



Committee of the Whole  
Tuesday, September 25, 2018  
City Council Chambers

**1. FINAL PAYMENT- LIBRARY CHILLER REPLACEMENT – LIB030**

As approved at the October, 2017 City Council meeting, the Minot Public Library replaced an air conditioning unit (chiller) in the early spring of 2018. C&C Plumbing & Heating, L.L.P. was awarded the project and completed work the week of 9/10/18.

**It is recommended the Committee and Council approve the final payment in the amount of \$2,071.10 to C&C Plumbing for the completion of project LIB030 (Library Chiller Replacement).**

Documents:

[Final Payment Memo LIB030.docx.pdf](#)  
[Pay Request 6.pdf](#)

**2. SWIF ACTION C LEVEE REPAIR, BANK STABILIZATION - FINAL PAYMENT (P3135.2C)**

This project removed trees within the levee footprint, repaired minor erosion areas that could jeopardize the levee integrity, and stabilized bank erosion. The project was bid in August of 2017 and Park Construction submitted the low bid for the project at \$966,077.80. After balancing quantities on the project and adding some additional work, the project came in \$8,781.71 under the bid price.

**It is recommended the City Council approve the final payment to Park Construction in the amount of \$125,611.27 for the SWIF Action C Levee Repair.**

Documents:

[Memo - Final Payment 3135.2c.pdf](#)  
[Pay app 7 - final.pdf](#)  
[3135.2c - Change Order 5 - final.pdf](#)

**3. CITIES OF SERVICE BUDGET AMENDMENT (LIB032)**

Tools were purchased to be rented out to the public as part of the new library program. They were budgeted in the library's general fund. Because these items are rented out, they need to be capitalized.

**It is recommended the Committee and Council pass an ordinance to increase library capital revenues and expenditures and decrease general fund planning revenue and expenditures**

Documents:

[2018 Memo- Cities of Service BA.pdf](#)  
[2018 BA Cities of Service MGR003.pdf](#)

**4. SPECIAL ASSESSMENT APPROVAL; REVISED 2018 WEED CUTTING**

Two parcels were pulled from last month's weed cutting list: #131540400030 was pulled

to allow the property owner a protest period and no protest has been received. #34C691000120 was pulled as it was discovered the wrong parcel/address was used. Notice has been given to the property owners and the City wishes to certify the assessments to Ward County for collection with property taxes.

**Staff recommends the approval of special assessment for weed cutting costs for the two remaining parcels.**

Documents:

[Memo Weed cutting 2018\\_2.pdf](#)  
[2nd weed cutting 2018.pdf](#)

#### **5. JOINT POWERS AGREEMENT – MINOT PARK DISTRICT**

On August 7, 2017, the City Council considered the request of the Minot Park District with respect to construction of the Magic City Discovery Center, a community facility located in Minot, ND. The Council has given tentative approval for their finance request in the amount of one million dollars. This one million dollar contribution is contingent and subject to (1) the passage of an ordinance (on second reading at the October 1, 2018 meeting); (2) the execution and signature of the attached Joint Powers Agreement; (3) determination by the City Finance Director that sufficient funds have been collected upon the city sales tax which adequately fund the NAWS project and further permit distributions of the one million dollar sum for improvements and enhancements to Roosevelt Park Zoo; (4) proof to the City Finance Director that, prior to disbursement of any monies by the City and no later than December 31, 2018, the Minot Park District or Magic City Discovery Center raised an additional five hundred thousand dollars for the Magic City Discovery Center; and (5) execution of an agreement between the Minot Park District and Magic City Discovery Center relating to this venture.

**It is recommended the City Council move to approve the Joint Powers Agreement between the City of Minot and the Minot Park District and authorize the Mayor to sign the Agreement.**

Documents:

[Memo Community Facilities\\_Minot Park District\\_Childrens Museum.pdf](#)  
[FINAL\\_JP Agreement\\_Childrens Museum.pdf](#)  
[Agreement 9-19-18 \(Redline\) \(002\).pdf](#)  
[Ground Lease 9-18-18 \(Redline\).pdf](#)

#### **6. APPROVAL OF NON-SUBSTANTIAL AMENDMENT #9 CDBG-DR ALLOCATION #2**

All changes in this amendment involve minor adjust of accounts based on project close-out or winding down projects. The one exception is recently approved \$50,000 for the Anne Street Bridge study for which funds are being transferred from administration to the previously de-funded line item for the Anne Street Bridge Study.

**It is recommended the City Council approve the Non-Substantial (Technical) Amendment #9 for CDBG-DR Allocation #2.**

Documents:

[Non-substantialamendment9allocation2councilmemo.pdf](#)  
[Amendment 9 Action Plan Revised 09-13-18.pdf](#)

#### **7. CITY COUNCIL EMINENT DOMAIN AUTHORIZATION FOR CDBG-NDR PROPERTY ACQUISITION**

These three properties are located in what is identified as Buyout Area #4 in the HUD approved CDBG-NDR Action Plan. The city has carried out the due diligence with the

owners of these properties as set forth in HUD's involuntary acquisition guidelines and the requirements of the federal Uniform Relocation Act.

**It is recommended the City Council authorize Eminent Domain process to commence for acquisition of 435 Fourth Avenue NE, 19 Fifth Street NE, and 10 Sixth Street NE.**

Documents:

[Eminentdomainauthorizationcouncilmemo9-13-18.pdf](#)

**8. DEPARTMENT PRESENTATION: FIRE DEPARTMENT**

The Fire Chief will present an update on current activities taking place and obstacles encountered within the Fire Department.



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**TO:** Mayor Shaun Sipma  
Members of the City Council

**FROM:** Janet Anderson, Library Director

**DATE:** September 17, 2018

**SUBJECT:** **Final Payment – LIB030**

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**I. RECOMMENDED ACTION**

It is recommended the Committee and Council:

1. Approve the final payment in the amount of \$2,071.10 to C&C Plumbing for the completion of project LIB030 (Library Chiller Replacement)

**II. DEPARTMENT CONTACT PERSON**

Janet Anderson, Library Director                      852-1045

**III. DESCRIPTION**

A. Background

As approved at the October, 2017 City Council meeting, the Minot Public Library replaced an air conditioning unit (chiller) in the early spring of 2018. Purchased in 1999, the Minot Public Library's west air conditioning unit had only been functioning at 50% for at least two years due to a leak that has been unable to be located. An inspection in 2016 resulted in the recommendation to replace the entire unit when possible due to this leak and the difficulty in replacing parts. In July of 2017, a sensor failed and needed to be replaced. Finally, on September 9<sup>th</sup> the entire unit stopped working and it was discovered that a pipe from the unit to the building had warped and leaked antifreeze. C&C Plumbing & Heating, L.L.P. was awarded the project and completed work the week of 9/10/18.

**IV. IMPACT:**

A. Strategic Impact:

As a public building where people often come in the hot weather to cool down and where people of all ages spend time, it is necessary that the Minot Public Library be able to maintain comfortable temperatures for the wellbeing of our patrons and staff.

B. Service/Delivery Impact:

The Chiller was replaced in time to cool the building toward the end of the summer and final work was completed in September.

C. Fiscal Impact:

\$73,486.00 was approved for this project and the total project costs were \$71,429.62. Overall, the project came in under budget by \$2,056.38.

Project Funding

210-67-00-455-04-33 (Bldg & Grnds)	\$73,486.00
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Advertise for Bids	\$68.62
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C&C Plumbing & Heating, L.L.P.	<u>\$71,361.00</u>
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Total	<u>\$71,429.62</u>
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**V. LIST OF ATTACHMENTS**

A. Pay Request #6

Approved for Council Agenda: \_\_\_\_\_

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





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**TO:** Mayor Shaun Sipma  
Members of the City Council

**FROM:** Dan Jonasson, Director of Public Works

**DATE:** September 17, 2018

**SUBJECT:** SWIF ACTION C LEVEE REPAIR, BANK STABILIZATION  
P3135.2C – FINAL PAYMENT

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**I. RECOMMENDED ACTION**

1. Recommend approval of the final payment to Park Construction in the amount of \$125,611.27.

**II. DEPARTMENT CONTACT PERSONS**

Dan Jonasson, Director of Public Works	857-4140
Jason Sorenson, Asst. Director of Public Works	857-4140

**III. DESCRIPTION**

A. Background

*Levee inspections are completed quarterly in accordance with our SWIF (System Wide Improvement Framework) which is a plan completed by the City to address the levee deficiencies identified by the USACE during their yearly inspections. In order to stay eligible for the PL-84-99 program with the USACE, we must have a plan (SWIF) which outlines our actions to repair the deficiencies.*

B. Proposed Project

*This project removed trees within the levee footprint, repaired minor erosion areas that could jeopardize the levee integrity and stabilized bank erosion. The project was bid in August of 2017 and Park Construction submitted the low bid for the project at \$966,077.80. After balancing quantities on the project and adding some additional work, the project came in \$8,781.71 under the bid price.*

C. Consultant Selection

*Houston Engineering was chosen in accordance with state selection criteria to complete the SWIF, as well as the improvements designated in the SWIF.*

**IV. IMPACT:**

A. Strategic Impact:

*This work will allow us to maintain our ability to leverage PL-84-99 funding and support from the USACE. It will restore our existing levee system to the new USACE standards, while the longer term flood project is being built.*

**B. Service/Delivery Impact:**

*This project is part of the long term improvements needed to keep our existing flood protection in place.*

**C. Fiscal Impact:**

*Public Works was able to obtain funding from the State Water Commission for part of this work.*

**Project Costs**

<i>Engineer's estimate of construction cost</i>	<i>\$1,645,078.76</i>
<i>Total Bid</i>	<i>\$ 966,077.80</i>
<i>Net Change by Change Order</i>	<i><u>\$ -(8,781.71)</u></i>
<i>Total Construction Cost</i>	<i>\$ 957,296.09</i>

**Project Funding**

<i>State Water Commission Grant</i>	<i>\$ 950,254.00</i>
<i>Flood Control Sales Tax</i>	<i>\$1,023,840.51</i>

*Funds in excess of the construction costs have been reallocated to the next SWIF project.*

**V. ALTERNATIVES**

*N/A*

**VI. TIME CONSTRAINTS**

*N/A*

**VII. LIST OF ATTACHMENTS**

- A. Final Pay Application*
- B. Final Balancing Change Order*



P3135.2C  
Checked by: CB



# Contractor's Application for Payment No. 7

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE		Application Period: 7.3.2018 to 9.5.2018	Application Date: 9.5.2018
To (Owner):	City of Minot, ND	From (Contractor):	Park Construction
Project:	City of Minot 2017 Levee Repair, Bank Stabilization, and Tree Clearing Project	Contract:	Minot SWIF Action C
Owner's Contract No.:	3135.2C	Contractor's Project No.:	HEI-6027-030
		Via (Engineer):	Houston Engineering, Inc.
		Engineer's Project No.:	HEI-6027-030

## Application For Payment Change Order Summary

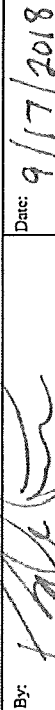
Approved Change Orders		
Number	Additions	Deductions
1		\$13,961.50
2	\$30,081.39	
3	\$1,040.00	
4		\$25,941.60
TOTALS	\$31,121.39	\$39,903.10
NET CHANGE BY CHANGE ORDERS		-\$8,781.71

1. ORIGINAL CONTRACT PRICE..... \$ \$966,077.80
2. Net change by Change Orders..... \$ -\$8,781.71
3. Current Contract Price (Line 1 + 2)..... \$ \$957,296.09
4. TOTAL COMPLETED AND STORED TO DATE (Column F total on Progress Estimates)..... \$ \$957,296.09
5. RETAINAGE:
  - a. X \$957,296.09 Work Completed..... \$
  - b. X Stored Material..... \$
  - c. Total Retainage (Line 5.a + Line 5.b)..... \$
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... \$ \$957,296.09
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$ \$831,684.82
8. AMOUNT DUE THIS APPLICATION..... \$ \$125,611.27
9. BALANCE TO FINISH, P (Column G total on Progress Estimates + Line 5.c above)..... \$


## Contractor's Certification

The undersigned Contractor certifies, to the best of his knowledge, the following:  
 (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;  
 (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and  
 (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.


Contractor Signature: 

By:  Date: 9/17/2018

Payment of: \$ 125,611.27 (Line 8 or other - attach explanation of the other amount)

is recommended by:  (Engineer) 9/17/2018 (Date)

Payment of: \$ 125,611.27 (Line 8 or other - attach explanation of the other amount)

is approved by:  (Owner) 9/17/2018 (Date)

Approved by: 265.9500.415.08-01 P# 3135.2C (Date)

Funding or Financing Entity (if applicable)



# Progress Estimate - Unit Price Work

# Contractor's Application

For (Contract):		Minor SWIF Action C		Application Number:		7											
Application Period:		7.3.2018 to 9.5.2018		Application Date:		9.5.2018											
A				B		C		D		E		F					
Item		Contract Information						Value of Work Installed to Date		Materials Presently Stored (not in C)		Total Completed and Stored to Date (D + E)		% (F / B)		Balance to Finish (B - F)	
Bid Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item (\$)		Estimated Quantity Installed										
2	Clearing and Grubbing <sup>2,4</sup>	3,385	SY	\$1.65	\$5,585.25		3,385										
3	Remove Tree <sup>4</sup>	231	EA	\$350.00	\$80,850.00		231										
4	Remove Tree in Levee <sup>4</sup>	53	EA	\$450.00	\$23,850.00		53										
7	Remove Bituminous Pavement <sup>4</sup>	163	SY	\$4.60	\$749.80		163										
8	Remove Concrete Pavement <sup>4</sup>	215	SY	\$6.45	\$1,386.75		215										
9	Remove Curb and Gutter <sup>4</sup>	270	LF	\$2.70	\$729.00		270										
10	Remove Fence <sup>4</sup>	151	LF	\$5.15	\$777.65		151										
12	Strip and Stockpile Topsoil <sup>2,4</sup>	1,842	CY	\$1.90	\$3,499.80		1,842										
13	Install Salvaged Topsoil <sup>2,4</sup>	1,842	CY	\$2.40	\$4,420.80		1,842										
14	Excavation Trench <sup>2,4</sup>	7,369	CY	\$19.50	\$143,695.50		7,369										
15	Excavation - Existing Levee Removal	1,440	CY	\$9.85	\$14,184.00		1,440										
16	Excavation - Slope Grading <sup>1,2,4</sup>	3,494	CY	\$5.85	\$20,439.90		3,494										
17	Sediment Removal	2,060	CY	\$17.60	\$36,256.00		2,060										
18	Import and Install Approved Levee Fill <sup>1,4</sup>	8,261	CY	\$13.70	\$113,175.70		8,261										
19	Import and Install Topsoil <sup>2,4</sup>	397	CY	\$17.70	\$7,026.90		397										
20	B2 Riprap Bedding <sup>1,2,4</sup>	2,503	TON	\$49.00	\$122,647.00		2,503										
21	NDDOT Grade I Riprap <sup>1,2,4</sup>	5,632	TON	\$35.50	\$199,936.00		5,632										
22	NDDOT Grade II Riprap <sup>4</sup>	182	TON	\$39.00	\$7,098.00		182										
23	Access Road (6" Crushed Concrete) <sup>4</sup>	473	SY	\$12.30	\$5,817.90		473										
24	Bituminous Pavement (4" Thick) <sup>1,4</sup>	196	SY	\$82.00	\$16,072.00		196										
25	Concrete Curb and Gutter (Type I) <sup>4</sup>	251	LF	\$20.70	\$5,195.70		251										
26	Concrete Driveway Pavement <sup>4</sup>	17	SY	\$69.70	\$1,184.90		17										
27	Rubber Duckbill Check Valve	1	EA	\$2,100.00	\$2,100.00		1										
28	4" Gate Valve and Valve Box	1	EA	\$2,040.00	\$2,040.00		1										
29	Chain Link Fence <sup>4</sup>	95	LF	\$30.00	\$2,850.00		95										
31	Construction Fence <sup>4</sup>	780	LF	\$3.25	\$2,535.00		780										
32	Inlet Protection <sup>4</sup>	1	EA	\$174.00	\$174.00		1										
33	Silt Fence <sup>4</sup>	2,338	LF	\$2.00	\$4,676.00		2,338										
34	Floating Silt Curtain <sup>1,4</sup>	620	LF	\$9.15	\$5,673.00		620										
35	Erosion Control Blanket <sup>2,4</sup>	1,155	SY	\$2.00	\$2,310.00		1,155										
36	Seeding <sup>4</sup>	8.1	AC	\$900.00	\$7,290.00		8.1										
37	Hydromulching <sup>4</sup>	8.1	AC	\$1,745.00	\$14,145.00		8.1										
EXTRA	Machine Time - Excavator <sup>2</sup>	3	HR	\$200.00	\$600.00		3										
EXTRA	Machine Time - Skid Loader <sup>3,3</sup>	5	HR	\$125.00	\$625.00		5										
EXTRA	Machine Time - D6 Dozer <sup>3</sup>	4	HR	\$160.00	\$640.00		4										
EXTRA	Machine Time - Loader <sup>3</sup>	1	HR	\$150.00	\$150.00		1										

# Progress Estimate - Unit Price Work

## Contractor's Application

For (Contract):		Minot SVIF Action C		Application Number:		7	
Application Period:		7.3.2018 to 9.3.2018		Application Date:		9.5.2018	
A		B		C		D	
Item		Contract Information		E		F	
Bid Item No.	Description	Item Quantity	Unit Price	Total Value of Item (\$)	Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)
Totals				\$857,986.55		\$857,986.55	
						\$857,986.55	100.0%

<sup>1</sup>Item added or modified by Change Order No. 1

<sup>2</sup>Item added or modified by Change Order No. 2

<sup>3</sup>Item added or modified by Change Order No. 3

<sup>4</sup>Item added or modified by Change Order No. 4


Date of Issuance: 9/5/2018  
Owner: City of Minot, ND  
Contractor:  
Engineer: Houston Engineering, Inc.  
Project: City of Minot 2017 Levee Repair, Bank  
Stabilization, and Tree Clearing Project  
Minot SWIF Action C

Effective Date: 9/5/2018  
Owner's Contract No.: 3135.2C  
Contractor's Project No.:  
Engineer's Project No.: HEI-6027.050  
Contract Name: Park Construction

The Contract is modified as follows upon execution of this Change Order:

Description: This change order is a final balancing change order that adjusts the original estimated bid quantities to match the final project quantities. See attached Change Order No. 4 (Final Balancing CO) Breakdown for additional information.

<b>CHANGE IN CONTRACT PRICE</b>	<b>CHANGE IN CONTRACT TIMES</b> <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ <u>966,077.80</u>	Original Contract Times: Substantial Completion: <u>Nov 1, 2017 : Sept 1, 2018</u> Ready for Final Payment: <u>Oct 1, 2018</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>3</u> : \$ <u>17,159.89</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>   </u> to No. <u>   </u> : Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ <u>983,237.69</u>	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ <u>25,941.60</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ <u>957,296.09</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>Nov 1, 2017 : Sept 1, 2018</u> Ready for Final Payment: <u>Oct 1, 2018</u> days or dates

RECOMMENDED: 

By: \_\_\_\_\_  
Engineer (if required)

Title: Project Manager

Date: 9/17/2018

ACCEPTED:  
By: *[Signature]*  
Owner (Authorized Signature)  
Title *Director of Public Work*  
Date *9/17/18*

ACCEPTED:

By: \_\_\_\_\_  
Contractor (Authorized Signature)

Title: \_\_\_\_\_  
PM

Date: \_\_\_\_\_  
9/17/2018

Approved by Funding Agency (if applicable)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date:

## Change Order No. 4 (Final Balancing CO) Breakdown

### City of Minot 2017 Levee Repair, Bank Stabilization, and Tree Clearing Project - Minot SWIF Action C

Item No.	Description	Unit	Original or Previous CO Quantity	Change in Quantity this CO	Revised Quantity This CO	Unit Price	Amount of Increase / (Decrease)
2	Clearing and Grubbing	SY	3,575	(190)	3,385	\$ 1.65	\$ (313.50)
3	Remove Tree	EA	188	43	231	\$ 350.00	\$ 15,050.00
4	Remove Tree In Levee	EA	54	(1)	53	\$ 450.00	\$ (450.00)
7	Remove Bituminous Pavement	SY	299	(136)	163	\$ 4.60	\$ (625.60)
8	Remove Concrete Pavement	SY	248	(33)	215	\$ 6.45	\$ (212.85)
9	Remove Curb and Gutter	LF	220	50	270	\$ 2.70	\$ 135.00
10	Remove Fence	LF	157	(6)	151	\$ 5.15	\$ (30.90)
12	Strip and Stockpile Topsoil	CY	1,716	126	1,842	\$ 1.90	\$ 239.40
13	Install Salvaged Topsoil	CY	1,716	126	1,842	\$ 2.40	\$ 302.40
14	Exploration Trench	CY	8,062	(693)	7,369	\$ 19.50	\$ (13,513.50)
16	Excavation - Slope Grading	CY	3,587	(93)	3,494	\$ 5.85	\$ (544.05)
18	Import and Install Approved Levee Fill	CY	8,316	(55)	8,261	\$ 13.70	\$ (753.50)
19	Import and Install Topsoil	CY	522	(125)	397	\$ 17.70	\$ (2,212.50)
20	B2 Riprap Bedding	TON	2,497	6	2,503	\$ 49.00	\$ 294.00
21	NDDOT Grade I Riprap	TON	5,881	(249)	5,632	\$ 35.50	\$ (8,839.50)
22	NDDOT Grade II Riprap	TON	235	(53)	182	\$ 39.00	\$ (2,067.00)
23	Access Road (6" Crushed Concrete)	SY	452	21	473	\$ 12.30	\$ 258.30
24	Bituminous Pavement (4" Thick)	SY	299	(103)	196	\$ 82.00	\$ (8,446.00)
25	Concrete Curb and Gutter (Type 1)	LF	220	31	251	\$ 20.70	\$ 641.70
26	Concrete Driveway Pavement	SY	12	5	17	\$ 69.70	\$ 348.50
29	Chain Link Fence	LF	87	8	95	\$ 30.00	\$ 240.00
31	Construction Fence	LF	1,150	(370)	780	\$ 3.25	\$ (1,202.50)
32	Inlet Protection	EA	2	(1)	1	\$ 174.00	\$ (174.00)
33	Silt Fence	LF	3,165	(827)	2,338	\$ 2.00	\$ (1,654.00)
34	Floating Silt Curtain	LF	770	(150)	620	\$ 9.15	\$ (1,372.50)
35	Erosion Control Blanket	SY	1,755	(600)	1,155	\$ 2.00	\$ (1,200.00)
36	Seeding	AC	8.2	(0.1)	8.1	\$ 900.00	\$ (90.00)
37	Hydromulching	AC	8.2	(0.1)	8.1	\$ 1,450.00	\$ (145.00)
EXTRA	Reinstall Salvaged Chain Link Fence	LS	0.0	1.0	1.0	\$ 396.00	\$ 396.00
Net Increase / (Decrease) this Change Order:							\$ (25,941.60)

Change Order No. 4 Total \$ (25,941.60)  
 Previous Change Orders Total \$ 17,159.89  
 Original Contract Amount \$ 966,077.80  
 Total Contract Amount \$ 957,296.09



**TO:** Mayor Shaun Sipma  
Members of the City Council

**FROM:** Lance Meyer, City Engineer

**DATE:** September 12, 2018

**SUBJECT:** CITIES OF SERVICE BUDGET AMENDMENT (LIB032)

**I. RECOMMENDED ACTION**

1. Authorize the Mayor to sign the budget amendment

**II. DEPARTMENT CONTACT PERSONS**

Lance Meyer, City Engineer 857-4101

**III. DESCRIPTION**

A. Background

Tools were purchased to be rented out to the public as part of the new library program. They were budgeted in the library's general fund. Because these items are rented out, they need to be capitalized.

B. Proposed Project

N/A

C. Consultant Selection

N/A

**IV. IMPACT:**

A. Strategic Impact:

N/A

B. Service/Delivery Impact:

N/A

C. Fiscal Impact:

There will be no additional fiscal impact. This is only moving the expenses and revenue from one fund to another.

Project Funding

001-3100-422.06-50	(\$5,399.30)
429-7400-422.07-93	\$5,399.30

**V. ALTERNATIVES**

N/A

**VI. TIME CONSTRAINTS**

The grant has already been awarded and funds requested.

**VII. LIST OF ATTACHMENTS**

- A. Budget Amendment

**ORDINANCE NO:**

**AN ORDINANCE AMENDING THE 2018 ANNUAL BUDGET TO INCREASE  
LIBRARY CAPITAL REVENUES AND EXPENDITURES AND DECREASE GENERAL  
FUND PLANNING REVENUE AND EXPENDITURES AND APPROVE THE  
TRANSFER OF FUNDS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT:**

- §1: Amend the 2018 annual budget to increase library capital revenues and expenditures and decrease general fund planning revenue and expenditures:

429-0000-391.30-00		\$5,399
429-7300-455.07-93		5,399
001-0000-491.34-19		(5,399)
001-3500-419.06-50		(5,399)

- §2: Approve the transfer of funds:

001-0000-391.30-00	MGR003	(5,399.30)
429-0000-491.34-19	LIB032	5,399.30
001-3500-419.06-50	LIB032	(5,399.30)
429-7300-455.07-93	LIB032	5,399.30

- §3: This ordinance shall be in effect from and after its passage and approval.

PASSED FIRST READING:

PASSED SECOND READING:

APPROVED:

ATTEST:

\_\_\_\_\_  
Shaun Sipma, Mayor

\_\_\_\_\_  
Kelly Matalka, City Clerk





**TO:** Mayor Shaun Sipma  
Members of the City Council

**FROM:** Penny Johnson, City Treasurer

**DATE:** September 17, 2018

**SUBJECT: SPECIAL ASSESSMENT APPROVAL; REVISED 2018 WEED CUTTING**

**I. RECOMMENDED ACTION**

1. Recommend approval of the additional assessment roll for 2018.

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**II. DEPARTMENT CONTACT PERSONS**

Dan Jonasson, Public Works Director  
Penny Johnson, City Treasurer

857-4112  
857-4771

**III. DESCRIPTION**

A. Background

Two parcels were pulled from last month's weed cutting list: #131540400030 was pulled to allow the property owner a protest period and no protest has been received. #34C691000120 was pulled as it was discovered the wrong parcel/address was used. Notice has been given to the property owners and the City wishes to certify the assessments to Ward County for collection with property taxes.

**IV. IMPACT:**

A. Strategic Impact:

N/A

B. Service/Delivery Impact:

N/A

C. Fiscal Impact:

This project was funded with property taxes. Timely collection of the assessments can help to reduce future property tax levies for nuisances.

**V. ALTERNATIVES**

Alt one. The Council could deny approval of the assessment roll for 2018 weed cutting. This would place the cost of abating nuisances on the shoulders of all property owners.

**VI. TIME CONSTRAINTS**

Council's approval of the assessment roll will allow staff to move forward with processing the loans resulting in inclusion in the annual certification to Ward County for collection.

**VII. LIST OF ATTACHMENTS**

Additional Weed Cutting 2018

Parcel	Legal Description	Assessment	Property Address	Owner First Name	Comments
MI131540400030	Hendrecksons Third Addition Lot 3 Block 4	\$ 250.00	808 9th Ave NE	Laura Marie Ericson	work done 6/28/18
MI341290000440	Green Acres Third Addition Lot 44	\$ 585.00	2312 23rd St SW	Joshua Gill	work done 9/07/17
		<u>\$ 835.00</u>			



**TO:** Mayor Shaun Sipma  
Members of the City Council

**FROM:** Kelly Hendershot

**DATE:** September 19, 2018

**SUBJECT: JOINT POWERS AGREEMENT – MINOT PARK DISTRICT**

**I. RECOMMENDED ACTION**

1. Move to approve the Joint Powers Agreement between the City of Minot and the Minot Park District and authorize the Mayor to sign the Agreement.

**II. DEPARTMENT CONTACT PERSONS**

Kelly Hendershot – (701) 857-4755

**III. DESCRIPTION**

On August 7, 2017, the City Council considered the request of the Minot Park District with respect to construction of the Magic City Discovery Center, a community facility located in Minot, ND. The Council has given tentative approval for their finance request in the amount of one million dollars. This one million dollar contribution is contingent and subject to (1) the passage of an ordinance (on second reading at the October 1, 2018 meeting); (2) the execution and signature of the attached Joint Powers Agreement; (3) determination by the City Finance Director that sufficient funds have been collected upon the city sales tax which adequately fund the NAWS project and further permit distributions of the one million dollar sum for improvements and enhancements to Roosevelt Park Zoo; (4) proof to the City Finance Director that, prior to disbursement of any monies by the City and no later than December 31, 2018, the Minot Park District or Magic City Discovery Center raised an additional five hundred thousand dollars for the Magic City Discovery Center; and (5) execution of an agreement between the Minot Park District and Magic City Discovery Center relating to this venture.

Also attached, for information purposes, are the draft documents (agreement and lease) between the Minot Park District and Children's Museum.

**IV. IMPACT:**

One million dollars from the prior community facilities portion of the sales tax collections will be contributed to the Minot Park District upon approval of the attached Joint Powers Agreement and passage of the attached ordinance.

**V. ALTERNATIVES**

The City Council could amend or reject the attached Joint Powers Agreement.

## **VI. TIME CONSTRAINTS**

The Joint Powers Agreement and ordinance must be approved prior to the City contributing any monies to the Minot Park District for the Magic City Discovery Center.

## **VII. LIST OF ATTACHMENTS**

1. Joint Powers Agreement between City of Minot and Minot Park District;
2. Draft Minot Park District/Children's Museum agreement.
3. Draft Minot Park District/Children's Museum lease.

JOINT POWERS AGREEMENT  
City of Minot Park District and  
City of Minot, North Dakota

THIS JOINT POWERS AGREEMENT ("Agreement") is between the City of Minot, North Dakota, (the "City") and the Board of Park Commissioners of the City of Minot (the "Park District"), both entities constituting political subdivisions under the laws of the State of North Dakota.

PRELIMINARY STATEMENT

The City of Minot is a Home Rule City organized and operated under its Home Rule Charter pursuant to Chapter 40-05.1, North Dakota Century Code. The Park District is a Parks and Recreation District organized under Chapter 40-49 of the North Dakota Century Code. Both the City and the Park District have authority to enter into a Joint Powers Agreement pursuant to Section 54-40.3-01 of the North Dakota Century Code.

The purpose of this Agreement is to provide for financial assistance to the Park District for construction of the future Magic City Discovery Center, a community facility to be located in Minot, North Dakota. Partial funding for these contemplated improvements and enhancements has been requested from the City of Minot, North Dakota, pursuant to Ordinance No. 4380, which was lawfully adopted by the City of Minot in June of 2011. Section 1 of Ordinance No. 4380 authorizes the City of Minot to allocate revenues collected from a city sales tax previously adopted, Ordinance No. 3560, for potential expenditures of upgrading, remodeling and constructing community facilities which include, but are not limited to, arenas, auditoriums, and facilities for conventions, tourist and sporting events conducted in the city. This authorization was for allocation of up to 30% of the proceeds collected on a yearly basis from the sales tax, and is contingent upon the City Finance Director further determining that there is sufficient funding derived from the sales tax to fund the City's share of the current Northwest Area Water Supply Project and to complete the necessary construction for such project.

The City Council for the City of Minot, North Dakota, has considered the joint request of the Park District and the Children's Museum of Minot, Inc., a North Dakota non-profit corporation (hereinafter "Children's Museum") with respect to construction of the future Magic City Discovery Center, a community facility to be located in Minot, North Dakota, and pursuant to a public hearing at its regular meeting on August 7, 2017, and the first reading of an ordinance at its regular meeting on September 4, 2018, has given tentative approval for financial support of this joint request from the Park District and Children's Museum totaling one million dollars (\$1,000,000). This contribution of one million dollars (\$1,000,000) is contingent upon and subject to (1) completion and execution of this Joint Powers Agreement by the parties' authorized representatives; (2) final passage of an appropriate Ordinance authorizing the foregoing and described Joint Powers Agreement, appropriation of the one million dollar (\$1,000,000) sum described herein for the year 2018, and the enterprise; (3) determination by the City Finance Director, in consultation with the City Council, that sufficient funds have been collected upon the city sales tax which will adequately fund the NAWWS project and further permit a distribution of one million dollars (\$1,000,000) to assist in the improvements and enhancements of the Park District property identified as the future Magic City Discovery Center

as specified in this Joint Powers Agreement; (4) the completion and execution of an agreement between the Park District and Children's Museum which fully describes compliance with all of the responsibilities and obligations laid out in this Agreement; and (5) proof to the City Finance Director that, prior to disbursement of any monies by the City and no later than December 31, 2018, the Park District and/or Children's Museum raised an additional five hundred thousand dollars (\$500,000) for the construction of the future Magic City Discovery Center to be located in Minot, North Dakota.

THEREFORE, for valuable consideration and pursuant to North Dakota Century Code Chapter 54-40.3, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Purpose. The purpose of this Agreement is to provide for funding for the construction of the future Magic City Discovery Center, a community facility to be located at 25 16<sup>th</sup> Avenue NE, Minot, North Dakota, which has a legal description of Lot 1, Grandview Park & Boulevard ("Property"). The Property is Park District property and under the supervision and jurisdiction of the Park District.

The public purpose for entering into this Agreement is to promote recreation opportunities to the community and surrounding areas residents and visitors, promote visitor attraction and economic development, and enhance the quality of life of the community and surrounding area residents.

2. Source of Funds. The Park District and the City agree that potential funding for these improvements and enhancements will be derived from the proceeds collected in 2017 under the city sales tax authorized by City Ordinance 3560 and 4380, and that the sum of one million dollars (\$1,000,000) will be awarded. The parties further specifically agree that the monetary sum of one million dollars (\$1,000,000) is also subject to the terms and provisions of Section 4, which is listed immediately below and is contained within the terms and provisions of this Agreement.
3. Effective Date and Term. This Agreement shall become effective on the date signed by the last party to sign the Agreement and following required approval and passage of an appropriate ordinance passed with two readings. With respect to the allocation of any sales tax proceeds from the City for the project and construction activity specified herein to the applicable Park District Property, this payment of one million dollars (\$1,000,000) shall be made during the year 2018. However, with reference to the potential and general use of the enhanced and improved park property supervised by the Park District and specified in this Agreement, the duration of these provisions shall be continuous and without a time limitation following the completed execution of this Agreement. (See Section 6 below).
4. Financing of Improvements and Enhancements. Both the City and the Park District understand and agree that the potential payments totaling one million dollars (\$1,000,000) under this Agreement are contingent upon full compliance with all of the following factors:

- (a) Completion and execution of this Joint Powers Agreement by the parties' authorized representatives;
  - (b) Final passage of an appropriate Ordinance authorizing the foregoing and described Joint Powers Agreement, appropriation of the one million dollar (\$1,000,000) sum described herein for the year 2018;
  - (c) Determination by the City Finance Director, in consultation with the City Council, that sufficient funds have been generated and received by the city sales tax which will adequately meet the requirements of Section 1 of City Ordinance 4380 and will also permit for adequate funding and construction of the Northwest Area Water Supply Project to the City of Minot;
  - (d) Completion and execution of an Agreement between the Park District and Children's Museum which fully describes compliance with the responsibilities and obligations outlined in this Joint Powers Agreement; and
  - (e) Proof, submitted prior to disbursement of any monies and on or before December 31, 2018, that the Park District and/or Children's Museum raised an additional five hundred thousand dollars (\$500,000) for the construction of the future Magic City Discovery Center. The proof shall be submitted to the City Finance Director in a form acceptable to the City Finance Director.
5. Title to Improvements and Administration, Management and Operation. Legal title to the Property previously described and constituted by future Magic City Discovery Center located in Minot, North Dakota, shall completely remain with the Park District. Additionally, the parties agree that the supervision of the administration, management and operation of the Magic City Discovery Center, as described throughout this Agreement, shall be under the complete direction and authority of the Park District.
6. General Use. Both the City and the Park District agree that based upon the construction of the future Magic City Discovery Center contemplated by this Agreement, said facility shall be operated as public facility and shall be made available to other public and private entities and individuals. The parties further agree that the future Magic City Discovery Center described herein shall be utilized for community activities and events that promote recreation opportunities to the community and surrounding areas residents and visitors, promote visitor attraction and economic development, and enhance the quality of life of the community and surrounding area residents. Furthermore, the uses of the facilities and properties shall be pursuant to the current terms of use of said facilities already adopted by the Park District, with the Park District and/or Children's Museum reserving the right to amend those terms of use, including fee amounts, from time to time.
7. Objectives, Projects, and Standards. The Park District agrees and understands that the following standards and requirements shall apply with respect to the \$1,000,000 sum disbursed by the City to the Park District:

- (a) The Park District shall ensure that all development activities by the Park District or Children's Museum are carried out in accordance with all federal, state, and local laws or regulations;
- (b) The Park District shall ensure that the City and Park District are permitted to inspect or audit the Children's Museum's records as may be necessary to ascertain its compliance with applicable laws and regulations as well as the conditions imposed in connection with this Agreement;
- (c) After execution of this Agreement and until completion of the Magic City Discovery Center project, the Park District shall ensure that the Children's Museum submits annual written reports relating to the construction project. The Park District shall ensure that each written report includes, at a minimum, general project information, milestone reviews, issues and/or risks, and project metrics.

In addition, for a period of ten (10) years after completion of the Magic City Discovery Center, the Park District shall ensure that the Children's Museum submits annual written reports indicating the various activities and programs provided. The Park District shall ensure that each written report includes, at a minimum, the date of such activities and programs, as well as the general identification of the entities or parties participating in the activities or programs.

Upon receipt of any written report by the Park District, as described previously, the Park District shall provide the written report to the City; and

- (d) The Park District shall monitor and ensure that the Children's Museum does not discriminate in its plans, programs, and activities on the basis of race, color, national origin, creed, religion, race age, sex, handicap, or any other basis which has been declared as discriminatory by federal or state cases or law.
8. Financial Administration – City. Both the City and the Park District agree that the disbursement of proceeds from the city sales tax in accordance with the terms and provisions of this Joint Powers Agreement shall be made through the Office of the City Finance Director. After full compliance with the contingent requirements described in Section 4, the distribution of one million dollars (\$1,000,000) shall be made by the City Finance Director. However, the City Finance Director shall only make payment after the Park District provides sufficient verified documentation (such as invoices, billings, or contracts) which the City Finance Director finds sufficient and in accordance with the improvements and enhancements described herein to the Park District property constituted as the future Magic City Discovery Center. Any payments made pursuant to this Agreement shall be disbursed to the Park District Board.
  9. Liability and Insurance. The Park District will acquire appropriate liability and property insurance to cover the Park District Property specified in this Agreement to ensure the continued operation of such Property and to sufficiently cover any liability that might be imposed in connection with the operation of the future Magic City Discovery Center. In



these respects, the Park District shall adopt and enforce reasonable rules regarding liability insurance for users of such property or facilities.

The Park District shall also require the Children's Museum to secure an adequate insurance policy relating to the assets and liability issues that may arise with respect to the operation of the Magic City Discovery Center, including all costs, expenses, and attorneys' fees which may in any manner result from or arise with respect to the Magic City Discovery Center. The Park District shall also require and ensure that the Children's Museum agrees to defend, indemnify, and hold the City harmless for all claims, costs, expenses, and attorneys' fees incurred in any litigation relating in any way to the Magic City Discovery Center.

10. Miscellaneous.

- (a) The parties further agree that all site preparation and construction contracts utilizing the one million dollars (\$1,000,000) proceeds and derived from the city sales tax shall be entered into solely by the Park District and/or Children's Museum and shall be the sole responsibility of the Park District and/or Children's Museum.
- (b) This Agreement may be amended at any time and from time to time upon written agreement of the parties.
- (c) This Agreement is personal to the parties and neither the rights nor the obligations of either party may be assigned without the written consent of the other. This Agreement contains the parties' entire agreement and may not be varied except by an instrument in writing signed by the parties. This Agreement with respect to its validity and lawfulness shall be governed and construed under the laws of the State of North Dakota.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest:

CITY OF MINOT:

By: \_\_\_\_\_  
Kelly Matalka, City Clerk

By: \_\_\_\_\_  
Shaun Sipma, Mayor

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest:

MINOT PARK DISTRICT:

By: \_\_\_\_\_  
Ron Merritt, Director

By: \_\_\_\_\_  
President

## AGREEMENT

This Agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between:

Children's Museum of Minot, Inc., a North Dakota non-profit corporation, Minot, North Dakota

and

Minot Park District, a Municipal Corporation, Minot, North Dakota.

### RECITALS

The Children's Museum of Minot, Inc., a non-profit corporation organization organized under the laws of the State of North Dakota ("CHILDREN'S MUSEUM"), has developed a plan for a children's museum that will provide a place of learning and discovery for children, families and Schools in the City of Minot as well as the surrounding communities. The CHILDREN'S MUSEUM has developed a general plan for the funding and construction of what will be known as the Magic City Discovery Center ("Discovery Center"). Under this general plan, the CHILDREN'S MUSEUM intends to construct a building and other structures upon a portion of Minot Park District property located at 25 15<sup>th</sup> Avenue NE, Minot, North Dakota, having legal description of Lot 1, Grandview Park & Boulevard, as depicted on the attached Exhibit "A". This property is currently referred to as the "\_\_\_\_\_ Park." CHILDREN'S MUSEUM and the Board of Park Commissioners of the Park District of the City of Minot ("PARK") have independently determined that the public needs and interests demand, and that the public would benefit from the development of a Children's Museum such as the Discovery Center. The general plan is in the fundraising and development stages; the proposed structures and improvements contemplated for the Discovery Center within the \_\_\_\_\_ Park are, but may not be limited to, a main building which would house and provide the indoor space for the museum's indoor exhibits, outdoor space to be utilized for public space, outdoor exhibits and possibly other structures, and provide some required parking areas, all of which would comprise the "Discovery Center." See the attached Exhibit "B". The parties recognize that these planned structures and improvements may not materialize on the proposed site, or that other structures or improvements may be substituted therefore.

In order to carry out the broad concept of development by the CHILDREN'S MUSEUM of a Discovery Center, CHILDREN'S MUSEUM has approached the Board of Park

Commissioners of the Minot Park District suggesting that a portion of \_\_\_\_\_ Park be utilized for the construction of the above-mentioned structures and improvements. The PARK is receptive to the concept presented to it.

In accordance with the foregoing recitals, CHILDREN'S MUSEUM and PARK agree as follows:

1. Exhibit "A" is a depiction of \_\_\_\_\_ Park, Minot, North Dakota, upon which there is generally outlined the tentative location and outline (not necessarily to correct scale) of proposed Structures and Improvements for the Discovery Center. ("Structures and Improvements" comprise the Discovery Center's buildings, outdoor public areas and exhibits, parking areas and sidewalks and other structures). PARK after due consideration of the CHILDREN'S MUSEUM'S proposal finds that the CHILDREN'S MUSEUM'S suggestion of being located on Park District property is appropriate and consistent with the goals and plans for the PARK for the property identified and known as \_\_\_\_\_ Park. Further, PARK adopts as its own concept the development of Structures and Improvements to be known as the Discovery Center by the CHILDREN'S MUSEUM as set forth herein, at CHILDREN'S MUSEUM'S cost, and subject to the limitations set forth in this Agreement and by law. Pursuant to this Agreement and to Exhibit "A", the CHILDREN'S MUSEUM is permitted to locate any or all of the proposed structures in the approximate location, as shown on Exhibit "A", to the extent permitted by law. To the extent there is any substantive modification to the proposed Structures and Improvements or any substantive changes in their proposed location, PARK shall have authority to give written approval as to the proposed location of each and every such structure, but nothing herein shall require PARK to grant approval, it being recognized that PARK in its discretion and pursuant to the powers given to it by the legislature, retains all rights pursuant to NDCC 40-49-12 as to the maintenance, governance, and improvements of park lands and for the erection of structures thereon. Therefore, no installation nor construction shall be done by CHILDREN'S MUSEUM except upon the approved location and then only with prior written approval of PARK. Each structure when located, shall become a part of the \_\_\_\_\_ Park concept as developed by CHILDREN'S MUSEUM and PARK, with Park retaining complete ownership.

CHILDREN'S MUSEUM shall have the following duties, functions and obligations:

- a. To construct and set forth on the property the Structures and Improvements as approved by PARK, at CHILDREN'S MUSEUM'S sole cost and expense, free and clear of all liens, expenses, and charges to PARK (except as otherwise approved by Park) with such Structures and Improvements being installed in accordance with all building codes and ordinances (except where waivers are granted), and in such manner that is consistent with all laws applicable to buildings, structures and property of the United States and North Dakota.
- b. All work performed by CHILDREN'S MUSEUM or its contractors, employees or representatives shall recognize the necessity of obtaining and providing for workers the appropriate safety instrumentalities and Worker's Compensation coverage and CHILDREN'S MUSEUM does hereby warrant and guarantee that PARK is released and indemnified from all claims, demands, and/or judgments arising from the design, construction, installation and operation of the CHILDREN'S MUSEUM'S Structures and Improvements. To this extent, CHILDREN'S MUSEUM shall insure PARK under its policies for construction, installation, development and operational activities. It is agreed by all that the construction and development costs are those of the CHILDREN'S MUSEUM, and PARK is not an agency or privity relationship with CHILDREN'S MUSEUM on the construction of any Structures and Improvements.
- c. To have all of such Structures and Improvements, upon completion, open to the general public as a children's museum, the management, operations and administration of which are the sole responsibility of CHILDREN'S MUSEUM, provided however, that CHILDREN'S MUSEUM acknowledges and agrees to consult with PARK as of would relate to the use and hours of operation of the children's museum, and comply with all conditions imposed by this agreement and the Ground Lease Agreement which has been attached as Exhibit "C".
- d. Keep and maintain all such Structures and Improvements in appropriate condition for use and admission by the general public, including, but not limited to preservation, restoration, the general daily maintenance and cleaning so as to

maintain the proper general appearance, and consistent with the facilities intended use and character.

- e. Take appropriate steps necessary, when such Structures and Improvements are available and open to the public, to ascertain that the sidewalks and approaches to the entry ways of each building, exhibit and structure are safe and free of snow and other obstructions and reasonably convenient for patrons desiring to enter, and are handicap accessible.
- f. Pay any and all costs, expenses, wages, etc. for such personnel as CHILDREN'S MUSEUM may utilize in connection with the operation and maintenance of all Structures and Improvements open to the public or on display, along with the insurance for construction, development, and operations thereon with PARK as a named insured.

2. PARK shall have the following duties, functions and obligations:

- a. To maintain to the extent the PARK deems necessary, any roadway, CHILDREN'S MUSEUM'S parking lot(s) (and excepting sidewalks and building entrances), outdoor public areas, and Park rest areas/facilities adjacent to each such CHILDREN'S MUSEUM Structure and Improvement as part of the general maintenance by PARK of such \_\_\_\_\_ Park.
- b. To landscape and maintain grass, trees, flowers, and shrubbery around the Structures and Improvements consistent with that of other areas of the \_\_\_\_\_ park and that the permission granted by PARK to CHILDREN'S MUSEUM under this Agreement for the construction of Structures and Improvements contemplated by this Agreement, shall in no manner whatsoever, except as provided in sub-section (c) below, either now or through the passage of time, create any right, title or interest of CHILDREN'S MUSEUM in and to any of the real estate or structural improvements of \_\_\_\_\_ Park and that the CHILDREN'S MUSEUM, for itself and its successors and assigns, waives and releases any right, title or interest it has or may subsequently have in and to \_\_\_\_\_ Park for the purposes herein specified,

- c. CHILDREN’S MUSEUM and PARK hereby agree that CHILDREN’S MUSEUM’S rights and interest in the Real Estate and Structural Improvements comprising the Discovery Center have been memorialized in a Ground Lease Agreement between the parties which has been attached as Exhibit “C.”
- d. CHILDREN’S MUSEUM agrees and understands that it has no right to change the name of \_\_\_\_\_ Park and will identify, where appropriate, in its advertising, signs or billboards the location of the Discovery Center as being in \_\_\_\_\_ Park.
- e. Regarding the \$1,000,000 sum disbursed by the City of Minot to the PARK, which sum will be used by the CHILDREN’S MUSEUM to build the Magic City Discovery Center, the PARK AND CHILDREN’S MUSEUM agree and understand that the following standards and requirements shall apply:

(1) The PARK shall ensure that all development activities by the PARK or CHILDREN’S MUSEUM are carried out in accordance with all federal, state, and local laws or regulations;

(2) The PARK shall ensure that the City of Minot and PARK are permitted to inspect or audit the CHILDREN’S MUSEUM’S records as may be necessary to ascertain its compliance with applicable laws and regulations as well as the conditions imposed in connection with this Agreement;

(3) After execution of this Agreement and until completion of the CHILDREN’S MUSEUM project, the PARK shall ensure that the CHILDREN’S MUSEUM submits annual written reports relating to the construction project. The PARK shall ensure that each written report includes, at a minimum, general project information, milestone reviews, issues and/or risks, and project metrics.

In addition, for a period of ten (10) years after completion of the structures and improvements, the PARK shall ensure that the CHILDREN’S MUSEUM

submits annual written reports indicating the various activities and programs provided. The PARK shall ensure that each written report includes, at a minimum, the date of such activities and programs, as well as the general identification of the entities or parties participating in the activities or programs.

Upon receipt of any written report by the PARK, as described previously, the PARK shall provide the written report to the City of Minot; and

(4) The PARK shall monitor and ensure that the Children's Museum does not discriminate in its plans, programs, and activities on the basis of race, color, national origin, creed, religion, race age, sex, handicap, or any other basis which has been declared as discriminatory by federal or state cases or law.

3. The parties agree that the following restrictions will be applied with respect to the location or construction of any Structure and Improvement:

a. Before any Structure and Improvement is placed in \_\_\_\_\_ Park by CHILDREN'S MUSEUM, CHILDREN'S MUSEUM shall first have given to Park a written instrument specifying the following:

- (1) Identification by name of the Structure and/or Improvement proposed to be installed by the CHILDREN'S MUSEUM;
- (2) General size dimensions of such Structure and/or Improvement;
- (3) General location with points of reference of proposed Structures and Improvements, to fix and determine site area, and location;
- (4) Transfer of title to such Structure and/or Improvement to PARK to be effective when installed or constructed; and
- (5) All Structures and Improvements will be in conformity with all land and site use laws and regulations.

4. CHILDREN'S MUSEUM shall with its funds, and without reimbursement from PARK secure clear title to all Structures and Improvements placed in or upon \_\_\_\_\_ Park by CHILDREN'S MUSEUM pursuant to this Agreement, free and clear of all liens, mortgages and/or encumbrances except those specifically approved by

the PARK'S board. Unless otherwise agreed by PARK in writing, CHILDREN'S MUSEUM shall pay all costs and expenses of installation, construction and maintenance of such Structures and/or Improvements, to the end that PARK shall in no manner whatsoever be obligated for the expenditure of any public funds, nor trust or foundation funds of Minot Park District, in connection with any of such Structures and Improvements, neither with respect to construction nor to installation nor with respect to future repair and maintenance thereof. The sole obligation of PARK under this Agreement, is to make \_\_\_\_\_ Park available for the installation of the various Structures and Improvements contemplated by CHILDREN'S MUSEUM, and as approved by PARK from time to time. PARK is only obligated for general maintenance as previously set forth in accordance with its general policies of maintenance with respect to its park areas.

5. Except as otherwise provided for herein as to construction of CHILDREN'S MUSEUM Structures and Improvements, or as otherwise provided in the accompanying Lease Agreement, PARK will procure appropriate liability Insurance sufficiently to cover any liability that might be imposed on the Park in connection with the CHILDREN'S MUSEUM's operation of the future Magic City Discovery Center, and Property Insurance to cover the Buildings and Structures which the CHILDREN'S MUSEUM will be constructing on the Premises. CHILDREN'S MUSEUM will be billed by the Park, at least annually for the amount of the premium for the Property Insurance. CHILDREN'S MUSEUM will also provide liability insurance coverage in an amount determined by the Park from time to time to be adequate relating to the assets and liability issues that may arise with respect to the CHILDREN'S MUSEUM's operation of the Magic City Discovery Center, including all costs, expenses, and attorneys' fees which may in any manner result from or arise with respect to the Magic City Discovery Center. The CHILDREN'S MUSEUM also agrees to defend, indemnify, and hold the PARK harmless for all claims, costs, expenses, and attorneys' fees incurred in any litigation relating in any way to the CHILDREN'S MUSEUMS operation Magic City Discovery Center . The Ground Lease Agreement shall provide the manner in which the CHILDREN'S MUSEUM shall reimburse PARK for amounts PARK shall expend for such Property Insurance coverage.

6. CHILDREN'S MUSEUM shall staff and operate at its sole expense all Structures and Improvements which it proposed to install or construct pursuant to this Agreement.



7. This Agreement does not permit CHILDREN'S MUSEUM to lease nor rent its buildings, exhibits and structure without a separate contract, which separate contract must be approved by PARK in writing. The Parties may, at a later date, provide by separate contract the relative rights, duties and functions of the parties with respect to concessions, leases, rentals and the net income thereof. Until such time as such contract is executed by the parties hereto, PARK may, but is not required to, install and operate such concessions as it may desire and retain the net income therefrom.

8. CHILDREN'S MUSEUM must acquire all permits and approvals required by any and all governmental, regulatory or permitting agencies prior to the beginning of construction. To the extent any Structure and/or Improvement is found by any court to be inappropriate for PARK land, the CHILDREN'S MUSEUM agrees to have said Structure or Improvement removed at its sole cost and expense.

9. If, at some later date, either PARK or CHILDREN'S MUSEUM finds that the premises is no longer suitable for the Discovery Center, or if the CHILDREN'S MUSEUM defaults under the terms of the Ground Lease Agreement and the Ground Lease Agreement is thereafter terminated by PARK, then, in that event, unless agreed otherwise by the parties, the PARK shall retain ownership of all Structures and Improvements on the Premises, to the exclusion of the CHILDREN'S MUSEUM'S, and PARK shall be able to repurpose and/or re-rent the Structures and Improvements at their sole discretion, including for the purposes of a museum.

10. In consideration of the City of Minot's contribution of \$1,000,000 to the PARK and the CHILDREN'S MUSEUM for the purposes of constructing the Discover Center as defined in this Agreement, CHILDREN'S MUSEUM also agrees to defend, indemnify, and hold the City of Minot harmless for all claims, costs, expenses, and attorneys' fees incurred in any litigation or administrative proceedings relating in any way to the CHILDREN'S MUSEUM'S design, construction, installation and operation of the Structures and Improvements that will constitute the Magic City Discovery Center.

11. **ADDITIONAL TERMS AND CONDTIONS:**

- a. The parties hereby acknowledge and agree that CHILDREN'S MUSEUM will from time to time contract with individuals, corporations and other entities for the rights to name certain buildings, exhibits, rooms or features involving the Structures and Improvements defined herein which, as it applies to the exterior

of the building or outdoor features, shall be approved by PARK, which approval shall not be unreasonably withheld.

- b. It is understood and agreed that PARK shall be responsible for providing water, wastewater, and electrical trunk infrastructure to the street immediately adjacent to the CHILDREN MUSEUM'S primary structure.

IN WITNESS WHEREOF, the parties have hereunder set their hands the day and year first above written.

CHILDREN'S MUSEUM OF MINOT, INC.

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

BOARD OF PARK COMMISSIONERS

By: \_\_\_\_\_  
Board President

ATTEST:

\_\_\_\_\_

Clerk

GROUND  
LEASE  
AGREEMENT

Between

THE MINOT PARK DISTRICT

And

CHILDREN'S MUSEUM OF MINOT, INC.

## **GROUND LEASE**

THIS GROUND LEASE is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between The Minot Park District, a North Dakota municipal corporation, whose address is 420 3<sup>rd</sup> Avenue SW, Minot, North Dakota 58701 (hereinafter “Park”), and Children’s Museum of Minot, Inc., a North Dakota nonprofit corporation, whose address is P.O. Box 751, Minot, ND 58702-0751 (hereinafter called “Children’s Museum”).

### **RECITALS**

Children’s Museum desires to lease from Park, and Park desires to lease to Children’s Museum, the Premises, for the sum of one dollar (\$1.00) and other good and valuable consideration in accordance with the terms and conditions of this Ground Lease.

### **AGREEMENTS**

**NOW, THEREFORE**, in consideration of the terms, covenants and conditions herein set forth, Park and Children’s Museum hereby covenant and agree as follows:

#### **ARTICLE 1. BASIC DEFINITIONS**

**Section 1.1    Effective Date:** The date set forth in the introductory paragraph above.

**Section 1.2    Governmental Regulations:** All applicable laws, building codes, zoning ordinances and other rules and regulations of all federal, state, county and municipal governmental and public authorities and agencies having jurisdiction over the Land.

**Section 1.3    Improvements:** Buildings, roads, parking lots, driveways, walkways, landscaping and other structures and improvements.

**Section 1.4    Land:** Certain real property described as a tract of approximately \_\_\_\_\_ acres of land contained within \_\_\_\_\_ City of Minot, Ward County, North Dakota. The location of the Land within \_\_\_\_\_ is shown on the depiction attached as Exhibit A.

**Section 1.5    Park:** The Minot Park District, a North Dakota municipal corporation, for so long as it retains control of the Land, and thereafter any future owner or lessor of the Land.

**Section 1.6    Children’s Museum:** Children’s Museum of Minot, Inc., a nonprofit North Dakota corporation, or the permitted successors and/or assigns of its interests under this Ground Lease.

**Section 1.7 Ground Lease:** This Agreement, as may be hereafter amended by the parties in accordance with its terms.

**Section 1.8 Premise:** The Land and Improvements, as defined herein.

## **ARTICLE 2. PREMISES**

In consideration of the mutual covenants, conditions and agreements included in this Ground Lease, Park leases to Children's Museum, and Children's Museum leases from Park, the Premises together with any and all easements, appurtenances, rights and privileges belonging to the Premises; provided, however, that Children's Museum's rights under this Ground Lease are subject and subordinate to all matters of record.

## **ARTICLE 3. COMMENCEMENT AND TERM**

This Ground Lease shall begin and be of full force and effect as to both Park and Children's Museum as of the Effective Date. The term of this Ground Lease shall commence on the Effective Date, and, unless sooner terminated as permitted by this Ground Lease or by law, shall continue for a period of fifty (50) years ("Initial Term"). Upon expiration of the Initial Term, the lease shall automatically continue in full force and effect upon the same terms and conditions for a successive fifty (50) year term.

## **ARTICLE 4. RENT**

Children's Museum shall pay to Park Base Rent in the amount of one dollar (\$1.00) per year, with the first payment due upon execution of the Ground Lease, and annually thereafter on that same date. In addition to Base Rent, Children's Museum shall be required to pay annually or more frequently if requested by Children's Museum their portion of the insurance(s) as required under the Ground Lease.

## **ARTICLE 5. SITE PREPARATION AND LAND DEVELOPMENT**

**Section 5.1 Site Preparation.** Site preparation shall include the removal of all existing structures or impediments, if any, necessary for the use of the Premises for its intended purpose under this Ground Lease. Park will be responsible for providing water, sewer, and electric trunk infrastructure to the street immediately adjacent to the Children's Museum's primary structure. Children's Museum will be responsible for providing all of the remaining site preparation and utility infrastructure.

**Section 5.2 Land Development.** Children's Museum will be responsible for the cost of land development on the Premises. Land development shall include roadways, parking, sidewalks, and other items which are necessary to prepare the Land for its intended purpose under this Ground Lease. The parties will be jointly responsible for the design and construction of all landscaping on the Premises.

**Section 5.3 Site Plan.** Park shall have the opportunity to review and comment on the proposed site plan for the Premises prior to approval by Children's Museum.

## **ARTICLE 6. PRE-CONSTRUCTION TERMINATION**

**Section 6.1 Start Date.** If construction has not started on the Premises on or before June 1, 2021, either party may elect to terminate this Ground Lease, effective June 2, 2021.

**Section 6.2 Proposed Costs.** If at any time, the proposed costs of construction on the premises exceed Eight Million Five Hundred Thousand and no/100 Dollars (\$8,500,000.00), Children's Museum may elect to terminate this Ground Lease.

**Section 6.3 Fundraising Goals.** If Children's Museum's fundraising goals are not met on or before June 1, 2021, Children's Museum may elect to terminate this Ground Lease, effective June 2, 2021.

## **ARTICLE 7. CONSTRUCTION OF IMPROVEMENTS**

**Section 7.1 Improvements by Children's Museum.** Children's Museum may, from time to time and at its sole cost and expense, construct or cause to be constructed upon the Land such buildings, sidewalks, parking lots, landscaping and other Structures and Improvements on the premises, as substantially located and identified in the Agreement entered into by Park and Children's Museum on this same date. Any additional improvements or substantial changes to these Structures and Improvements that have been authorized by Park must be approved by Park prior to construction. All Improvements constructed upon the Land shall be in compliance with Governmental Requirements, in compliance with the provisions of this Ground Lease and not injurious to the adjacent property owned by Park. Without limiting the foregoing, allowable Improvements shall include all facilities and appurtenances necessary for the use and operation of the Premises in the manner required hereunder or as may be desired by Children's Museum.

**Section 7.2 Improvements by Park.** Park shall have no obligation to make any improvements or modifications to the Premises or for the benefit of the Premises, except as specifically provided for in Article 5 of this Ground Lease.

**Section 7.3 Ownership of Improvements and Fixtures.** During the term of this Ground Lease and any extension thereof, Park shall be deemed the owner of the Structures and Improvements. Moveable furniture, trade fixtures, equipment and other personal property not permanently affixed to the Premises, or which can be removed from the Premises without substantial damage to the Premises, which are acquired by Children's Museum at its expense, shall remain Children's Museum's property and may be removed at any time, provided Children's Museum promptly repairs any damage caused by such removal.

## **ARTICLE 8. USE OF PREMISES**

Children's Museum intends to construct and operate a Children's Discovery Center (Museum) on the Premises that may include indoor and outdoor exhibits. Construction of said Children's Discovery Center will begin when Children's Museum's fundraising goals are met and construction financing is secured by Children's Museum. Once constructed, the Children's Discovery Center shall be open to the general public as a children's Museum, with the use and hours of operation to be determined by the Children's Museum, subject to approval of the Park. Children's Museum shall be solely responsible for the management, operations and administration of the Children's Museum.

## **ARTICLE 9. OVERFLOW PARKING**

Children's Museum shall have the right, from time to time and as necessary, to use and occupy parking spaces on property owned by Park and adjacent to the Premises for the purposes of overflow parking.

## **ARTICLE 10. PAYMENT OF ADDITIONAL RENT, PERSONAL PROPERTY, TAXES, ETC.**

**Section 10.1 Obligations of Children's Museum.** Children's Museum shall pay to Park and reimburse Park for property insurance premium that Park is required to pay on the Children's Discovery Museum building and Improvements on the Premises as required of Park under Section 13.2. Upon completion of construction of each Improvement, Park will notify Children's Museum of the additional annual premium, if any, associated with such Improvement. Thirty days prior to Children's Museum annual Rent Payment due date, park will provide Children's Museum with a Statement for the annual property insurance premium associated with all Children's Museum improvements located on the premises. Children's Museum shall pay to Park on the same day that the annual Rent payment is due, the insurance premium amount associated with all Children's Museum Improvements. If the premises is assessed for real estate tax purposes, Children's Museum shall also pay when due all real estate taxes, assessments and other governmental charges, general and special, ordinary and extraordinary, of any kind and nature, assessed on the Premises while this Ground Lease is in effect.



**Section 10.2 Personal Property Taxes and All Other Insurance Premiums.** In accordance with applicable Governmental Regulations, Children's Museum shall at all times be responsible for and pay, before delinquency, all taxes levied, assessed or unpaid upon any leasehold interest, any right of occupancy or use, any investment of Children's Museum in the Premises or any personal property of any kind owned, installed or used by Children's Museum, including Children's Museum's leasehold improvements or taxes on Children's Museum's right to occupy or use the Premises. Children's Museum shall also pay when due, before delinquency or cancellation, all other insurance premiums associated with those insurance coverages that are required to be obtained by Children's Museum under Section 13.2 and Article 14.

## **ARTICLE 11. DISCHARGE OF LIENS**

**Section 11.1 Liens and Encumbrances.** Without the written consent of Park, Children's Museum shall not create, permit to be created or permit to remain, any lien, encumbrance or charge derived from or through Children's Museum which might be or become a lien, encumbrance or charge upon the fee title to the Premises, or any part thereof. Children's Museum shall not suffer any other matter or thing derived from or through Children's Museum whereby the estate, rights and interest of Park or Park's designees in the Premises, or any part thereof, might be impaired; provided however, that any mechanic's and/or materialman's liens filed against the Premises or any part thereof, for which Children's Museum is responsible, may be discharged or bonded in accordance with Section 10.2 of this Ground Lease.

**Section 11.2 Construction Liens.** Children's Museum shall do all things reasonably necessary to prevent the filing of any construction liens against the Premises, or any part thereof, by reason of work, labor, services or materials furnished or claimed to have been furnished to Children's Museum or anyone occupying the Premises, or any part thereof, by, through or under Children's Museum. If any such construction lien shall at any time be filed against the Premises, or any part thereof, as the result of work, labor, services or materials furnished or claimed to have been furnished to Children's Museum or anyone occupying the Premises, or any part thereof, by, through or under Children's Museum, then Children's Museum shall cause the same to be discharged of record within thirty (30) days after Children's Museum receives written notice from Park of the existence of same. However, if Children's Museum, in its discretion and in good faith, determines that such lien should be contested, Children's Museum shall furnish such security or bond as may be required by law to prevent any foreclosure proceedings against the Premises or any part thereof during the pendency of such contest. Nothing herein contained shall imply any consent or agreement on the part of the Park to subject Park's estate to liability under any construction lien law.

## **ARTICLE 12. REPAIRS AND MAINTENANCE**

**Section 12.1 Obligation of Children's Museum.** Children's Museum agrees, at its sole cost and expense, that it will throughout the term of this Ground Lease, take good care of the Premises and keep same in good repair, order and condition, and in a clean and orderly condition, free of rubbish and unlawful obstructions, and that it will make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen. As used herein, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments. All repairs made by Children's Museum shall be at least equal in quality and utility value to the original work. During the term of this Ground Lease, Park shall not be required to furnish any services or facilities or to make any repairs or alterations with respect to the Premises, and Children's Museum hereby assumes the full and sole responsibility for the condition, operation, repairs, replacement, maintenance and management thereof.

**Section 12.2 Site Maintenance.** Park shall be responsible for maintaining in good order and repair and in a safe condition, and free of snow, ice, debris, or other obstruction, all parking lots, sidewalks and walkways between parking lots and walking paths of the Premises. Children's Museum shall be required to keep all sidewalks leading from the parking lots and entrances to the structures and buildings free of ice and snow and shall be required to repair and replace walkways and service ways which may become out-of-repair or in a dangerous condition. Park shall, at its expense, maintain in good condition the landscaped areas of the Premises, including, without limitation, periodic mowing, watering, trimming, removal of rubbish and replacement of plants, shrubs and trees, as may be necessary to keep the landscaped areas in good condition, commensurate with the maintenance and condition of the remainder of the Park's property which abuts the Premises.

**Section 12.3 Waste or Nuisance.** Children's Museum shall not commit or allow to be committed any waste upon the Premises or any nuisance or other act or thing which materially disturbs the quiet enjoyment of any other tenant or occupant of adjacent properties.

## **ARTICLE 13. GOVERNMENTAL REQUIREMENTS; INSURANCE STANDARDS**

**Section 13.1 Governmental Requirements.** Throughout the Ground Lease term, Children's Museum agrees, at its sole cost and expense (except as expressly otherwise provided in this Ground Lease), that it will promptly comply in every respect with all Governmental Requirements now in force or that may be duly enacted hereafter, foreseen and unforeseen, whether or not compliance therewith shall require changes to the Improvements and whether or not such changes are structural or nonstructural, interior or exterior, ordinary or extraordinary.

**Section 13.2 Insurance Requirements.** Children's Museum agrees, at its sole cost and expense (except as expressly otherwise provided in this Ground Lease), that it will promptly comply in every respect with all terms and provisions of its insurance policies covering or applicable to the Premises or any part thereof. Children's Museum agrees, at its sole cost and expense, that it will make all additions, repairs and alterations to the Premises, and other facilities thereon which are or hereafter may be required in order to comply with the foregoing. Further, Children's Museum agrees, at its sole cost and expense (except as expressly otherwise provided in this Ground Lease), that it will observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Premises. Children's Museum covenants and agrees to indemnify and save Park harmless from any penalties, damages or charges imposed for any violation of the covenants and obligations of Children's Museum set forth in this Section 13.2, whether occasioned by neglect, omission or willful act of Children's Museum or any person upon the Premises by license or invitation of Children's Museum or holding or occupying the Premises or any part thereof under, or by right of, Children's Museum, unless caused primarily by the neglect, omission or willful act of Park or Park's contractors, agents or employees.

**Section 13.3 Children's Museum's Right to Contest.** Children's Museum shall have the right to contest by appropriate legal proceedings, without cost or expense to Park, the validity of any law, ordinance, rule or regulation, if such contest does not and would not: (i) subject Park to any fine or any civil or criminal penalty; or (ii) result in a forfeiture or seizure of the Premises. In the event of any such contest, compliance with such law, ordinance, rule or regulation legally contested by Children's Museum may be postponed if permitted by law until the final determination of any such proceeding, provided that all such proceedings shall be prosecuted by Children's Museum with due diligence and dispatch.

## **ARTICLE 14. INSURANCE AND INDEMNITY**

**Section 14.1 Construction Insurance.** Following the Effective Date and at all times during the making of any Improvements or other construction on the Premises by Children's Museum, or on behalf of Children's Museum, Children's Museum shall have and maintain in full force builder's risk insurance and workers compensation insurance to the extent required by law. The limits of such builder's risk liability insurance shall not be less than two million dollars (\$2,000,000) combined single limit for death, bodily injury and property damage. Prior to the commencement of any construction, Children's Museum shall provide Park a certificate of such insurance evidencing compliance with this Section 14.1.

**Section 14.2 Liability Insurance.** Following the Effective Date, Children's Museum shall have and maintain at their close cost and keep in full force and effect, or require its subtenant(s) if any have been approved by Park, to keep in full force and effect, a public liability insurance policy with respect to the Premises and the business operated by Children's Museum or any of its subtenants, with a combined single limit of no less

than two million dollars (\$2,000,000), including independent contractor's coverage. Children's Museum shall have the Park listed on this insurance policy as an additional insured, if possible, and this policy shall be primary for any liability claim against the Children's Museum or the Park. A copy of the policy or a certificate of insurance shall be delivered to Park upon written request.

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**Section 14.3 Property Insurance.** Park agrees to maintain in full force during the term of this Ground Lease one or more policies of fire and extended coverage, vandalism, malicious mischief and sprinkler leakage insurance covering the Improvements, such insurance to be in an amount equal to the full replacement cost thereof, less the cost of excavations, foundation, footings and underground tanks, conduits, pipes, pilings and other underground items. Except as otherwise provided in this Ground Lease, the proceeds of such insurance shall be used to repair and/or replace the Improvements. Children's Museum shall reimburse Park on an annual basis that portion of the Property Insurance Premium which is attributable to the Improvements as required under Section 10.1.

**Section 14.4 Insurance Requirements.** All insurance required to be carried by Children's Museum or Children's Museum's subtenant(s) hereunder shall insure Children's Museum and shall name, to the extent permitted by law, as additional insureds or loss payee (as the case may be), Park and such other person or persons designated in writing by Park to Children's Museum that have an insurable interest in the Premises.

**Section 14.5 Proof of Insurance.** A certificate of all insurance procured by Children's Museum or its subtenant(s) if any have been approved by Park, in compliance with its obligations under this Ground Lease shall be delivered to Park upon request.

**Section 14.6 Indemnification.** Subject to any effects of the waiver of subrogation provided below, Children's Museum covenants and agrees to indemnify, defend and save Park harmless from and against any and all injury, loss, claims, actions, damages, liability, costs and expenses, including reasonable attorney's fees, resulting from loss of life, personal or bodily injury, damage to property, or litigation arising from or out of any occurrence in, upon or at the Premises or the occupancy or use by Children's Museum of the Premises, or occasioned anywhere, to the extent of the negligence, willful misconduct or breach of this Ground Lease by Children's Museum, its agents, contractors, employees, servants, lessees, concessionaires or guests, excepting agents and employees of the Park.

Subject to any effects of the waiver of subrogation provided below, and as limited or prohibited by law, Park covenants and agrees to indemnify, defend and save Children's Museum harmless from and against any and all injury, loss, claims, actions, damages, liability, costs and expenses, including reasonable attorney's fees, resulting from loss of life, personal or bodily injury, damage to property, or litigation arising from or out of any occurrence in, upon or at the Premises or the occupancy or use by Park of the Premises, or occasioned anywhere, to the extent of the negligence, willful misconduct or breach of this Ground Lease by Park, its agents, contractors, employees, servants, lessees, concessionaires or guests, excepting agents or employees of Children's Museum.

**Section 14.7 Waiver of Subrogation.** Park and Children's Museum each hereby release and waive any and all rights of recovery from the other party and the officers, employees, agents and representatives of the other party, for any loss or damages which they may suffer

to their person, business or property, or the property of others under their control, arising from any cause insured under any policy of insurance required hereunder, to the extent such loss or damage is insurable thereunder (an "Insured Loss"), and without regard to the negligence of the other party that may have contributed to the loss or damage.

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## **ARTICLE 15. DAMAGE AND DESTRUCTION**

**Section 15.1 Park's Obligation.** Except as otherwise provided in this Article 14, if the Improvements are damaged or destroyed by fire, windstorm, or other casualty during the term of this Ground Lease (any such event herein referred to as a "Casualty"), then Park, to the extent of the value of the insurance proceeds received, shall promptly repair and restore same to at least the substantially same condition as existed prior to such Casualty. Park shall consult with Children's Museum at all times during the repair or reconstruction process, to insure that Children's Museum receives a repaired improvement that meets their needs. Such repair and restoration shall be in compliance with all Governmental Requirements.

## **ARTICLE 16. ENVIRONMENTAL CONDITIONS**

If either Park or Children's Museum encounters conditions at the site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those anticipated by the parties or (ii) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Ground Lease, Park shall promptly investigate such conditions. If it is determined the conditions differ materially from the parties' reasonable expectations, Park shall take action to correct or remedy such condition(s) so the parties may proceed as anticipated under this Ground Lease.

## **ARTICLE 17. EMINENT DOMAIN**

**Section 17.1 Taking of Entire Premises.** If the entire Premises shall be taken by any public or quasi-public authority under any statute or under the power of eminent domain or by private sale to the condemning authority, or to its designee, under the threat of eminent domain (hereinafter referred to as a "Taking"), then this Ground Lease shall automatically terminate as of the date Children's Museum is deprived of possession or access to the Premises or the date title thereto vests in the condemning authority, or its designee, whichever date occurs first.

**Section 17.2 Partial Taking.** If there is a Taking of any part of the Premises so that the Premises, or the remainder thereof, is no longer usable for the purposes for which the Premises is hereby leased, and cannot, as reasonably determined by Park and Children's Museum, be made adequate for such purposes by such repairs or alterations as Children's Museum is obligated to make pursuant to the provisions of this Agreement; or if as the result of a Taking, the Premises no longer has any access to public streets or roads contiguous to the Premises and Park does not provide reasonable alternative legal access; or if, as the result of a Taking, the remaining available parking thereafter is no longer adequate for

the operation of Children's Museum's or its subtenant(s)' business at the Premises, then Children's Museum shall have the right to terminate this Ground Lease within ninety (90) days after the date of such Taking by providing at least thirty (30) days written notice to Park.

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**Section 17.3 Condemnation Award.** If allowed by law, Children's Museum shall be allowed to negotiate their own condemnation award (i.e. damages and recovery of costs, etc.). If Children's Museum and Park are required by law to negotiate a condemnation award jointly, an amount equal to the lesser of the condemnation award or the costs incurred by Children's Museum for repairs and/or alterations to the Premises necessitated by such Taking, and the value of Children's Museum's leasehold interest in the Premises for the balance of the current Ground Lease term shall be paid to Children's Museum from any award or damages as the result of a Taking, and the remainder of any such award for damages, after reimbursement to Park and Children's Museum for their respective costs in prosecuting their respective claims in such action, shall be divided between Park and Children's Museum, as their respective interests may appear, in accordance with the applicable Governmental Regulations.

## **ARTICLE 18. ASSIGNMENT AND SUBLETTING**

**Section 18.1 Limitation on Right to Assignment.** Except as otherwise provided in this Article 18, Children's Museum shall not voluntarily or by operation of law or otherwise: (i) assign or otherwise transfer this Ground Lease and/or (ii) sublet the whole or any part of the Premises to any person without first obtaining in each instance Park's prior written consent thereto, which consent shall not be unreasonably withheld by Park.

**Section 18.2 Assignment or Transfer by Park.** Park shall be entitled to sell, mortgage, pledge or otherwise transfer its interest in the Premises and/or in this Ground Lease. However, any transfer shall not relieve Park of its obligations under this Ground Lease arising prior to the date of the transfer.

## **ARTICLE 19. UTILITIES**

Children's Museum shall pay or cause to be paid all charges for gas, fuel, electricity, sewer, water, heat, power and other utilities, telephone or other communication service used by, rendered or supplied to, the Premises from and after the Effective Date and thereafter through the last day of the Ground Lease term, and Children's Museum shall indemnify and save Park harmless against any and all, expenses, liability and damages on account of such charges. Except as otherwise required with respect to Park's work, Children's Museum shall, at its sole cost and expense, procure any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes, meters and other equipment and appliances for use in supplying any such services and facilities to and upon the Premises.

**ARTICLE 20.**  
**DEFAULT AND REMEDIES**

**Section 20.1 Events of Default.** Any one or more of the following occurrences shall constitute an event of default under this Ground lease by Children's Museum:

- (a) The bankruptcy or insolvency of Children's Museum or the filing of any debtor proceedings, including petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or any portion of Children's Museum's, or the making of assignment for the benefit of creditors, or the petitioning or entering into an arrangement by Children's Museum or;
- (b) The taking by any party of this Ground Lease by writ of execution or similar process;
- (c) The failure of Children's Museum to keep or perform any of the terms, conditions or covenants of this Ground Lease agreed to be observed or performed by Children's Museum, not otherwise specified as a default or event of default, for more than thirty (30) days after written notice of such default or violation shall have been given to Children's Museum, provided that if the default be of such a nature that it cannot be reasonably cured within said thirty (30) day period, and Children's Museum shall in good faith have properly commenced the curing of such default within such period, then Children's Museum shall be deemed not in default hereunder if it shall diligently proceed to cure such default within a reasonable grace period necessary to promptly cure the default. This provision shall not apply to defaults listed in subparts (a) and (b) of this Section 20.1.

**Section 20.2 Remedies for Default.** In the event of the occurrence of an event of default, as defined in Section 20.1, in addition to all other rights and remedies available to Park under this Ground Lease or under law, Park shall have the following remedies:

- (a) At any time following an event of default Park may, at Park's option, elect to terminate this Ground Lease by written notice to Children's Museum specifying Park's intention to terminate this Ground Lease, which notice may, but need not be, included in a notice of intention to evict or pleading in an eviction action. Notice of termination shall be served in the manner specified herein, or any manner authorized for service of any pleading or notice of intention to evict.

Termination of this Ground lease will be effective without further notice and without the necessity of any legal suit or action, upon the expiration of the period Children's Museum is allowed to reinstate this Ground Lease. Delivery of Park's notice of termination under this provision is intended to satisfy any common law requirements relating to service of notice of default or demand for payment of rents prior to terminating a lease, and no further notice to quit, vacate demand or legal process shall be necessary to terminate this Ground Lease, whether or not any additional notice may be required by law as a condition to obtaining an order

evicting Children's Museum from the Premises.

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- (b) Following the effective date of termination, Children's Museum shall have no further interest in the Land and Improvements, or in this Ground Lease.
- (c) At any time following an event of default, Park, shall, at its option, have the immediate right to re-enter the Premises, with or without legal process, and without terminating this Ground Lease. Should Park elect to re-enter, it may take such steps as it deems necessary to secure the Premises and to exclude Children's Museum and its agents and employees therefrom.

**Section 20.3 Waiver of Default.** The waiver by a party of the breach of any term, covenant or condition herein contained, or the doing of any matter or payment of any sum by another party not required of it by the terms hereof shall not be deemed to be a waiver or amendment of that term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein. No covenant, term or condition of this Ground Lease shall be deemed to have been waived by a party, unless such waiver is in writing and signed by such party.

**Section 20.4 Remedies Cumulative.** All remedies provided to a party under this Ground Lease are intended to be cumulative, and any one or more may be exercised by a party, at its option. The exercise by a party of any remedy reserved to it under this Ground Lease or provided by law is not intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute

## **ARTICLE 21. SURRENDER OF PREMISES**

**Section 21.1 Children's Museum's Obligations.** At the expiration of Children's Museum's right to possession of the Premises whether expiration of the term of this Ground Lease, abandonment of the Premises by Children's Museum or as a consequence of the occurrence of an event of default, Children's Museum shall surrender to Park the Premises, including all Improvements, in good condition and order, ordinary wear and tear and damage by insured casualty excepted, and shall turn over to Park all keys for the Premises and shall inform Park of all combinations on locks, safes and vaults, if any, in the Premises. Children's Museum shall, at its expense, remove all its trade fixtures, furniture and signs before surrendering the Premises and shall repair any damage to the Premises caused thereby. The provisions of this Section 21.1 shall survive the expiration or termination of this Ground Lease.

**Section 21.2 Holding Over.** Any holding over after the expiration of the term of this Ground Lease, without the consent of the Park shall, unless otherwise agreed by the parties in writing, be construed to be a tenancy from month to month, with monthly rent payable at the rate of one dollar (\$1.00) per month, and shall otherwise be on the terms and conditions herein specified, so far as applicable.



**ARTICLE 22.**  
**ACCESS TO PREMISES**

**Section 22.1 Posting Notices.** Provided Park gives Children's Museum or Children's Museum's manager at the Premises reasonable prior notice thereof, Children's Museum shall permit Park and the authorized representatives of Park to enter the Premises at all reasonable times (which times shall be selected to minimize interference with Children's Museum's business) for the purpose of inspecting the Premises, or serving, or posting, or keeping posted thereon any notices required by Federal and State laws and for such other lawful purpose which Park may deem reasonably necessary or appropriate for the protection of Park or its interest in the Premises.

**Section 22.2 Park's Access to the Land.** Park shall be authorized to install, maintain, repair and replace utility facilities, such as water, gas, electric and telephone lines and underground storm and sanitary sewers on the Premises. Construction of any such utility facilities shall be undertaken at the sole cost and expense of Park, and at such times and in a manner so as to minimize any loss of access to or use of buildings or parking on the Premises. Any damage occasioned to the Premises by reason of the installation, maintenance, repair, or replacement of such utilities on the Land shall be repaired by Park. Nothing contained in this provision shall require Park to construct, modify, or repair any utilities servicing the Premises.

It is anticipated Park may have to utilize the Premises as a means to access certain portions of Park's property adjacent to the Premises. If Park causes any portion of the Premises to be damaged in any way, Park shall be responsible to return that portion of the Premises back to the same or substantially similar state it was in prior to the Park's damage.

**ARTICLE 23.**  
**PROTECTION OF LENDERS**

**Section 23.1 Estoppel Certificate.** Park and Children's Museum each agree that it will, within twenty (20) business days following written notice by the other party hereto specifying that it is given pursuant to this provision, execute, acknowledge and deliver to the party who gave such notice, a statement, in writing, certifying: (i) this Ground Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications) and (ii) stating whether or not, to the best of knowledge of the signer of such certificate, the other party is in default in performance of any covenant, agreement or condition contained in this Ground Lease, and, if so, specifying each such default of which the signer may have knowledge.

The failure of either party to execute, acknowledge and deliver to the other a statement in accordance with the foregoing provisions within the twenty (20) day period shall constitute an acknowledgment by the party given such notice, which may be relied on by any person holding or proposing to acquire an interest in the Premises or this Ground Lease from or through the other party, that this Ground Lease is unmodified and in full force and effect.

**ARTICLE 24.**  
**OTHER PROVISIONS**

**Section 24.1 Excuse for Non-Performance.** Notwithstanding anything in this Ground Lease to the contrary, if performance of any act or obligation is prevented or delayed by an act of god, war, labor disputes, fire, windstorm, explosion, collapse of structure, riot, government regulation, delays by government bodies or any other cause or causes, beyond the reasonable control of Park or Children's Museum (except those unlisted causes relating to the financial status of Park or Children's Museum or general economic conditions), the time for the performance of the act or obligation will be extended for the period that such act or performance is delayed or prevented by any such cause.

**Section 24.2 Successors.** All rights and liabilities herein given to, or imposed upon, the Park or Children's Museum shall extend to and bind the respective heirs, executors, administrators, successors, and assigns; and if there shall be more than one sublandlord or subtenant, they shall all be bound jointly and severally by the terms, covenants, conditions and agreements herein. No rights, however, shall inure to the benefit of any assignee of Children's Museum required to be approved by Park pursuant to the terms hereof unless the assignment has been approved by Park in writing.

**Section 24.3 Consent and Approval.** Whenever under this Ground Lease the consent or approval of Park or Children's Museum is required, such consent or approval shall not be unreasonably withheld or delayed.

**Section 24.4 Notices.** Any notice, demand, request or other instrument required to be given under this Ground Lease shall be delivered in person to a director, Board Member, officer, or executive director, or sent by United States certified mail, postage prepaid, and addressed: (i) if to Park, at Park's address specified herein or at such other address as it may designate in writing, and (ii) if to Children's Museum, at the address specified herein or such other address as Children's Museum shall designate in writing.

**Section 24.5 Captions.** The captions used as headings for the various subject matters appearing in this Ground Lease are used only as a matter of convenience to help find subject matters and are not to be construed as part of this Ground Lease provisions nor in determining the intent of the parties to this Ground Lease.

**Section 24.6 Brokerage.** Each of the parties represents and warrants that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Ground Lease, and each of the parties agrees to indemnify the other against, and hold it harmless from, all liabilities arising from any such claim (including, without limitation, the cost of attorney's fees in connection therewith).

**Section 24.7 Severability.** If any term, covenant or condition of this Ground Lease shall, to any extent, be found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Ground Lease, or the application of such term, covenant or condition to person or circumstances; other than those in respect to which it is held invalid or

unenforceable, shall not be affected thereby and each term, covenant or condition of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

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**Section 24.8 No Option.** The submission of this Ground Lease for examination does not constitute a reservation of, or option for, the Premises. This Ground Lease becomes effective upon execution and delivery thereof by Park and Children's Museum.

**Section 24.9 Entire Agreement.** This Ground Lease sets forth all the covenants, promises, agreements, conditions and understandings between Park and Children's Museum concerning the Premises or matters related thereto. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between Park and Children's Museum and related directly to the ground leasing of the Premises other than those set forth in this Ground Lease. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Ground Lease shall be binding upon Park or Children's Museum unless reduced to writing and signed by both parties.

IN WITNESS WHEREOF, Park and Children's Museum have signed this Ground Lease as of the day and year first above written

THE MINOT PARK DISTRICT

CHILDREN'S MUSEUM OF  
MINOT, INC.

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

\_\_\_\_\_  
Its:

\_\_\_\_\_  
Its:







**TO:** Mayor Shaun Sipma  
Members of the City Council

**FROM:** John R. Zakian, DR Grant Program Manager & Chief Resilience Officer

**DATE:** August 23, 2018

**SUBJECT: APPROVAL OF NON-SUBSTANTIAL AMENDMENT #9 ALLOCATION #2**

**I. RECOMMENDED ACTION**

City Council approve Non-Substantial (Technical) Amendment #9 for CDBG-DR Allocation #2

**II. DEPARTMENT CONTACT PERSONS**

John R. Zakian, DR Program Manager & Chief Resilience Officer, 423-4528

**III. DESCRIPTION**

A. Background

Pursuant to HUD rules related to what is known as Sandy Allocations which is the source of funding for the city's CDBG-DR Allocation #2, Non-Substantial (also known as technical amendments) Amendments do not require public comment and do not need pre-approval by HUD. Such amendments are allowed as long as beneficiary, activity, and/or move of more than \$1 million between projects in different budget categories do not occur (rules are different for CDBG-NDR). All changes in this amendment involve minor adjust of accounts based on project close-out or winding down projects. The one exception is recently approved \$50,000 for the Anne Street Bridge study for which funds are being transferred from administration to the previously defunded line item for the Anne Street Bridge Study. All of these adjustments reflect the city's aggressive fiscal oversight to assure all funds in this allocation are spent by the July, 2019 deadline (this deadline is different than the CDBG-NDR which is September, 30, 2022, and Allocation #1 which is not from a Sandy allocation and does not have a deadline). Less than 3 per cent of the funds remain to be fully spent from the \$34 million grant.

B. Proposed Project

Upon approval of the City Council, this amendment will be filed with HUD pursuant to the applicable rules and five days after such submission will be effected. The amendment will also be posted on the city website. It should be noted that HUD is fully aware of all these adjustments because they are being reported in the online HUD financial reporting system known as DRGR.

**IV. IMPACT:**

A. Strategic Impact:

Continues city progress to assure all funds for Allocation #2 are spent by July, 2019.

B. Service/Delivery Impact:

Supports feasibility assessment for Anne Street Bridge.

C. Fiscal Impact:

N/A

**V. ALTERNATIVES**

N/A

**VI. TIME CONSTRAINTS**

**VII. LIST OF ATTACHMENTS**

- i. Non-Substantial Amendment #9



**COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY  
ACTION PLAN AMENDMENT #9**



**For CDBG-DR Disaster Recovery Funds  
Department of Housing and Urban Development Appropriations Act, 2013  
(Public Law 113-2, approved January 29, 2013, Second Allocation May 29, 2013)  
Thursday, September 13, 2018**

**City of Minot, North Dakota  
Shaun Sipma, Mayor**



# City of Minot CDBG Disaster Recovery Action Plan

## Non-Substantial Amendment #9

### THE CITY OF MINOT ACTION PLAN AMENDMENT #9

As projects are being completed, the City is making adjustments to the activity budgets in the Action Plan. The following summarizes the budget changes being made:

ACTIVITIES	BUDGET	CHANGE	NEW BUDGET
14th, 16th and 46th Street Repair project	\$ 2,370,511.43	\$ -	\$ 2,370,511.43
Street Repairs and Improvements FIA	6,529,926.56	-	6,529,926.56
Street Repairs and Improvements 55th	2,765,112.98	-	2,765,112.98
Reimbursements Homeowners	5,676,683.00	-	5,676,683.00
Buyouts/Acquisitions of Flooded Properties	14,556,741.99	57,659.27	14,614,401.26
Demolition of Acquired Properties	2,188,706.04	-	2,188,706.04
Planning	-	50,000.00	50,000.00
Resilience Program	378,117.65	10,000.00	388,117.65
Administration	590,200.35	(117,659.27)	472,541.08
Total	<u>\$35,056,000.00</u>	<u>\$0.00</u>	<u>\$35,056,000.00</u>

The following summarizes obligation changes being made:

ACTIVITIES	OBLIGATION	CHANGE	UPDATED OBLIGATION
14th, 16th and 46th Street Repair project	\$ 2,370,511.43	\$ -	\$ 2,370,511.43
Street Repairs and Improvements FIA	6,529,926.56	-	6,529,926.56
Street Repairs and Improvements 55th	2,765,112.98	-	2,765,112.98
Reimbursements Homeowners	5,676,683.00	-	5,676,683.00
Buyouts/Acquisitions of Flooded Properties	14,556,741.99	57,659.27	14,614,401.26
Demolition of Acquired Properties	2,188,706.04	-	2,188,706.04
Planning	-	50,000.00	50,000.00
Resilience Program & Planning	378,117.65	10,000.00	388,117.65
Administration	590,200.35	(117,659.27)	472,541.08
CDM Smith Case Management Project Delivery	-	-	-
Total	<u>\$ 35,056,000.00</u>	<u>(\$0.00)</u>	<u>\$35,056,000.00</u>

[Non-English speaking individuals and individuals with disabilities may request auxiliary aids and services necessary for participation by contacting Tami Stroklund, Executive Secretary, PO Box 5006, Minot, North Dakota 58702-5006, or tami.stroklund@minotnd.org. Alternatively, they may access the State of North Dakota for assistance at the following numbers:](#)

800.366.6888 or 711:TTY	800.366.6889 or 711:Voice	800.435.8590 or 711:Spanish
877.366.3709:900 Services	877.366.3709:Speech To Speech	

# City of Minot CDBG Disaster Recovery Action Plan

## Non-Substantial Amendment #9

### Method of Distribution for Program Activities

Proposed Activities	Estimated Total Costs	Estimated CDBG-DR Funds	Funds Obligated		Estimated Funds – Other Sources	Eligible Activity and National Objective Citation
<b>Acquisition, Buyouts, &amp; Relocation of Flooded Properties</b> – The City will use CDBG funds as match for State funds intended to buy flooded properties that may be used for green space or flood access/control						Acquisition [24 CFR 570.201(a)] Nat. Obj: Urgent Need [24 CFR 570.208(d)] and LMI Housing [24 CFR 570.208(e)(3)]
	\$51,566,600.00	\$12,891,650.00	\$1,650,000.00	1	\$38,674,950.00	
<b>AMENDMENT #1</b> -- Monies are being moved to the Demolition activity						
	(6,816,000.00)	(1,704,000.00)	6,665,737.50	4	(5,112,000.00)	
<b>Total</b>	<b>44,750,600.00</b>	<b>11,187,650.00</b>	<b>8,315,737.50</b>		<b>33,562,950.00</b>	
<b>AMENDMENT #2</b> – Better cost estimates on properties to be acquired. Reduction of funds for the activity						
	(2,748,360.00)	(687,090.00)	-		(2,061,270.00)	
<b>Total</b>	<b>42,002,240.00</b>	<b>10,500,560.00</b>	<b>8,315,737.50</b>		<b>31,501,680.00</b>	
<b>AMENDMENT #3</b> – Reduces budget by \$350,000 to be moved into Resilience Planning activity						
	(350,000.00)	(350,000.00)	-		-	
<b>Total</b>	<b>41,652,240.00</b>	<b>10,150,560.00</b>	<b>8,315,737.50</b>		<b>31,501,680.00</b>	
<b>AMENDMENT #3</b> – Move Project Delivery to activity it pertains to.						
	3,126,705.00	3,476,705.00	3,476,705.00		(262,500.00)	
<b>Total</b>	<b>44,778,945.00</b>	<b>13,627,265.00</b>	<b>11,792,442.50</b>		<b>31,239,180.00</b>	
<b>AMENDMENT #4</b> – Move monies to cover overruns						
	10,863,738.00	407,040.00	42,907.75		10,863,738.00	
<b>Total</b>	<b>56,137,222.00</b>	<b>14,034,305.00</b>	<b>11,835,350.25</b>		<b>42,102,918.00</b>	
<b>AMENDMENT #5</b> - Moving project delivery out of other activities into acquisition						
	5,070.57	5,071.05	-		-	
<b>Total</b>	<b>56,142,292.57</b>	<b>14,039,376.05</b>	<b>11,835,350.25</b>		<b>42,102,918.00</b>	
<b>AMENDMENT #6</b> – Reallocated obligated funds						
	494,539.00	-	731,656.03		494,539.00	
<b>AMENDMENT #6</b> – Move monies to Demolitions to cover cost overruns						
	(147,840.00)	(147,840.00)	(147,840.00)		(1.48)	
<b>Total</b>	<b>\$56,488,991.57</b>	<b>\$13,891,536.05</b>	<b>\$12,419,166.28</b>		<b>\$42,597,455.52</b>	
<b>AMENDMENT #7</b> – Reallocated obligated funds						
	(397,217.45)	(397,217.45)	(497,217.45)		-	
<b>Total</b>	<b>\$56,091,774.12</b>	<b>\$13,494,318.60</b>	<b>\$11,921,948.83</b>		<b>\$42,597,455.52</b>	
<b>AMENDMENT #8</b> – Reallocated obligated funds and final obligation of remaining funds						
	\$1,061,129.43	\$1,061,129.43	\$2,633,499.20	10	-	
<b>Total</b>	<b>\$57,152,903.55</b>	<b>\$14,555,448.03</b>	<b>\$14,555,448.03</b>		<b>\$42,597,455.52</b>	
<b>AMENDMENT #9</b> - Move monies to cover overruns						
	\$57,659.27	\$58,953.23	\$58,953.23		\$0.00	
<b>Total</b>	<b>\$57,210,562.82</b>	<b>\$14,614,401.26</b>	<b>\$14,614,401.26</b>		<b>\$42,597,455.52</b>	
<b>Street Repairs and Improvements of Roads Damaged by Floods in the Inundated Flood Area</b> – Funds fully obligated						Rehabilitation [24 CFR 570.22] Nat. Obj: Urgent Need [24 CFR 570.208(d)]
	\$9,108,700.00	\$9,108,700.00	\$9,108,700.00		\$0.00	
<b>AMENDMENT #2</b> – Project bid was lower than anticipated						
	(1,867,874.00)	(1,867,874.00)	(1,867,874.00)	9		
<b>Total</b>	<b>7,240,826.00</b>	<b>7,240,826.00</b>	<b>7,240,826.00</b>			
<b>AMENDMENT #3</b> – Move Project Delivery to activity it pertains to. No new funds obligated						
	50,000.00	50,000.00	50,000.00			
<b>Total</b>	<b>7,290,826.00</b>	<b>7,290,826.00</b>	<b>7,290,826.00</b>			
<b>AMENDMENT #4</b> – Project Complete						
	(757,899.44)	(757,899.44)	-			
<b>Total</b>	<b>6,532,926.56</b>	<b>6,532,926.56</b>	<b>7,290,826.00</b>			
<b>AMENDMENT #5</b> - Project delivery moved out of activity						
	(3,000.00)	(3,000.00)	-			

# City of Minot CDBG Disaster Recovery Action Plan

## Non-Substantial Amendment #9

### Method of Distribution for Program Activities

Proposed Activities	Estimated Total Costs	Estimated CDBG-DR Funds	Funds Obligated		Estimated Funds – Other Sources	Eligible Activity and National Objective Citation
<b>Total</b>	<b>6,529,926.56</b>	<b>6,529,926.56</b>	<b>7,290,826.00</b>			
<b>AMENDMENT #6</b> – Reallocated obligated funds	-	-	(760,899.44)			
<b>Total</b>	<b>\$6,529,926.56</b>	<b>\$6,529,926.56</b>	<b>\$6,529,926.56</b>			
<b>Reimbursement of Homeowner Repair Expenses for Flood Damages</b> – Funds fully obligated	\$5,000,000.00	\$5,000,000.00	\$5,000,000.00		\$0.00	Rehabilitation [24 CFR 570.202] Nat. Obj: LMI Housing
<b>AMENDMENT #2</b> – Project is Complete	(1,480,410.00)	(1,480,410.00)	(1,480,410.00)			
<b>Total</b>	<b>3,519,590.00</b>	<b>3,519,590.00</b>	<b>3,519,590.00</b>			
<b>AMENDMENT #3</b> – Move Project Delivery into activity it pertains to. No new funds obligated	2,200,000.00	2,200,000.00	2,200,000.00			
<b>Total</b>	<b>5,719,590.00</b>	<b>5,719,590.00</b>	<b>5,719,590.00</b>			
<b>AMENDMENT #4</b> – Project Completed	(42,907.00)	(42,907.00)	(42,907.00)			
<b>Total</b>	<b>\$5,676,683.00</b>	<b>\$5,676,683.00</b>	<b>\$5,676,683.00</b>			
<b>14<sup>th</sup>, 16<sup>th</sup>, and 46<sup>th</sup> Street Repair Project</b>	\$2,546,825.00	\$2,546,825.00	\$2,546,825.00		\$0.00	Infrastructure [24 CFR 570.201(c)] Nat. Obj: Low Mod Area Benefit [24 CFR 570.208(a)(3)]
<b>AMENDMENT #2</b> – Project bid was lower than anticipated	(437,831.00)	(437,831.00)	(437,831.00)			
<b>Total</b>	<b>2,108,994.00</b>	<b>2,108,994.00</b>	<b>2,108,994.00</b>			
<b>AMENDMENT #3</b> – Move Project Delivery into activity it pertains to. No new funds obligated	60,000.00	60,000.00	60,000.00			
<b>Total</b>	<b>2,168,994.00</b>	<b>2,168,994.00</b>	<b>2,168,994.00</b>			
<b>AMENDMENT #4</b> – Move monies due to cost overrun	203,588.43	203,588.43	-			
<b>Total</b>	<b>2,372,582.43</b>	<b>2,372,582.43</b>	<b>2,168,994.00</b>			
<b>AMENDMENT #5</b> - Move project delivery out of activity	(2,070.57)	(2,070.57)	-			
<b>Total</b>	<b>2,370,511.86</b>	<b>2,370,511.86</b>	<b>2,168,994.00</b>			
<b>AMENDMENT #6</b> – Reallocated obligated funds	-	-	201,517.43			
<b>Total</b>	<b>\$2,370,511.86</b>	<b>\$2,370,511.86</b>	<b>\$2,370,511.43</b>			
<b>AMENDMENT #8</b> – Reallocated obligated funds	(0.43)	(0.43)	-			
<b>Total</b>	<b>\$2,370,511.43</b>	<b>\$2,370,511.43</b>	<b>\$2,370,511.43</b>			
<b>Demolition of Buyouts and Acquisition - Demolition of flooded properties.</b>						Acquisition [24 CFR 570.201(d)] Nat. Obj: Urgent Need [24 CFR 570.208(d)]
<b>AMENDMENT 1</b> – Added new activity; Moved funds from buyouts; Need to obligate \$802,000	\$7,216,000.00	\$1,704,000.00	\$802,000.00	6	\$5,412,000.00	
<b>AMENDMENT #1</b> – Moved from Anne Street Bridge; The \$100,000 obligated under the Bridge activity	100,000.00	100,000.00	100,000.00		-	
<b>Total</b>	<b>7,316,000.00</b>	<b>1,804,000.00</b>	<b>902,000.00</b>		<b>5,412,000.00</b>	
<b>AMENDMENT #3</b> – Move Project Delivery into activity it pertains to. No new funds obligated	265,000.00	265,000.00	265,000.00			
<b>Total</b>	<b>7,581,000.00</b>	<b>2,069,000.00</b>	<b>1,167,000.00</b>			
<b>AMENDMENT #4</b> – Add monies due to cost overrun	1,882,356.00	362,451.90	-		1,882,356.00	
<b>Total</b>	<b>9,725,807.90</b>	<b>2,431,451.90</b>	<b>1,167,000.00</b>		<b>7,294,356.00</b>	
<b>AMENDMENT #6</b> – Reallocated obligated funds	(362,451.90)	-	-		(362,451.90)	
<b>AMENDMENT #6</b> – Move monies from Acquisition to cover cost overruns	147,840.00	147,840.00	147,840.00		-	
<b>Total</b>	<b>\$9,511,196.00</b>	<b>\$2,579,291.90</b>	<b>\$1,314,840.00</b>		<b>\$6,931,904.10</b>	
<b>AMENDMENT #7</b> – Reallocated obligated funds	\$397,217.45	\$397,217.45	\$397,217.45		-	

# City of Minot CDBG Disaster Recovery Action Plan

## Non-Substantial Amendment #9

### Method of Distribution for Program Activities

Proposed Activities	Estimated Total Costs	Estimated CDBG-DR Funds	Funds Obligated		Estimated Funds – Other Sources	Eligible Activity and National Objective Citation
<b>Total</b>	<b>\$9,908,413.45</b>	<b>\$2,976,509.35</b>	<b>\$1,712,057.45</b>		<b>\$6,931,904.10</b>	
<b>AMENDMENT #8</b> – Reallocated obligated funds and final obligation of remaining funds	(\$786,509.35)	(\$786,509.35)	\$477,942.55	10	\$0.00	
<b>Total</b>	<b>\$9,121,904.10</b>	<b>\$2,190,000.00</b>	<b>\$2,190,000.00</b>		<b>\$6,931,904.10</b>	
<b>AMENDMENT #9</b> - Move monies to correct Estimated CDBG-DR Funds difference		(\$1,293.96)	(\$1,293.96)		\$0.00	
<b>Total</b>	<b>\$9,121,904.10</b>	<b>\$2,188,706.04</b>	<b>\$2,188,706.04</b>		<b>\$6,931,904.10</b>	
<b>Street Repairs and Improvements 55th Crossing-</b> Street repairs to serve the residents of the 55th Crossing Subdivision						Infrastructure [24 CFR 570.201(c)] Nat. Obj: Low Mod Area Benefit [24 CFR 570.208(a)(3)]
<b>AMENDMENT #2</b> – Added New Activity No new funds obligated – funds were from other projects that were already obligated	\$2,905,705.00	\$2,905,705.00	\$19,098.00		\$0	
<b>Total</b>	<b>2,905,705.00</b>	<b>2,905,705.00</b>	<b>19,098.00</b>			
<b>AMENDMENT #3</b> – In Amendment #2, there was \$3,786,115 moved from various projects that was previously obligated; \$19,098 was used on the activity and \$2,747,837 was used on the Project Delivery activity. This left \$1,019,180 not specifically identified to a project activity. It is now being added to this activity.	-	-	1,019,180.00			
<b>AMENDMENT #3</b> – Requires obligation of the additional funds for the completion of this project	-	-	1,867,427.00			
<b>AMENDMENT #3</b> – Move Project Delivery into activity it pertains to. No new funds obligated	20,000.00	20,000.00	20,000.00			
<b>Total</b>	<b>2,925,705.00</b>	<b>2,925,705.00</b>	<b>2,925,705.00</b>			
<b>AMENDMENT #4</b> – Project Completed	(160,592.02)	(160,592.02)				
<b>Total</b>	<b>2,765,112.98</b>	<b>2,765,112.98</b>	<b>2,925,705.00</b>			
<b>AMENDMENT #6</b> – Reallocated obligated funds	\$0.00	\$0.00	(160,592.02)			
<b>Total</b>	<b>\$2,765,112.98</b>	<b>\$2,765,112.98</b>	<b>\$2,765,112.98</b>			
<b>Planning</b>						
<b>Anne Street Bridge</b>	\$100,000.00	\$100,000.00	\$100,000.00			Planning [24 CFR 570.205] Nat. Obj: N/A
<b>AMENDMENT #1</b> – Bridge has already been evaluated; therefore, the City is deleting this activity and moving monies into demolition.	(100,000.00)	(100,000.00)	(100,000.00)		\$0.00	
<b>Total</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
<b>AMENDMENT #9</b> - Move funds back to Anne Street Bridge Study per Council's approval	50,000.00	50,000.00	50,000.00			
<b>Total</b>	<b>\$50,000.00</b>	<b>\$50,000.00</b>	<b>\$50,000.00</b>			
<b>Strategic Resilience Plan and Application</b>						Planning [24 CFR 570.205] Nat. Obj: N/A
<b>AMENDMENT #3</b> – Reduces acquisition and adds a new activity	\$350,000.00	\$350,000.00	\$350,000.00	7		
<b>Total</b>	<b>350,000.00</b>	<b>350,000.00</b>	<b>350,000.00</b>			
<b>AMENDMENT #4</b> – Activity Complete	(11,682.35)					
<b>Total</b>	<b>338,317.65</b>	<b>350,000.00</b>	<b>350,000.00</b>			

# City of Minot CDBG Disaster Recovery Action Plan

## Non-Substantial Amendment #9

### Method of Distribution for Program Activities

Proposed Activities	Estimated Total Costs	Estimated CDBG-DR Funds	Funds Obligated		Estimated Funds – Other Sources	Eligible Activity and National Objective Citation
<b>AMENDMENT #5-</b> Moves monies to administration	(21,882.35)	(21,882.35)				
<b>Total</b>	<b>316,435.30</b>	<b>328,117.65</b>	<b>350,000.00</b>			
<b>AMENDMENT #6-</b> Moves monies from administration.	11,682.35	-	(21,882.35)			
<b>Total</b>	<b>\$328,117.65</b>	<b>\$328,117.65</b>	<b>\$328,117.65</b>			
<b>AMENDMENT #9 - Move monies to cover overruns</b>	\$10,000.00	\$10,000.00	\$10,000.00			
<b>Total</b>	<b>\$338,117.65</b>	<b>\$338,117.65</b>	<b>\$338,117.65</b>			
Project Delivery						
<b>CDM Smith</b> – Case management, construction management, and other service necessary to implement an activity						Dependent
	\$3,656,825.00	\$3,656,825.00	\$1,921,825.00	2		
<b>AMENDMENT #1</b> – Project Delivery is being increased by \$847,380	847,380.00	847,380.00	-			
<b>Total</b>	<b>4,504,205.00</b>	<b>4,504,205.00</b>	<b>1,921,825.00</b>			
<b>AMENDMENT #2</b> – Project Delivery is being increased due to additional properties being acquired. The City requests new obligation.	1,567,500.00	1,567,500.00	1,402,043.75	5		
<b>AMENDMENT #2</b> – Funds were moved from three other projects and were previously obligated	-	-	2,747,837.00		\$0.00	
<b>Total</b>	<b>6,071,705.00</b>	<b>6,071,705.00</b>	<b>6,071,705.75</b>			
<b>AMENDMENT #3</b> – Project Delivery moved into activity it pertains to.	(6,071,705.00)	(6,071,705.00)	(6,071,705.00)			
<b>Total</b>	<b>0.00</b>	<b>0.00</b>	<b>0.75</b>			
<b>AMENDMENT #6-</b> Obligation reallocated to Reimbursements in amendment #3	-	-	(0.75)			
<b>Total</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>			
Administration						
<b>City of Minot Administration</b>	\$1,752,000.00	\$1,752,000.00	\$80,000.00	3		Administration [24 CFR] Nat. Obj: N/A
<b>AMENDMENT #1</b> – Administration is being reduced by \$847,380.00	(847,380.00)	(847,380.00)	-			
<b>Total</b>	<b>904,620.00</b>	<b>904,620.00</b>	<b>80,000.00</b>			
<b>AMENDMENT #3</b> – The City wishes to obligate an additional \$100,000 with the Amendment	-	-	100,000.00	8		
<b>Total</b>	<b>904,620.00</b>	<b>904,620.00</b>	<b>180,000.00</b>			
<b>AMENDMENT #5-</b> Moving monies from resilience activity to administration	21,882.35	21,882.35				
<b>Total</b>	<b>926,502.35</b>	<b>926,502.35</b>	<b>180,000.00</b>			
<b>AMENDMENT #6-</b> Moving monies to Resilience.	(11,682.35)	(11,682.35)	10,200.35		\$0.00	
<b>Total</b>	<b>\$914,820.00</b>	<b>\$914,820.00</b>	<b>\$190,200.35</b>			
<b>AMENDMENT #7</b> – Reallocated obligated funds	\$0.00	\$0.00	\$100,000.00			
<b>Total</b>	<b>\$914,820.00</b>	<b>\$914,820.00</b>	<b>\$290,200.35</b>			
<b>AMENDMENT #8</b> – Reallocated obligated funds and final obligation of remaining funds	(\$274,619.65)	(\$274,619.65)	\$350,000.00	10		
<b>Total</b>	<b>\$640,200.35</b>	<b>\$640,200.35</b>	<b>\$640,200.35</b>			
<b>AMENDMENT #9 - Move monies to cover overruns</b>	(\$117,659.27)	(\$117,659.27)	(\$117,659.27)			
<b>Total</b>	<b>\$522,541.08</b>	<b>\$522,541.08</b>	<b>\$522,541.08</b>			

## City of Minot CDBG Disaster Recovery Action Plan Non-Substantial Amendment #9

### Method of Distribution for Program Activities

Proposed Activities	Estimated Total Costs	Estimated CDBG-DR Funds	Funds Obligated	Estimated Funds – Other Sources	Eligible Activity and National Objective Citation
<b>Total</b>	<b>\$84,585,359.62</b>	<b>\$35,056,000.00</b>	<b>\$35,056,000.00</b>	<b>\$49,529,359.62</b>	
1 The City wishes to obligate only \$1,650,000 through this Action Plan (Original Obligation)					
2 The City wishes to obligate only \$1,921,825 through this Action Plan (Original Obligation)					
3 The City wishes to obligate only \$80,000 through this Action Plan (Original Obligation)					
4 The City wishes to obligate additional monies in the amount of \$6,665,737.50 through Amendment #1					
5 The City wishes to obligate additional monies in the amount of \$1,402,043.75 through Amendment #2					
6 The City wishes to obligate additional monies in the amount of \$802,000 through Amendment #1					
7 The City wishes to obligate additional monies in the amount of \$350,000 through Amendment #3					
8 The City wishes to obligate additional monies in the amount of \$100,000 through Amendment #3					
9 The City wishes to obligate additional monies in the amount of \$1,867,874 through Amendment #3					
10 The City wishes to make a final obligation of monies in the amount of \$3,461,441.75 through Amendment #8					



**TO:** Mayor Shaun Sipma  
Members of the City Council

**FROM:** John R. Zakian, DR Grant Program Manager & Chief Resilience Officer

**DATE:** August 23, 2018

**SUBJECT: AUTHORIZE EMINENT DOMAIN FOR THREE CDBG-NDR ACQUISITIONS**

**I. RECOMMENDED ACTION**

City Council authorize the Eminent Domain Process to commence for acquisition of 435 Fourth Avenue NE, 19 Fifth Street NE, and 10 Sixth Street NE

**II. DEPARTMENT CONTACT PERSONS**

John R. Zakian, DR Program Manager & Chief Resilience Officer, 423-4528

**III. DESCRIPTION**

**A. Background**

These three properties are located in what is identified as Buyout Area #4 in the HUD approved CDBG-NDR Action Plan. The city has carried out the due diligence with the owners of these properties as set forth in HUD's involuntary acquisition guidelines and the requirements of the federal Uniform Relocation Act including undertaking an independent appraisal, an independent review appraisal, administrative conformation of the appraisal, making an initial offer to the property owner based on the value established through the independent appraisal process, allowing sufficient time for the property owner to make a counter offer, city response to the counter offer, affording the property owner to appear and make a case of his/her proposed counter offer to the Appeals Committee, and a minimum 30 day opportunity for the property owner to accept the recommendation of the Appeals Committee which had already been accepted by the DR Grant Program Manager. The use of involuntary acquisition which may include Eminent Domain is predicated on the HUD and URA requirement that acquisition is for an acceptable public purpose (flood mitigation and control measures are acceptable), there is a defined boundary for such public purpose projects for there is no discretion in the properties to be acquired, there is a defined project, and there is a known timeline necessary to acquire the property. The timeline for flood mitigation projects communicated through the Joint Souris Water Board and coordinated with the city of Minot Public Works Department has reported the need for these properties no later than the end of summer, 2019. Because of the wide variation experienced in North Dakota courts in terms of scheduling and reaching conclusion in Eminent Domain cases, there is need now to authorize commencement of the Eminent Domain process. The requirement for City Council authorization is set forth in the policies and procedures established for the involuntary acquisition program. There is currently one Eminent Domain case now in the courts.

**B. Proposed Project**

Letters have been sent to the affected property owners advising them of this step of recommending commencement of Eminent Domain proceedings but informing them that the opportunity continues for them to avoid legal proceedings by accepting the final offer made.

Authorizing Eminent Domain proceedings by the City Council does not mean we will not continue to seek a resolution of the acquisition outside of a court decision. It does trigger the city's use of the outside counsel under contract for Eminent Domain proceedings. If you will recall, both Home Sweet Home and Open Gate Church had advanced to Eminent Domain authorization but were resolved prior to pursuing a court decision.

**IV. IMPACT:**

A. Strategic Impact:

Provides all necessary options for city to acquire the properties on a timely basis consistent with flood control projects' timelines.

B. Service/Delivery Impact:

Properties need to be acquired in support of flood control projects.

C. Fiscal Impact:

All costs including outside counsel fees will be charged to CDBG-NDR acquisition allocation.

**V. ALTERNATIVES**

N/A

**VI. TIME CONSTRAINTS**

Property acquisition according to current flood projects' timelines need to be completed before end of summer, 2019.

**VII. LIST OF ATTACHMENTS**