>
<td>$12,058</td>
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<tr>
<td>Auto Liability</td>
<td>$5,000,000 Combined Single Limit $0 Deductible</td>
<td>$38,717</td>
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<tr>
<td>Auto Physical Damage</td>
<td>157 Vehicle(s) $ Varies on Deductible</td>
<td>$132,340</td>
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<tr>
<td>Commercial Property</td>
<td>$64,673,482 $10,000 Deductible</td>
<td>$122,557</td>
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</table>

**TOTAL ANNUAL CONTRIBUTION:**  $400,101

<table>
<thead>
<tr>
<th>Contribution Credit Options</th>
<th>180 Day Notice, 3 Year Commitment</th>
<th>180 Day Notice, 2 Year Commitment</th>
<th>90 Day Notice, 3 Year Commitment</th>
<th>90 Day Notice, 2 Year Commitment</th>
<th>90 Day Notice Only</th>
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<tbody>
<tr>
<td>Commitment Discount :</td>
<td>5%</td>
<td>4%</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
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<tr>
<td>Property &amp; Liability :</td>
<td>$380,095.86</td>
<td>$384,096.86</td>
<td>$392,098.88</td>
<td>$392,098.88</td>
<td>$396,099.89</td>
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<tr>
<td>Workers' Compensation :</td>
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<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
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<tr>
<td>Total Contributions :</td>
<td>$380,095.86</td>
<td>$384,096.86</td>
<td>$392,098.88</td>
<td>$392,098.88</td>
<td>$396,099.89</td>
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</tbody>
</table>
RESOLUTION NO. 2019-159

A Resolution of the City Council of the City of Fremont, Nebraska, to renew and extend a two-year insurance coverage commitment with the League Association of Risk Management (LARM).

WHEREAS, the City of Fremont is a member of the League Association of Risk Management (LARM) pool; and,

WHEREAS, the Interlocal Agreement for the Establishment and Operation of LARM provides that a member may voluntarily terminate its participation in LARM by written notice of termination given to LARM and the Nebraska Director of Insurance at least 90 days prior to the desired termination given to and that members may agree to extend the required termination notice beyond 90 days in order to realize reduced excess coverage costs, stability of contribution rates, and efficiency in operation of LARM; and,

WHEREAS, the Utility and Infrastructure Board has reviewed and recommends acceptance of LARM’s plan to provide contribution credits in consideration of certain agreements by members of LARM; and,

WHEREAS, the premium for the 180-day notice, one-year commitment for general insurance coverage for the 2019/2020 renewal of $392,098.88.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council accept the recommendation of the Utility and Infrastructure Board to provide written notice of termination at 180 days prior to the desired termination date, which date shall be no sooner than September 30, 2020 (180 days and one-year commitment; two percent discount) and renew and extend insurance coverage with LARM at a cost of $392,098.88.

PASSED AND APPROVED THIS 13th DAY OF AUGUST, 2019.

Scott Getzschman, Mayor

ATTEST:

Tyler Ficken, City Clerk
STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Tina Walker, Library Director

DATE: August 13, 2019

SUBJECT: Pitney Bowes Lease Agreement 2019-2024

Recommendation: Approve Resolution 2019-160 authorizing the Mayor to execute a five-year lease agreement with Pitney Bowes, in the amount of $147.57 quarterly.

Background: Pitney Bowes is the company we lease our mail system from. This is the contract extension for 2019-2024.

Fiscal Impact: This is already budgeted for in the library budget. The price is slightly lower than previous years.
### Your Business Information

<table>
<thead>
<tr>
<th>Full Legal Name of Lessee / DBA Name of Lessee</th>
<th>Tax ID # (FEIN/TIN)</th>
</tr>
</thead>
<tbody>
<tr>
<td>KEENE MEMORIAL LIBRARY</td>
<td>476006192</td>
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<table>
<thead>
<tr>
<th>Sold-To: Address</th>
<th>1030 N BROAD ST, FREMONT, NE, 68025-4199, US</th>
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</thead>
<tbody>
<tr>
<td>Sold-To: Contact Name</td>
<td>Tracy Parr</td>
</tr>
<tr>
<td>Sold-To: Contact Phone #</td>
<td>4027272694</td>
</tr>
<tr>
<td>Sold-To: Account #</td>
<td>0010569775</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill-To: Address</th>
<th>1030 N BROAD ST, FREMONT, NE, 68025-4199, US</th>
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</thead>
<tbody>
<tr>
<td>Bill-To: Contact Name</td>
<td>Tracy Parr</td>
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<tr>
<td>Bill-To: Contact Phone #</td>
<td>4027272694</td>
</tr>
<tr>
<td>Bill-To: Account #</td>
<td>0010569775</td>
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<tr>
<td>Bill-To: Email</td>
<td><a href="mailto:tracy.parr@fremontne.gov">tracy.parr@fremontne.gov</a></td>
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<table>
<thead>
<tr>
<th>Ship-To: Address</th>
<th>1030 N BROAD ST, FREMONT, NE, 68025-4199, US</th>
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</thead>
<tbody>
<tr>
<td>Ship-To: Contact Name</td>
<td>Tracy Parr</td>
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<tr>
<td>Ship-To: Contact Phone #</td>
<td>4027272694</td>
</tr>
<tr>
<td>Ship-To: Account #</td>
<td>0010569775</td>
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### Your Business Needs

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<tr>
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<th>Business Solution Description</th>
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<tbody>
<tr>
<td>1</td>
<td>SENDPROCSERIESIMI</td>
<td>SendPro C-Series IMI</td>
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<tr>
<td>1</td>
<td>1FXA</td>
<td>Interface to InView Dashboard</td>
</tr>
<tr>
<td>1</td>
<td>7H00</td>
<td>C Series IMI Meter</td>
</tr>
<tr>
<td>1</td>
<td>8H00</td>
<td>C Series IMI Base</td>
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<tr>
<td>1</td>
<td>APAC</td>
<td>Connect+ Accounting Weight Break Reports</td>
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<tr>
<td>1</td>
<td>APAV</td>
<td>Cost Acctg Accounts Level (25)</td>
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<td>1</td>
<td>APB1</td>
<td>Cost Accounting Devices (2)</td>
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<td>1</td>
<td>APKN</td>
<td>Account List Import/Export</td>
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<td>1</td>
<td>C200</td>
<td>SendPro C200</td>
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<td>CAAA</td>
<td>Cost Accounting Bronze plan</td>
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<td>Return Kit for DM100/125 - Large</td>
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<td>F9S1</td>
<td>SendPro C Install Training w/o Shipping</td>
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<td>SendPro C Series Drop Stacker</td>
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<td>1</td>
<td>MP81</td>
<td>C Series Integrated Scale</td>
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<tr>
<td>Code</td>
<td>Description</td>
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<tr>
<td>PTJ1</td>
<td>Postal Shipping</td>
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<tr>
<td>PTJA</td>
<td>SendPro Basic 1 User</td>
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<td>PTJN</td>
<td>Single User Access</td>
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<tr>
<td>PTK1</td>
<td>Web Browser Integration</td>
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<tr>
<td>PTK2</td>
<td>SendPro C Series Shipping Integration</td>
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<td>SJS1</td>
<td>C200 SoftGuard</td>
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<tr>
<td>STDLSA</td>
<td>Standard SLA-Equipment Service Agreement (for SendPro C-Series IMI)</td>
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<td>ZH24</td>
<td>Manual Weight Entry</td>
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<td>ZH25</td>
<td>HZ02 40 LPM Speed</td>
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<td>ZHC2</td>
<td>SendPro C200 Base System Identifier</td>
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<td>ZHD5</td>
<td>USPS Rates with Metered Letter</td>
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<tr>
<td>ZHWWL</td>
<td>5lb / 3kg Weighing Option for MP81</td>
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**Your Payment Plan**

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<thead>
<tr>
<th>Initial Term: 60 months</th>
<th>Initial Payment Amount:</th>
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</thead>
<tbody>
<tr>
<td>Number of Months</td>
<td>Monthly Amount</td>
</tr>
<tr>
<td>60</td>
<td>$ 49.19</td>
</tr>
</tbody>
</table>

*Does not include any applicable sales, use, or property taxes which will be billed separately.

- ( ) Tax Exempt Certificate Attached
- ( ) Tax Exempt Certificate Not Required
- ( ) Purchase Power® transaction fees included
- (X) Purchase Power® transaction fees extra

See Pitney Bowes Terms for additional terms and conditions.
Non-Appropriations. You warrant that you have funds available to make all payments until the end of your current fiscal period, and shall use your best efforts to obtain funds to make all payments in each subsequent fiscal period through the end of your lease term. If your appropriation request to your legislative body, or funding authority ("Governing Body") for funds to make the payments is denied, you may terminate the lease on the last day of the fiscal period for which funds have been appropriated, upon (i) submission of documentation reasonably satisfactory to us evidencing the Governing Body's denial of an appropriation sufficient to continue the lease for the next succeeding fiscal period, and (ii) satisfaction of all charges and obligations under the lease incurred through the end of the fiscal period for which funds have been appropriated, including the return of the equipment at your expense.

By signing below, you agree to be bound by all the terms of this Agreement, including the Pitney Bowes Terms (Version 1/19), which are available at http://www.pb.com/statelocalfmvterms and are incorporated by reference. This lease will be binding on us after we have completed our credit and documentation approval process and have signed below. This lease requires you either to provide proof of insurance or participate in the ValueMAX® equipment protection program (see Section 6 of the State and Local Fair Market Value Lease Terms) for an additional fee. If software is included in the Order, additional terms apply which are available by clicking on the hyperlink for that software located at http://www.pitneybowes.com/us/license-terms-of-use/software-and-subscription-terms-and-conditions.html. Those additional terms are incorporated by reference.
RESOLUTION NO. 2019-160

A Resolution of the City Council of the City of Fremont, Nebraska, granting the Mayor authorization to execute a five year lease agreement with Pitney Bowes, the library mail system.

WHEREAS, the Keene Memorial Library is seeking to renew the five year lease agreement with Pitney Bowes for 2019-2024.

WHEREAS, Pitney Bowes has been the mail system for many years so the library would like to renew this lease.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Council accept to renew a five year lease agreement with Pitney Bowes.

PASSED AND APPROVED THIS ___ DAY OF ___________________, 2019

___________________________
Scott Getzschman, Mayor

ATTEST:

___________________________
Tyler Ficken
City Clerk
STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Keith Kontor – Water/Wastewater Superintendent
DATE: August 13, 2019
SUBJECT: Horizontal Well Project - Phase II study

Recommendation: Approve Resolution 2019-161, a contract with Burns McDonnell for Horizontal Well - Phase II study

BACKGROUND:

An RFP was sent out to three (3) consulting firms with extensive experience in site testing and designing Horizontal Wells. Bids were received on July 26, 2019 with two (2) respective firms submitting bids. The third indicated they would not submit a bid citing they work with Lincoln and did not want to create a conflict of interest. After review of the bids, staff recommends awarding the contract to the lowest most responsible bidder – Burns McDonnell for $124,312.50.

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Total Base Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burns McDonnell</td>
<td>$124,312.50</td>
</tr>
<tr>
<td>HDR</td>
<td>$170,097.00</td>
</tr>
<tr>
<td>Black &amp; Veatch</td>
<td>No bid</td>
</tr>
</tbody>
</table>

FISCAL IMPACT: $124,312.50 – budgeted.
RESOLUTION NO. 2019-161

A Resolution of the City Council of the City of Fremont, Nebraska authorizing Staff to execute a contract with Burns McDonnell for the Horizontal Well – Phase II Study for $124,312.50.

WHEREAS, the City of Fremont sought bids for a Horizontal Well – Phase II study; and

WHEREAS, the Utility and Infrastructure Board reviewed the bid tabulation and recommends approval of the lowest responsible bid for the Horizontal Well – Phase II study.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council accept the recommendation of the Utility and Infrastructure Board and authorize staff to execute a contract with Burn McDonnell for $124,312.50 for Horizontal Well – Phase II Study.

PASSED AND APPROVED THIS 13th DAY OF AUGUST, 2019

__________________________________________
Scott Getzschman, Mayor

ATTEST:

__________________________________________
Tyler Ficken, City Clerk
STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Kirk Hillrichs Gas System Supervisor
DATE: August 13, 2019
SUBJECT: Change Order #1 to Utility Safety & Design, Inc. for Gas Extension Inspections at Gallery 23 East

Recommendation: Approve resolution 2019-162.

Background: Utility Safety & Design, Inc. (USDI) was awarded the contract for inspection of construction of Gas Extension for Gallery 23 East February 27, 2018. This amount of the change order is for extra time spent on inspections at Gallery 23. The original estimate of $46,800 was surpassed because of longer hours worked in a day and more days of work performed by the contractor installing the gas lines to Gallery 23.

Staff recommends approval of this amendment

Fiscal Impact: With Change Order # 1, the amended total contract amount will be $58,657.40
RESOLUTION NO. 2019-162

A Resolution of the City Council of the City of Fremont, Nebraska, authorize approval of Change Order #1 with Utility Safety & Design, Inc. in the amount of $11,857.40 for gas extension inspections at Gallery 23 East.

WHEREAS, A contract was signed with Utility Safety & Design, Inc. for Gas Extension Inspections to Gallery 23 East in the amount of $46,800.00; and

WHEREAS, Additional work completed by Utility Safety & Design, Inc. in the sum of $11,857.40, was necessary to complete inspections.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Council accept the recommendation of the Utilities and Infrastructure Board to authorize the approval of Change Order #1 to Utility Safety & Design, Inc. for gas extension inspections at Gallery 23 East.

PASSED AND APPROVED THIS 13th DAY OF AUGUST, 2019.

_________________________________________________
Scott Getzschman, Mayor

ATTEST:

_________________________________________________
Tyler Ficken, City Clerk
STAFF REPORT

TO: Honorable Mayor and City Council
FROM: David Goedeken, P.E., Director of Public Works/City Engineer
DATE: August 13, 2019
SUBJECT: Diers 6th Addition Intersection Pavement Reimbursement

Recommendation: Authorize to Approve Resolution 2019-163 for the reimbursement for the pavement in Diers 6th Addition intersections.

Background:

Deer Pointe Corporation is requesting pavement cost reimbursement for the two (2) intersections in Diers 6th Addition. The two intersections are on the north and south ends of Deer Lane which cross at 23rd Street and Elk Lane. The reimbursement is for 523 square yards of concrete pavement. The East 23rd Street and Deer Lane reimbursement is for $16,120.60. The second intersection on Elk Lane and Deer Lane reimbursement is for $11,564.80. The total reimbursement is for $27,685.40.

Fiscal Impact:

The fiscal impact for the project is $27,685.40.
INTERSECTION REIMBURSEMENT
EAST 23RD ST. AND DEER LANE
SCALE: 1" = 10'

8" P.C. CONC. PAVEMENT - 300.3 SY @ $52 = $15,615.60
PAVEMENT REMOVAL - 10.1 SY @ $50 = $505.00

TOTAL = $16,120.60
INTERSECTION REIMBURSEMENT
ELK LANE AND DEER LANE
SCALE: 1" = 10'

8" P.C. CONC. PAVEMENT = 222.4 SY @
$52 = $11,564.80
A Resolution of the City Council of the City of Fremont, Nebraska to authorize reimbursement for the pavement in Diers 6th Addition.

WHEREAS, Deer Pointe Corporation reimbursement for the intersection pavement costs in Diers 6th Addition located East 23rd Street and Deer Lane, and Elk Lane and Deer Lane. The total reimbursement for concrete pavement is for $27,685.40.

WHEREAS, The total reimbursement to Deer Pointe Corporation for 523 s.y. of concrete pavement is for $27,685.40.

NOW THEREFORE BE IT RESOLVED:
That the Mayor and City Council accept the recommendation of the Public Works Director and approve the request from Deer Pointe Corporation for reimbursement in the amount of $27,685.40.

PASSED AND APPROVED THIS 13th DAY OF AUGUST 2019

Scott Getzschman, Mayor

ATTEST:

Tyler Ficken, City Clerk
STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Brian Newton, City Administrator

DATE: August 13, 2019

SUBJECT: Affirmation of emergency declaration and authorize repairs to the Storm Sewer Main under Bell Street in the general location of 20th Street

Background: Fremont Municipal Code Section 2-506 requires expenditures over $30,000.00 be approved by the Mayor and City Council. The City Administrator or his/her designee may waive these limits for street and storm sewer work if an emergency is declared. Any such declaration shall be affirmed the City Council and made part of the minutes.

Excerpt of Section 2-506: No single expenditure shall exceed thirty thousand dollars ($30,000) for material, supplies, service, and the replacement, and maintenance of equipment directly connected with the operation of the street and storm sewer system, electric system, wastewater system, waterworks, or natural gas distribution system, and their associated lines and facilities without advertising for bids and the approval of the Board and Council. These limits may be waived by the City Administrator and Mayor if an emergency is declared. Such a declaration shall be affirmed by the Council at its next regular meeting and the affirmation shall be made a part of the Council minutes. The City Administrator may purchase fuel on the spot market after receiving comparable quotations in excess of these limits; and may buy and sell electricity in the integrated market place. Bilateral electric sales and purchase agreements shall be approved by the Mayor and Council.

The storm sewer main in this location has significant deterioration in the pipe and has caused the overlaying street surface to settle. This drainage pipe carries the flow of the Rawhide Creek under Bell Street and a resulting failure could cause flooding in the vicinity and/or failure of the roadway of Bell Street. Therefore, staff is requesting the Mayor and City Council declare an emergency for the repair of the damaged piping system, to allow for emergency repairs to commence.

This item will be considered by the Utility and Infrastructure Board at their August 13th, 2019 Meeting.
**Fiscal Impact:** Estimated cost of the repair work is $250,000.00. However, due to the damage being underground and the extent of damage prohibits safe access for inspection, the cost may vary. Staff is seeking a consulting engineer for expert advice on how best to proceed. Request for Proposals were sent out the week of August 5th, 2019.
RESOLUTION NO. 2019-164

A Resolution of the City Council of the City of Fremont, Nebraska to affirm the emergency declaration for the replacement of the storm sewer main under Bell Street in the general location of 20th Street and authorize staff to issue purchase orders and sign required documents for the expenditures.

WHEREAS, the FMC § 2-506 permits the City Administrator to waive approval of expenditures over $30,000.00 if an emergency is declared; and

WHEREAS, the City Administrator declared an emergency to make timely repairs to the storm sewer line on Bell Street in the vicinity of 20th Street; and

WHEREAS, the Utility and Infrastructure Board considered the request at its August 13th, 2019 meeting.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of Fremont, Nebraska affirms the emergency declaration for the replacement of the damaged storm sewer main on Bell Street in the vicinity of 20th Street and authorize staff to issue purchase orders and sign necessary expenditures estimated to be $250,000.00

PASSED AND APPROVED THIS 13th DAY OF August, 2019

_____________________________
Scott Getzschman, Mayor

ATTEST:

___________________________
Tyler Ficken
City Clerk
TO: Honorable Mayor and City Council

FROM: Council Member Yerger

DATE: 8/13/19

SUBJECT: Municipal Code changes to Chapter 2-106 Agenda for Meetings

Recommendation – Approve and Hold First Reading of the Ordinance.

Request: Attached is a draft amendment to the Fremont Municipal Code, Chapter 2 - 106 that redefines and clarifies the “Agenda for Meetings” agenda scheduling requirements, responsibilities and permissions relating to preparation and noticing of the City Council’s agenda for the City of Fremont.

Background: The current code needs to be amended to reflect the clarifying changes.
Old
§2-106  **Agenda for Meetings.**

All matters for consideration at any regular meeting or formal study session of the City Council shall be submitted in writing and filed in the office of the City Clerk. The City Clerk shall place upon the agenda of any regular, special or formal study session meeting only those matters which have been directed by a Council Member, or authorized by the Mayor or the City Administrator. The agenda for each, any and all meetings of the City Council and each, any or all meetings of any committees, boards, commissions or bureaus of the City shall be posted on the public website of the City and Continuously current there. Postings shall occur at times required by the *Nebraska Open Meetings Act* for posting of notices in public places

New
§2-106  **Agenda for City Council Meetings.**

All matters for consideration at any Regular meeting, Formal Study Session or Special Session of the City Council shall be submitted in writing and filed in the office of the City Clerk. The City Clerk shall place upon the agenda of any Regular, Formal Study Session or Special meeting, only those matters which have been directed by a Council Member, or authorized by the Mayor or the City Administrator.

The schedule and requirements regarding the City Council’s agenda, and the requisite supporting Staff materials, for each City Council meeting are as follows:

1. A preliminary City Council agenda will be prepared of items proposed by the City Administration, City Staff, and any other recommending City Boards or Commissions; and it shall be accompanied by any requisite supporting agenda materials. This preliminary agenda, along with the supporting materials, are due 10 days in advance of any scheduled City Council meeting; items submitted after this deadline will be considered for inclusion in a future agenda;

2. City Council members will have 3 additional days to rearrange, modify, remove or supplement the preliminary agenda before finalizing the agenda;

3. Agenda items deemed to be of a routine nature, and not requiring the authorization or expenditure of City funds, may be categorized on the Council’s agenda as “Consent Agenda” items. However, such categorization in the agenda requires the approval of the City Council President. If such items are subsequently removed for discussion by any member of the Council, or by the Public, at the City Council meeting, the Council and the
Public will both have an opportunity to address and discuss such matters;

4. The Final agenda, along with all supporting documents, will be made available to the City Council and the Public no less than 7 days in advance of its scheduled meetings. The only exceptions to this Final agenda release date will be to accommodate the Claims Report provided by the Director of Finance and any last minute requests for trade application permits.

When an update to the Final agenda is required to incorporate the Claims Report or authorized trade application permits, the due date for Claims data and trade applications will be no later than four (4) days preceding the meeting of the City Council. Use of these exceptions and agenda extension will necessitate that the City Clerk update and reissue the City Council Final agenda and supporting detail; this shall be done no later than four (4) days preceding the scheduled Council meeting date and no later than 4:30 PM.;

5. The Council’s Final agenda described in item #4 above, may be only be further modified for items of extreme emergency, and only then with the approval and consent of the City Council President and no less than two additional members of the Council;

6. Postings of the Final agenda, and any updates, shall occur at times as required by the *Nebraska Open Meetings Act* for posting of notices in public places.

The agenda for each, any and all meetings of the City Council, as well as each, any or all meetings of any committees, boards, commissions or bureaus of the City shall be posted on the public website of the City and will be continuously kept current there. All postings shall occur at times required by the *Nebraska Open Meetings Act* for posting of notices in public places.
ORDINANCE NO. __________

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, AMENDING THE MUNICIPAL CODE OF THE CITY OF FREMONT, NEBRASKA, CHAPTER 2. ARTICLE 1, SECTION 2-106; AMENDING VARIOUS DEFINITIONS, REMOVING AND ADDING LANGUAGE TO ASSIST IN THE UNDERSTANDING AND ENFORCEMENT OF SUCH ORDINANCE: PROVIDING FOR AN EFFECTIVE DATE OF SUCH AMENDMENTS; AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND THE COUNCIL OF THE CITY OF FREMONT, NEBRASKA:

SECTION 1. CHAPTER 2. ARTICLE 1, Sec. 2-106. – Agenda for Meetings is hereby amended to read as follows:

Old

§2-106  Agenda for Meetings.
All matters for consideration at any regular meeting or formal study session of the City Council shall be submitted in writing and filed in the office of the City Clerk. The City Clerk shall place upon the agenda of any regular, special or formal study session meeting only those matters which have been directed by a Council Member, or authorized by the Mayor or the City Administrator. The agenda for each, any and all meetings of the City Council and each, any or all meetings of any committees, boards, commissions or bureaus of the City shall be posted on the public website of the City and Continuously current there. Postings shall occur at times required by the Nebraska Open Meetings Act for posting of notices in public places.

New

§2-106  Agenda for City Council Meetings.
All matters for consideration at any Regular meeting, Formal Study Session or Special Session of the City Council shall be submitted in writing and filed in the office of the City Clerk. The City Clerk shall place upon the agenda of any Regular, Formal Study Session or Special meeting, only those matters which have been directed by a Council Member, or authorized by the Mayor or the City Administrator.

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in a future agenda;

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The agenda for each, any and all meetings of the City Council, as well as each, any or all meetings of any committees, boards, commissions or bureaus of the City shall be posted on the public website of the City and will be continuously kept current there. All postings shall occur at times required by the Nebraska Open Meetings Act for posting of notices in public places.