

**CITY OF PAPILLION  
MAYOR AND CITY COUNCIL REPORT  
FEBRUARY 5, 2019 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
A request for approval of a License Agreement with Harry Bossard American Legion Post 32, 230 W. Lincoln St., Papillion, NE, regarding the Legion's proposed temporary and limited use of an adjacent small parcel of City Park property.	Resolution No. R19-0019	Nicole Brown City Clerk

**SYNOPSIS**

This is a request for City Council approval of a License Agreement with Harry Bossard American Legion Post 32, 230 W. Lincoln St., ("Legion"), which would allow the Legion to temporarily use a small parcel of City Park property which is adjacent to the Legion's property for the purposes of erecting a fireworks tent for the Legion's annual fundraising event this summer between June 20-July 9, 2019.

**BACKGROUND**

In past summers prior to the summer of 2017, the Legion has had a fireworks tent erected entirely within the Legion's property boundaries. However, as part of the W. Lincoln Street improvements project constructed in 2017, the Legion was required to relocate its reserved handicapped parking from the Lincoln Street right-of-way to the east side of its building structure. As a result of such relocation, the Legion requested the City's permission to encroach on the adjacent City Park parcel to accommodate the Legion's fireworks tent for its scheduled annual fundraising event for the 2017 fireworks season (June 20-July 9, 2017), because their fireworks tent no longer fit entirely on the remainder of the Legion's east side parcel. On May 16, 2017, City Council granted the Legion's request by approving a limited License Agreement for the Legion's use of the City Park parcel for such purpose (Resolution No. R17-0084). The Legion made a similar request for use of a portion of the City Park parcel for the 2018 fireworks season (June 20-July 9, 2018) and was again granted permission by City Council through approval of another limited License Agreement (Resolution No. R18-0027) on February 6, 2018.

**FISCAL IMPACT**

The Legion has agreed to pay \$1.00 for the limited License Agreement. There is no other fiscal impact as a result of this Agreement.

**RECOMMENDATION**

Approval.

**ATTACHMENTS:**

Resolution No. R19-0019  
License Agreement

**RESOLUTION NO. R19-0019**

**BE IT RESOLVED** by the Mayor and City Council of Papillion that the License Agreement with Harry Bossard American Legion Post 32, 230 W. Lincoln St., Papillion, NE, regarding the Legion's proposed temporary and limited use of an adjacent small parcel of City Park property is hereby approved.

**PASSED AND APPROVED** this 5<sup>th</sup> day of February, 2019.

**CITY OF PAPILLION, NEBRASKA**

\_\_\_\_\_  
David P. Black, Mayor

ATTEST:

\_\_\_\_\_  
Nicole Brown, City Clerk

(SEAL)

## **LICENSE AGREEMENT**

This LICENSE AGREEMENT (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”) by and between the CITY OF PAPILLION, a Nebraska municipal corporation (“City”), and the HARRY BOSSARD AMERICAN LEGION POST 32, 230 W. Lincoln, Street, Papillion, Nebraska, a Non Profit Corporation of the State of Nebraska (the “Legion”) (collectively, the “Parties”). The Effective Date of this Agreement shall be the date of approval by the Papillion City Council.

### **RECITALS**

**WHEREAS**, pursuant to Neb. Rev. Stat. § 16-201(4), City is duly authorized to make all contracts in relation to real property which is owned and managed by City, including the lease of park land; and

**WHEREAS**, part of the recent W. Lincoln Street improvement project constructed in 2017, City required Legion to relocate Legion’s: (1) reserved parking spaces for handicapped persons from the W. Lincoln Street right-of-way to the east side yard of Legion’s building and (2) access point for such reserved parking spaces from W. Lincoln Street to the parking lot north of Legion’s building that is adjacent to City Park property; and

**WHEREAS**, Legion has advised City that such relocation will interfere with Legion’s plan to use its east side yard property for previously contracted fundraising-related activities, scheduled between June 20, 2019 and July 9, 2019; and

**WHEREAS**, under the circumstances, the Parties have agreed to cooperate with one another by entering into this Agreement for Legion’s temporary and limited use of a small parcel of City Park property, approximately 1,226 square feet, located immediately east and adjacent to the Legion’s east side yard boundary (the “Property”), as depicted in Exhibit “A” as that portion of the rectangle that is highlighted in red, which Exhibit is attached and incorporated herein by reference, pursuant to the terms of this Agreement.

**NOW THEREFORE**, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

1. Purpose and Term. The purpose of this Agreement is to specify the rights and responsibilities of the Parties hereto regarding Legion’s temporary use of the Property, specifically for the purpose of erecting and operating a fireworks tent for Legion’s annual fundraising event. The term of this Agreement shall commence on June 20, 2019 and shall terminate on July 9, 2019, during which time Legion shall be entitled to possession and use of the Property as described herein (the “term”), unless terminated earlier by any breach of this Agreement or by mutual written agreement of the Parties.

2. Payment. As consideration for the term of this Agreement, Legion shall pay one dollar and no/100 (\$1.00) to City at the office of the Papillion City Clerk, Papillion City Hall, 122 East Third Street, Papillion, Nebraska prior to taking possession of the Property.

3. Condition and Maintenance. Legion has inspected the Property and hereby accepts the same in its present “AS IS” condition. Legion shall maintain the Property during the term of this Agreement in a safe condition that is reasonably tidy for the intended use of the Property. Furthermore, upon the termination of the Agreement, Legion shall restore the Property and return it to City in reasonably tidy condition to the satisfaction of City.

4. Utilities. City shall have no responsibility to provide any utilities.

5. Right to Enter Property. City reserves the right to enter the Property to: (1) inspect the Property and (2) perform any maintenance or upkeep which City deems appropriate. Said right to enter is in addition to any other rights to enter and inspect the Property or operations on the Property as may be required by any City, state, or federal laws or regulations. City’s right to enter the Property shall extend to any employees, agents, contractors, or subcontractors hired on behalf of City to perform any such inspections or maintenance. Any requisite maintenance resulting from Legion’s use of the Property shall be at Legion’s cost.

6. Insurance. At all times during the term of this Agreement, Legion, at its own cost, shall carry general liability coverage of at least \$1 million (\$1,000,000) per occurrence, with \$2 million (\$2,000,000) general liability aggregate with respect to the Property with an insurance company licensed to do business in the State of Nebraska, or, in the alternative, shall require the same of its fireworks vendor. Such insurance policy shall name Legion as the insured and City as an additional insured. Legion shall provide the City Clerk with a certificate of insurance evidencing that such requisite insurance has been obtained prior to Legion taking possession of such Property under this Agreement.

7. Indemnification. Each Party agrees to release, indemnify, and hold harmless (“Indemnifying Party”) each other Party (“Indemnified Party”) and said Indemnified Party’s officers, officials, employees, and agents, and each of them, from and against all liabilities, claims, costs, and expenses whatsoever arising out of or resulting from the negligence, acts, or omissions of the Indemnifying Party, or the officers, officials, employees, agents, or contractors of the Indemnifying Party.

8. Signage. Legion shall not permit any posters, signs, or advertisements to be displayed on the Property without the express written approval of City. In the event City does provide any such approval, said notices, signs, or advertisements on the Property shall be kept neat and properly maintained and must comply with all City rules and regulations.

9. Material Modifications to the Property. Legion shall not make any material modifications to the Property, such as landscaping (e.g., planting or cutting, as applicable, of trees, bushes, boulders, rock walls, etc.) or constructing any additional buildings or permanent structures without first obtaining the express written approval of City.

10. Assignment. Legion shall not assign any portion of this Agreement for the Property to anyone else without City’s prior express written approval which may be withheld by City at City’s sole discretion.

11. Miscellaneous.

- a. Incorporation of Recitals. The recitals set forth above are, by this reference, incorporated into and deemed part of this Agreement.
- b. Nondiscrimination Clause. In accordance with the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1122, neither party nor any of its subcontractors or agents shall discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of the race, color, religion, sex, disability, or national origin of the employee or applicant.
- c. Drug Free Policy. Each party hereto represents and warrants to the other that it has established and maintains a drug free workplace policy.
- d. Governing Law. The Parties shall conform to all existing and applicable City ordinances, resolutions, state and federal laws, and all existing and applicable rules and regulations. 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.
- e. 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 Sarpy County, Nebraska. As such, the Parties also agree to exclusive personal jurisdiction in the courts located in Sarpy County, Nebraska.
- f. 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 agreement of the Parties and shall be binding upon the successors and assigns of the respective Parties. Accordingly, this Agreement supersedes any prior written or oral agreement or understanding between the Parties concerning the subject matter hereof.
- g. Modification. Any modification or amendment of this Agreement, including termination, shall require a written agreement signed by the authorized representatives of both Parties.
- h. Notices, Consents, and Approval. Unless expressly stated otherwise herein, all notices, 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:

(1) For Legion:

Post Commander  
Harry Bossard American Legion Post 32  
230 W. Lincoln, Street  
Papillion, NE 68046

(2) For City: City Clerk  
City of Papillion  
122 East Third Street  
Papillion, NE 68046

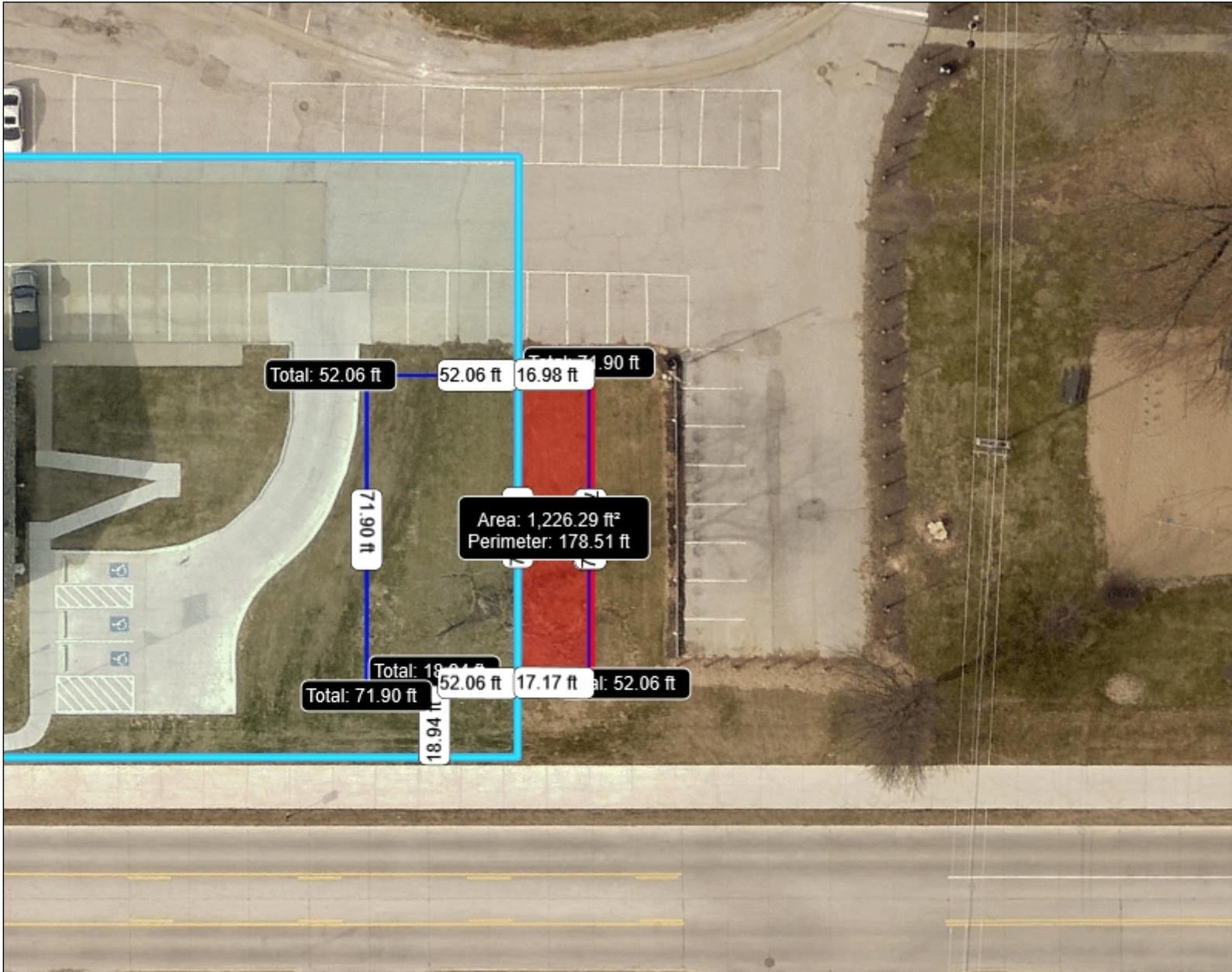
Such addresses may be changed from time to time by written notice to all other Parties.

- i. Headings. The headings herein are inserted for convenience and reference only and in no way define or limit the scope of any provisions hereof.
- j. Severability. In the event any portion of this Agreement may be held invalid, void, or illegal for any reason by a court of competent jurisdiction, any such holding shall in no way affect, impair, or invalidate any other provisions of this Agreement, and such other provisions shall remain in full force and effect as if the invalid, void, or illegal provision was never part of this Agreement.
- k. New Employee Work Eligibility Status. The Parties shall comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. The Parties are required and shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
- l. Conflict of Interest. The Parties warrant to each other that they have not employed nor retained any company or person, other than a bona fide employee working solely for the Parties to this Agreement, to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person other than a bona fide employee working solely for the Parties, any fee, commissions, percentage, brokerage fees, gifts or other consideration, contingent upon or resulting from the award or making of this contract.
- m. Representations. Each party hereto represents and warrants to the other that: (1) it has all necessary right, power, and authority to enter into this Agreement, and (2) the execution and delivery of this Agreement and the performance and observance of all obligations and conditions to be performed or observed by such party have been duly authorized by all necessary action on behalf of such party.
- n. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one Agreement. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto.

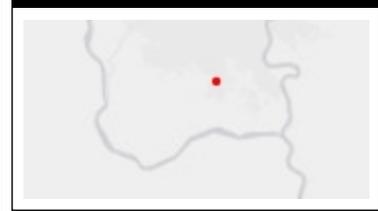
*(Signatures on following pages.)*



# Sarpy County Property Information

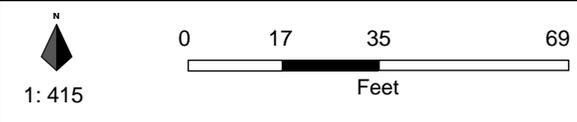


## Location



## Legend

- Sanitary & Improvement District
- Municipal Boundaries
- 2018 Aerial Photo
- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.

Sarpy County GIS  
 1210 Golden Gate Dr.  
 Suite 1130  
 Papillion, NE 68046  
[maps.sarpy.com](http://maps.sarpy.com)

# Exhibit A