

COMMITTEE OF THE WHOLE

SEPTEMBER 21, 2020

6:00 PM

1. Updates on Main Street Project
2. Discussion MOU/Agreement

MASKS AND SOCIAL DISTANCING REQUIRED IF ATTENDING IN PERSON

NOTICE FOR, AND AGENDA FOR, A REGULAR MEETING OF THE CITY COMMISSION, CITY OF LEWISTOWN, SEPTEMBER 21, 2020 AT 7:00 P.M. AT THE CENTRAL MONTANA COMMUNITY CENTER LOCATED AT 307 W WATSON

To join by zoom:

<https://zoom.us/j/8486275925?pwd=dTVGbndDK253ZUJLMjRuZXU5QVpMdz09>

Meeting ID: 848 627 5925 Passcode: 59457

To participate by phone: dial (253) 215-8782 Meeting ID: 848 627 5925

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES – September 8, 2020

COURTESIES

PROCLAMATIONS

BOARD AND COMMISSION REPORTS

CITY MANAGER REPORT

PUBLIC COMMENT – non agenda items

CONSENT AGENDA

The acknowledgement of the claims that have been paid from September 1, 2020 to September 16, 2020 for a total of \$420,438.61

Approval of issuing a business license to Jacobson Electrical Contracting Inc.

Approval of issuing a business license to Triangle Electric Inc.

Approval of issuing a business license to 5 Star Heating and Cooling Inc.

Approval of issuing a business license to Sun Electric

***REGULAR AGENDA – Resolutions, Ordinance & Other Action Items:**

1. Discussion and action on Resolution No. 4037, a resolution approving an application for TIF Funds made to the Lewistown Tax Increment Finance District Board (**Action: approve, disapprove or amend Resolution No. 4037**) City Manager Holly Phelps
2. Discussion and action on entering into a Storm Drain Maintenance agreement between the City of Lewistown and the American Prairie Foundation (**Action: approve, disapprove or amend entering into a Storm Drain Maintenance agreement**) City Manager Holly Phelps
3. Discussion and action on City/State Memorandum of Agreement US 87 / N57 / Main Street – Lewistown September 2020 (**Action: approve, disapprove or amend Memorandum of Agreement US 87/N57/Main Street – Lewistown**) City Manager Holly Phelps

4. Discussion and action on approving the Police bargaining unit agreement for July 1, 2020 to June 30, 2023 (**Action: approve, disapprove or amend the Police bargaining unit agreement**)
City Manager Holly Phelps

5. City Manager Review – the meeting will be closed because the demands of individual privacy clearly exceed the merits of public disclosure in regards to the City Manager review.

CITIZENS' REQUESTS

COMMISSIONER'S MINUTE

ADJOURNMENT

* All citizens are invited to make comment on any agenda item prior to action being taken by the Commission

RESOLUTION NO. 4037

A RESOLUTION APPROVING AN APPLICATION FOR
TIF FUNDS MADE TO THE LEWISTOWN TAX
INCREMENT FINANCING DISTRICT BOARD

WHEREAS, the Lewistown City Commission has adopted Ordinance No. 1748 – An Ordinance establishing the Lewistown Urban Renewal Area, creating the Lewistown Urban Renewal District and adopting the Lewistown Urban Renewal District Plan; and

WHEREAS, by Resolution number 3903 the City created an Urban Renewal Agency per 7-15-4232 Montana Codes Annotated (MCA), which was designated as the “Lewistown Improvement District Board” to engage in activities authorized in 7-15-4234 MCA and provide administrative functions; and

WHEREAS, the Commission re-designated the “Lewistown Improvement District Board” as the “Lewistown Tax Increment Financing District Board” by Resolution 3923; and,

WHEREAS, the Commission appointed a Lewistown Tax Increment Financing District Board (hereafter, the “TIF Board”) in order to manage the Lewistown Urban Renewal District created by Ordinance 1748; and,

WHEREAS, the TIF Board oversees the operation of the Lewistown Urban Renewal District, including public purpose activities; promotional activities; façade building conservation and loan programs; and administrative functions; and,

WHEREAS, the TIF Board exercises those powers authorized by law as specified in Resolution 3923; and,

WHEREAS, the TIF Board has developed the Lewistown TIF District (LTD) Program whereby qualified applicants may apply for TIF District Program Funds for assistance in redevelopment or rehabilitation of properties within the Urban Renewal District; and,

WHEREAS, through its LTD Program the TIF Board has received numerous applications for TIF District Program Funds, has reviewed the same and, has recommended approval of several applicants for those funds; and,

WHEREAS, the City Commission has retained final budgetary authority for TIF program activities.

NOW, THEREFORE, BE IT RESOLVED, that the Lewistown City Commission hereby approves the following applications for TIF District Program Funds as recommended by the TIF Board:

1. Blue Stone Boutique LLC signage improvements, 502 W. Main St, Rhiannon Knox; \$1661 grant

BE IT FURTHER RESOLVED, that prior to disbursement of any TIF funds, all applicants shall enter into such Development Agreements as established and approved by the TIF Board.

PASSED AND APPROVED this ____ day of September, 2020.

Gayle Doney, Chairperson
Lewistown City Commission

Attest:

Nikki Brummond
City Financial Officer/Clerk

Lewistown TIF District Program Application

Project Name: Blue Stone Sign Date Submitted: 01/01/01 08/31/20

APPLICANT INFORMATION

1. Name: Rhiannon Knox
2. Address: 502 W Main St.
3. City/ST/Zip: Lewistown, MT 59457
4. Telephone Number(s): (406) 535-0000 (406) 350-0518

If the applicant is not an individual doing business under his/her own name, the applicant has the status indicated below and is organized or operating under the laws of:

- ☐ A Corporation
- ☐ A nonprofit or charitable institution or corporation
- ☐ A partnership known as _____
- ☒ Other (explain) Blue Stone Boutique LLC

PROJECT INFORMATION

1. Building Address: 502 W Main St. Lewistown, MT 59457
2. Legal Description: _____
3. **Property Owner:** (If property is not owned by Applicant, list leasehold interests)
Name of Owner(s): Nicole Wines
Address: PO Box 91, Pray MT, 59065
Telephone Number(s): (406) 535-0000 (406) 220-3329
E-Mail: _____

4. **Project Architectural Firm:** _____

Address: _____ N/A

Telephone Number: 535-0000

E-Mail: _____

5. **Project Financial Lending Institution:** _____

Address: _____ N/A

Telephone Number: 535-0000

E-Mail: _____

6. **Project Contractor:** Mid State Signs

Address: 215 Main St., (Winifred) MT, 59489

Telephone Number: 535-0000 (406) 462-7446

E-Mail: _____

7. **Existing/Proposed Business:** _____

Business Description:

8. **Description of Project:** Please provide a full written description of your project, including type of use, square footage, number of stories, number of parking spaces, general building materials, etc., **making sure to address the particular program design criteria described in the applicable program narrative under which your project falls.** Please indicate if the items are existing or new construction.

24" x 84" x 3" custom built single sided push through sign. Includes .063" painted aluminum returns, .125" aluminum routed face with .5" white acrylic push through with applied vinyl; Samsung 80Q LED lighting. Meanwell LED Power supply / supplies.

9. **Project Renderings:** Submit design schematic and/or site and landscaping plans for project.

10. **Total Cost of the Project:** Summarize a full breakdown of costs on the Project Cost Worksheet (Page 7)

11. **Property Ownership:** Do you own the property or are you currently purchasing it? NO

12. **Job Creation:** Will there be any new permanent or part time jobs as a result of this project excluding construction jobs associated with the development of the project? If so, how many? NO

13. **Project Financing:** Briefly describe how the project will be financed:

Self financed

14. **Project Completion:** What is the expected completion date of the project?

01/01/01

9/30/2020

15. **Property Taxes:** How much are the annual property taxes including any improvements? \$ 0.00

Are the taxes current?

Have you applied for tax abatement?

Do you intend to apply for tax abatement?

Has tax abatement been awarded on the property prior to your ownership?

N/A

16. The City reserves the right to recapture up to 100% of funds awarded by the TIF if the property is sold within 5 years. See Schedule below for payback schedule:

- i. Year 1 – 80%
- ii. Year 2 – 60%
- iii. Year 3 – 40%
- iv. Year 4 – 20%
- v. Year 5 and beyond – 0%

PROJECT COST WORKSHEET

Construction/Rehabilitation Costs

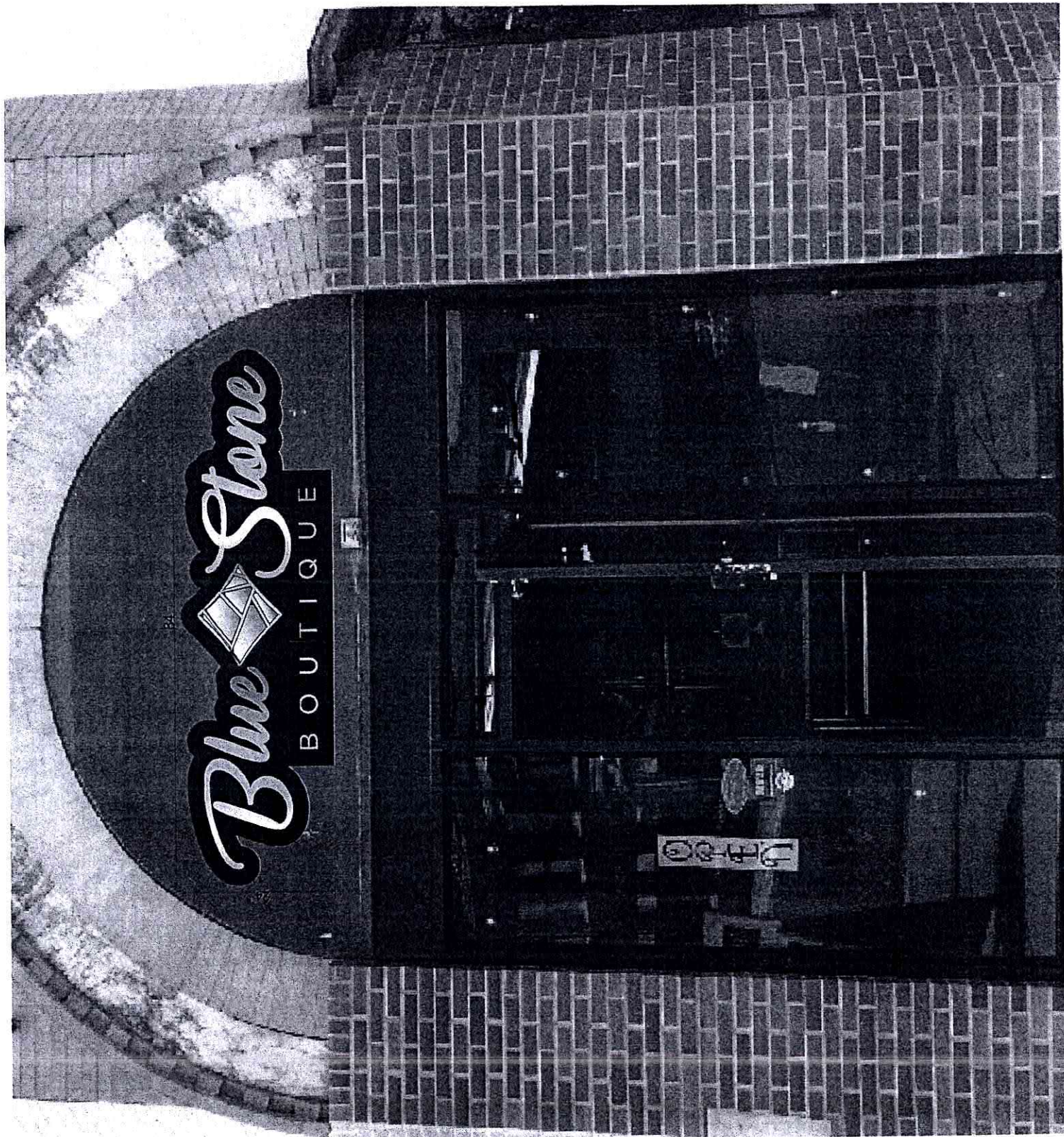
1. <u>Midstate Signs</u>	<u>\$ 0.00</u> 2222 ⁰⁰
2. <u>Electrician - Bid \$325 - 1000⁰⁰</u>	<u>\$ 0.00</u> 1000 ⁰⁰
3. _____	<u>\$ 0.00</u>
4. _____	<u>\$ 0.00</u>
5. _____	<u>\$ 0.00</u>
6. _____	<u>\$ 0.00</u>
7. _____	<u>\$ 0.00</u>
8. _____	<u>\$ 0.00</u>
Subtotal	<u>\$ 0.00</u>

Design and Permitting Costs

Architectural Design/Supervision	<u>\$ 0.00</u>
Permit Fees	<u>\$ 0.00</u> \$100 ⁰⁰
Other Fees	<u>\$ 0.00</u>
Subtotal	<u>\$ 0.00</u>

Total Project Development Costs

\$ 0.00
\$3322⁰⁰



STORM DRAIN MAINTENANCE AGREEMENT

This Storm Drain Maintenance Agreement ("Agreement") is made this ____ day of _____, 2020 by and between the City of Lewistown (hereafter "City") and the American Prairie Foundation hereafter ("Owner"), to include its heirs and assigns, together hereafter referred to as the parties.

RECITALS

Whereas, Owner owns several contiguous lots (the "Property") in the City, described as follows:

Lewistown Original Townsite, S15, T15 N, R18 E. Block C-8, Lot 001-002, East 1/2 Lot 003, Lot 13A of Amended Plat of Lots 7, 8, 9 to the City of Lewistown, Fergus County, Montana, according to the official recorded plat thereof, filed in the office of the Clerk and Recorder, Fergus County, Montana.

Whereas, Owner desires to construct a storm drain connection (hereafter the "project") from its property described above to the Montana Department of Transportation's (hereafter "MDT") storm drain main, located in right-of-way known as US Highway 87/N-57 and owned by MDT; and,

Whereas, MDT requires City to enter into a Memorandum of Agreement (hereafter the "MOA") detailing the City's responsibilities for construction, care and maintenance of the Project, which agreement is attached hereto and by this reference incorporated herein; and,

Whereas, Owner agrees to assume all responsibilities for the construction, care and maintenance of the Project placed upon the City as described in the MOA.

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, which the parties acknowledge, the parties agree as follows:

1. **MOA with MDT.** The City agrees to enter into the MOA attached as Exhibit 'A' with MDT.
2. **Assumption of Responsibilities.** Except as modified herein, Owner agrees to assume all duties, obligations, responsibilities and costs associated with the Project as described in the MOA. In order to effectuate this requirement between the parties, the term "City" as referenced in the MOA shall be replaced with "Owner". Similarly, the term MDT as referenced in the MOA shall be replaced with "City". The term "Parties" as referenced in the MOA shall mean the City and Owner.

3. **Representations and Warranties of Owner:** Owner represents and warrants that it has validly executed this Agreement and the same constitutes the binding obligation of the Owner. Owner has full power, authority and capacity to enter into this Agreement, to carry out Owner's obligations as described in this Agreement and to assume responsibility for compliance with all applicable provisions.
4. **Binding Agreement:** This Agreement shall be a covenant running with the land, and as such, binding on the Owner's heirs, successors or assigns.
5. **Hold Harmless & Indemnification.** The Owner agrees to protect, defend, indemnify and hold City, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the Owner's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the Owner, its agents, or sub-contractors, under this Agreement, except the negligence of City.

The City agrees to protect, defend, indemnify and hold Owner, its appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the City's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the City, its agents, or sub-contractors, under this Agreement, except the negligence of Owner.

6. **Venue.** This agreement shall be governed by the laws of Montana. The parties agree that any litigation concerning this Agreement must be brought in the Tenth Judicial District Court in and for the County of Fergus, State of Montana and each party shall pay its own costs and attorney fees, except as otherwise noted in the MOA.
7. **Representatives.** For purposes of any notices or communications required under this agreement, the City's representative shall be the City Manager, 305 W. Watson, Lewistown, MT 59457. The Owner's representative shall be Heather Griner, c/o American Prairie Foundation, PO Box 908, Bozeman, MT 59771-0908.
8. **Property lien.** Any payments owed by Owner under this agreement, which shall remain unpaid after 30 days of City providing written notice

thereof, may be taken as a lien upon the property and is enforceable as is nonpayment of property taxes.

9. **Public Record.** This agreement shall be filed of public record with the Fergus County Clerk and Recorder.

10. **Renewal of MOA.** The City shall have no obligation to renew the MOA with MDT, such decision resting solely within the discretion of the Lewistown City Commission.

In Witness whereof, the undersigned have hereunto affixed their signatures and seals as of the date first written above.

CITY OF LEWISTOWN,

By:

Holly Phelps
City Manager

The foregoing instrument was acknowledged before me in the State of Montana, this ____ day of _____, _____ by Holly Phelps, known to me or having provided proof of her identity. Witness my hand and official seal.

Notary Public, State of Montana
Residing at _____
My Commission expires: _____

AMERICAN PRAIRIE FOUNDATION

By:

Its _____

The foregoing instrument was acknowledged before me in the State of _____, this ____ day of _____, 2020 by _____, an authorized representative of the American Prairie Foundation, known to me or having provided proof of his/her identity. Witness my hand and official seal.

Notary Public, State of Montana
Residing at _____
My Commission expires: _____

CITY/STATE
MEMORANDUM OF AGREEMENT
US 87/N-57/Main Street - Lewistown
September 2020

This Memorandum of Agreement (Agreement) is made and entered into by and between the City of Lewistown (City), a municipal corporation organized and existing under the laws of the State of Montana, 305 W. Watson, MT 59457, and the State of Montana Department of Transportation ("MDT" or "the State"), whose address is 2701 Prospect Ave., P.O. Box 201001, Helena, MT 59620-1001, together referred to as "the Parties."

The Purpose of this Agreement is to set forth the respective responsibilities and duties of the Parties associated with the installation and maintenance of storm drain (the Project) within the US 87/N-57 right-of-way, per the approved plans (Attachment B) by American Prairie Foundation (Developer). This Agreement sets forth terms regarding the City's maintenance responsibilities for the Project that the City must meet for MDT to provide the Developer the necessary Encroachment Permit to install the storm drain. Any Encroachment Permit granted to the Developer by this Agreement is explicitly subject and subordinate to the rights and title of MDT and the State of Montana; and

WHEREAS, MDT is responsible for planning, designing, constructing and maintaining State highway and roadway associated transportation facilities, including associated pull-offs, parking areas, and rest areas for the use and benefit of the traveling public, in a safe and efficient manner in accordance with Title 23 United States Code (U.S.C.) and Title 60 Montana Code Annotated (MCA) including US 87, a commission-designated highway system; and

WHEREAS, The City has agreed to maintain, or cause to be maintained, the Project; and

WHEREAS, This Agreement must be fully executed before initiation of construction of the Project within commission-designated right-of-way; and

NOW, THEREFORE, The Parties set forth the fundamental duties and responsibilities necessary for the encroachment of the Project into state designated right-of-way.

ARTICLE I. GENERAL OBLIGATIONS OF THE CITY

1. The Parties acknowledge the City has agreed to, and MDT has approved, the general design of the Project planned for installation within MDT right-of-way. The documents are identified as Attachment "B" attached and made part of this agreement.
4. The City agrees that no fixture, building, structure, or other permanent installation will be constructed or placed within Transportation Commission designated right-of-way without prior written approval from MDT.

5. The City agrees any maintenance within MDT right-of-way that requires lane closure or equipment must be reviewed and approved by MDT District/Area maintenance staff prior to initiation of the maintenance.
6. The City shall complete the necessary environmental processes for modification to the state highways and roadways and demonstrate that all, if any, environmental issues associated with the proposed project have been identified and mitigated. The City agrees it will prepare and file any required environmental documents and apply for and obtain any permits required by other governmental agencies at no expense to MDT prior to maintenance taking place within Transportation Commission designated right-of-way.
7. The City agrees to be responsible for any and all damages to facilities within Transportation Commission designated right-of-way caused by the City, the City's staff or contractors, or resulting from the City's operations. The City must repair any and all damages, at its sole expense, after notification of damage by MDT and approval of repair work needed, method of repair, and schedule for repair.
8. If the City fails to perform or cause to be performed, the maintenance obligations as required by this agreement within 60 days of written notification from MDT, MDT may complete the required maintenance and the City shall be required to compensate MDT for its performance of said maintenance.
9. MDT may complete any maintenance required due to a public emergency without prior notice to the City. The City agrees to be responsible for and to reimburse MDT for said maintenance, including Indirect Costs.

ARTICLE II. GENERAL OBLIGATIONS OF MDT

1. If the City does not fulfill their maintenance requirements as stated herein, MDT may complete the required maintenance and seek compensation from the City. In doing so, MDT must first provide notice to the City allowing 60 days to complete any such maintenance. If MDT performs such maintenance under this section, it must provide detailed invoices of such costs to the City.
2. MDT may complete any maintenance required due to public emergency and seek compensation from the City for any costs incurred. In doing so, MDT may first provide notice to the City, when possible, allowing time to complete any such maintenance. If MDT performs maintenance under this section, it must provide detailed invoices of such costs to the City.

ARTICLE III. PROJECT SPECIFIC FEATURES

1. Storm Drain Facilities

- a. Upon completion of the Project the City agrees that it is responsible, at no cost to MDT, to service, maintain and repair, or replace if the connection becomes damaged, the storm drain installed as part of this project.
- b. Maintenance includes cleaning or removing debris from the pipe and inspecting the facilities manually or with the City's television unit.

ARTICLE IV. – GENERAL TERMS AND CONDITIONS

1. **Term** – The term of this Agreement shall be ten (10) years. After the initial ten (10) year term, this Agreement will renew automatically, for successive one (1) year terms, unless superseded by a new Agreement between the parties.
2. **Termination** – This Agreement may be terminated by MDT if the City has violated or breached any term, condition or article of this Agreement and the City has failed to correct the same within 60 days of receiving notice in writing addressed to the City at the addresses shown above, from MDT of such violation or breach of any term condition or article of this Agreement. If this Agreement is terminated, the improvements become the property of MDT, without reimbursement. MDT will maintain the Project as it sees fit and may remove it without City approval. MDT may seek compensation for maintenance or removal of the Project from the City.

3. Hold Harmless & Indemnification

The City agrees to protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the City's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the City, its agents, or sub-contractors, under this Agreement, except the negligence of MDT.

The State and Department of Transportation agrees to protect, defend, indemnify, and hold the City, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of MDT, its agents, or sub-contractors, under this Agreement, except the negligence of the City.

4. Insurance

- a. General Requirements: Each party shall maintain for the duration of this Agreement, at its own cost and expense, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the duties and obligations in this Agreement by each party, its agents, employees, representatives, assigns, or sub-contractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
- b. General Liability Insurance: Each party shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1 million per occurrence and \$2 million aggregate per year to cover such claims as may be caused by or arising out of any negligent acts or omissions in work or services performed under this Agreement, or as established by statutory tort limits as provided by a public entity self-insurance program either individually or on a pool basis as provided by Mont. Code Ann. Title 2, Chapter 9.
- c. General Provisions: All insurance coverage must be with a carrier licensed to do business in the State of Montana or by a public entity self-insured program either individually or on a pool basis. Each party must notify the other immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. Each party reserves the right to request complete copies of the other party's insurance policy or self-insured memorandum of coverage at any time.
- d. Workers' Compensation Insurance: The City must maintain workers' compensation insurance and require its contractors and its contractor's sub-contractors to carry their own workers compensation coverage while performing work within MDT right-of-way in accordance with Mont. Code Ann. §§39-71-401 and 39-71-405. Neither the contractor nor its employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.

5. Public Safety

If any repairs to the elements of the Project must be performed to address or prevent a public hazard, the City will immediately protect the area from public access and make reasonable and timely effort to correct or repair the hazard.

6. Invoicing and Indirect Cost (IDC)

If MDT incurs any costs as a result of a public emergency that necessitates action on MDT's part concerning the maintenance or repair of the Project back to its original state, MDT shall be compensated for such costs by the City, and the City shall pay the same within thirty (30) days of its receipt of such invoices.

Section 17-1-106, MCA, requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs (IDC). These costs are in addition to direct project costs. MDT's IDC rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's IDC as defined by 2 CFR Part

200, Appendix VII. MDT's current IDC rate is 10.99% for fiscal year 2021 (July 1, 2020 to June 30, 2021). If the work occurs or extends into fiscal year 2022 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

a. Invoice will be sent to:

City of Lewistown
305 West Watson
Lewistown, MT 59457

b. Payments shall be made to:

Montana Department of Transportation
Attention: Collections
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

7. Choice of Law and Venue

This Agreement shall be governed by the laws of Montana. The parties agree that any litigation concerning this Agreement must be brought in the First Judicial District Court, in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as otherwise noted in this Agreement on Indemnification. In case of conflict between the terms and conditions of this Agreement and the laws of the State of Montana, the laws of the State of Montana shall control.

8. Binding Effect – The benefits and obligations set forth in this Agreement shall be binding upon, and inure to the benefit of, their respective successors, administrators and assigns of the Parties.

9. Relationship of Parties – Nothing contained in this Agreement shall be deemed or construed (either by the Parties hereto or by any third party) to create the relationship of principal and agent or create any partnership joint venture or other association between the Parties.

10. Non-Discrimination – The City will require that during the performance of any work arising out of this Agreement the City, for itself, assignees, and successors shall comply with all applicable non-discrimination regulation set forth in Attachment "A" attached hereto and made part of this Agreement.

11. ADA - MDT requires that any construction or maintenance resulting from this Agreement must include appropriate pedestrian facilities that meet or exceed current MDT standards for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessible Design, United States Access Board Proposed

Guidelines for Pedestrian Facilities in the Public Right-of-Way (2011 PROWAG), and MDT's Detailed Drawings, 608 series.

12. Audit – The Legislative Auditor and the Legislative Fiscal Analyst may, without prior notice and during normal business hours, audit, at their own cost and expense, all records, reports, and other documents the City maintain in connection with this Agreement.
13. Access and Retention of Records – The City agrees to provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine compliance with this MOA (Mont. Code Ann. §18-1-118). The City agrees to create and retain records supporting this Agreement for a period of three years after the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to the Agreement taken by the State of Montana or a third party.
14. Highway Modifications – If MDT modifies or improves the highway or roadway facilities, the City will modify, upon reasonable notice at no expense to MDT, the Project accordingly.
15. Revocation – This Agreement is revocable by MDT in the event that the Project facilities within the right-of-way cease to be used by the City for a period of one year or abandoned otherwise. Upon revocation or abandonment, the system facilities must be removed in compliance with this Agreement.
16. Utilities – The right of any private or public utility now lawfully occupying the right-of-way to operate and maintain utility facilities supersedes any right granted by this Agreement to the City. Copies of existing utility permits may be obtained from the MDT District Utility Agent.
17. Amendment and Modification – The Parties may modify or amend this Agreement only by a written Addendum signed by the Parties. In addition to the terms and conditions contained herein, the provisions of any Addendum may be incorporated and made a part hereof by this reference in the terms of the amendment so provided. In the event of any conflict between the terms and conditions hereof and the provision of any Addendum, the provision of the Addendum shall control, unless the provisions thereof are prohibited by law.
18. Representatives
 - a. City's Representative: The City's Representative for this Agreement shall be the City Manager or designee or such other individual as City shall designate in writing. Whenever approval or authorization from or communication or submission to City is required by this Agreement, such communication or submission shall be directed to the City's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when City's Representative is not

available, MDT may direct its communication or submission to other designated City personnel or agents.

- b. MDT's Representative: The MDT Representative for this Agreement shall be the District Administrator or Maintenance Chief or such other individual as MDT shall designate in writing. Whenever direction to or communication with MDT is required by this Agreement, such direction or communication shall be directed to MDT's Representative; provided, however, that in exigent circumstances when MDT's Representative is not available, City may direct its direction or communication or submission to other designated MDT personnel or agents.

- 19. Counterpart Execution - This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

(Signature Pages to Follow)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative effective as of the date of final signature.

SIGNATURES:

MONTANA DEPARTMENT OF TRANSPORTATION

Date: _____ By: _____
Montana Department of Transportation

Title Printed name

Approved for Legal Content: By: Carol Grell Morris 9/17/20

Approved for Civil Rights Content: By: Patti Schwinden 09.17.20

CITY OF LEWISTOWN

Date: _____ By: _____
City of Lewistown

Title Printed name

ATTACHMENT A

MDT Nondiscrimination and Disability Accommodation Notice

**MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin,
sex, sexual orientation, gender identity,
age, disability, & Limited English Proficiency

State protected classes

Race, color, national origin, parental/marital
status, pregnancy, childbirth, or medical
conditions related to pregnancy or childbirth,
religion/ creed, social origin or condition,
genetic information, sex, sexual orientation,
gender identification or expression, national
origin, ancestry, age, disability mental or
physical, political or religious affiliations or
ideas, military service or veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.

- iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement, the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

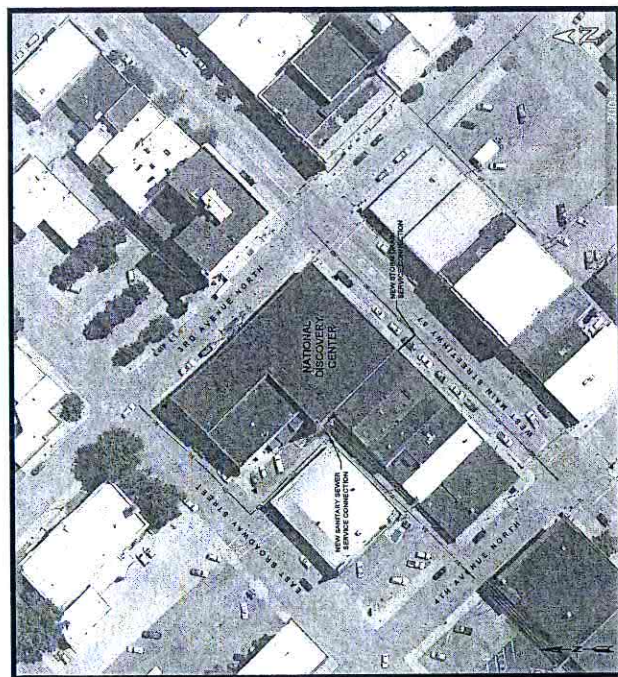
State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

ATTACHMENT B

Plans



PROJECT LOCATION MAP

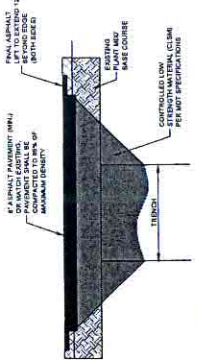
SCALE: 1" = 50'

GENERAL NOTES

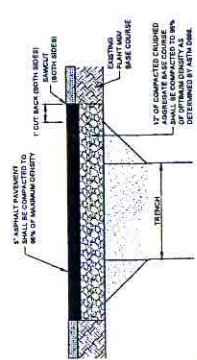
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KEY NOTES

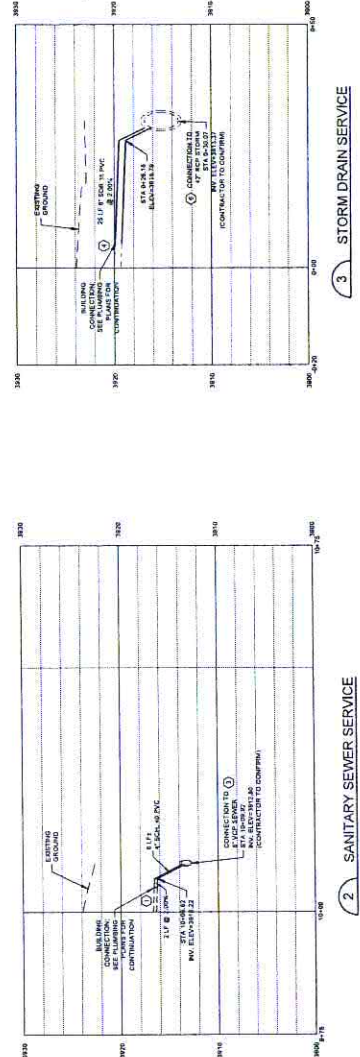
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4 TRENCH REPAIR DETAIL - STORM DRAIN

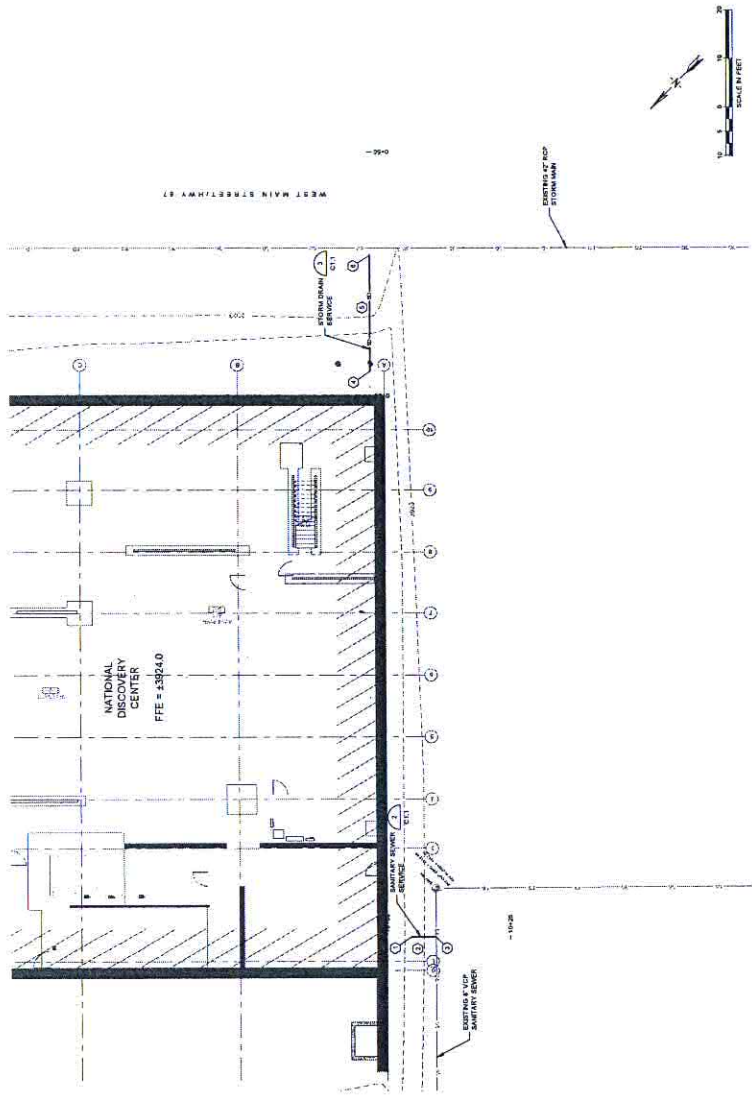


11 TRENCH REPAIR DETAIL - SANITARY SEWER



2 SANITARY SEWER SERVICE

3 STORM DRAIN SERVICE



100% CONSTRUCTION DOCUMENTS



3

