

## LAND USE AGREEMENT

This LAND USE AGREEMENT (“Agreement”) is entered into effective as of 17, May 2022, by and between the City of Missoula, a Montana municipal corporation, 435 Ryman Street, Missoula, Montana 59802 (“City”) and NorthWestern Corporation, a Delaware corporation, d/b/a/ Northwestern Energy, 1903 S. Russell St, Missoula, MT 59801 (NWE).

### City and NWE agree as follows:

**Section 1. License.** City grants a license to NWE to use a +/- 21,156 square foot portion of the East Caras Park/Riverside Parking Lot parcel (“License Area”); located on a tract of land owned by the City in Section 22, Township 13 N, Range 19 W, C.O.S. 3505, Parcel 1 and PT VAC ST, Missoula County, Montana, as depicted on the attached Exhibit A.

**Section 2. Use.** NWE shall use the License Area solely for the purpose of siting and operating a temporary electrical substation and construction staging inclusive of temporary and replacement overhead power poles and temporary security fencing.

**Section 3. Term.** The term of this Agreement is from the time of full execution of this Agreement, and ending on **January 30, 2023**. This Agreement may be extended by up to two additional 90 day periods beyond the end of the initial term. These extension shall occur automatically unless either of the following conditions exist: (1) the City notifies NWE of its intent not to renew the Agreement prior to the expiration of the term in effect; or (2) NWE has removed the temporary substation equipment from the License Area. This Agreement shall terminate upon its expiration or upon termination pursuant to Section 15 or Section 16 of this Agreement.

**Section 4. Payments.** NWE shall make a one-time payment of **ONE DOLLAR AND NO CENTS (\$1.00)** to City for the entire license term, due within 30 days of full execution of this Agreement.

NWE shall pay \$33,087 to the City’s Community Forestry Memorial fund for the value of park trees to be removed.

**Section 5. Property As-Is.** NWE acknowledges that the City makes no representations, warranties, promises, or guarantees of any kind to NWE, including but not limited to any representations about the quality, condition, or suitability of the License Area for the uses specified per this Agreement. In deciding to enter into this Agreement, NWE has made its own independent evaluation of the suitability of the Parcel for the desired uses described herein.

**Section 6. City Responsibilities.** With the exception of those responsibilities inherent in property ownership according to applicable laws, City has the sole responsibility for park management, maintenance, and carrying out of operations for the park outside of fenced portions of the licensed area. City has no obligation to make any improvements or repairs of any kind within the License Area during the term of this Agreement. City is responsible to modify the park irrigation system outside the License Area so that NWE facilities within the License Area are not unduly affected by its ordinary operation. During the term of this Agreement, the City will provide for regular weekly mowing, irrigation system maintenance and winterization in any areas of the park outside the License Area; snow and ice maintenance for the area's adjoining trails and sidewalks shall be the City's responsibility.

**Section 7. NWE Responsibilities.** Prior to taking possession of the License Area, NWE, at its sole expense, shall retain an ISA licensed arborist firm to trim any tree(s) as necessary to provide clearance for installation, operation, and removal of the temporary substation and related appurtenances. During the term of this agreement NWE shall ensure it regularly inspects and maintains its fences in good condition. NWE shall operate and maintain the electrical substation in accordance with industry standard practices and shall make every effort to mitigate or eliminate risks to public and public property.

Upon expiration or termination of this Agreement NWE shall provide for: prompt removal of its fences, equipment, and materials from property.

**Section 8. Site Restoration.** Upon expiration or termination of this Agreement NWE shall be solely responsible for the cost of restoring the Licensed Area (and any impacted adjacent park areas) and repairing any damage to the City parks facilities and infrastructure (including soils and landscaping). Following removal of the NWE equipment and fencing, the City will undertake, or hire a contractor to undertake, restoration efforts at the site. NWE shall be responsible to reimburse the City for the direct costs incurred to do the site restoration work, which the City anticipates to cost ~\$105,000 (as outlined in Exhibit C - Cost Estimate for East Caras Parkland Restoration) . The City will invoice NWE for these costs once the restoration work is complete, and NWE will pay the invoices within 30 days of receipt. The Parties anticipate the following restoration activities will be needed:

- a. Compaction relief (double aeration);
- b. Repairs to any damaged portion of the irrigation system;
- c. Provide for rut repairs, aeration, and over seed or sod depending on extent of damage to irrigated turf areas outside the fenced area;
- d. Soil remediation, including: placement of 2" of top-quality compost across entire area that was fenced; till soils to depth of 6"; and fine grade and rake to remove surface loose rock larger than 1" diameter; and
- e. Supply and placement of an approved sod (all work shall be guaranteed for 90 growing days following completion and acceptance of the work).

Park restoration shall be done by a licensed Landscape contractor selected through City bid processes. All park restoration work shall be done in accordance with standards specified in the City's Adopted Landscape Design Manual or contract documents.

**Section 9. Compliance with Laws.** NWE and its contractors shall use and conduct operations in the License Area in compliance with all applicable, zoning, public health or safety, environmental and other laws and regulations, which shall include obtaining all applicable local, state and federal permits for the project.

**Section 10. No Alterations or Improvements Absent City Consent.** No permanent alterations or improvements may be made to the License Area or the surrounding area without City's prior written consent. On the expiration or termination of this Agreement, all temporary above-grade improvements and alterations made to the License Area by NWE shall be removed by NWE.

City consents to the following alterations, uses, and improvements to the License Area identified by NWE as shown on the schematic depiction attached hereto as Exhibit A:

A. Modification of park irrigation system (Exhibit B) as needed to accommodate temporary and permanent pole placements inside the licensed area.

C. Installation of a temporary perimeter fence around the temporary substation and staging area.

D. Installation of the temporary substation equipment and temporary utility poles and overhead lines, as well as removal of poles to be abandoned per the schematic depiction attached hereto as Exhibit B.

E. Installation of temporary project sign in a prominent and visible location that identifies the scope and design of the NWE project, expected start and finish dates, QR code for more information, and a Project contact name, phone number and email for public concerns, comments, and complaints per the schematic depiction attached hereto as Exhibit B.

F. Installation of two (2) new permanent overhead utilities poles within established NWE easements.

G. Parkland resource protection and restoration.

**Section 11. No Assignment of Agreement by NWE.** NWE may not assign, mortgage, pledge, encumber, or otherwise transfer this Agreement, nor sublet or allow any part of the License Area to be used.

**Section 12. Right of Access.** City and MDT may enter the License Area at all reasonable times to inspect the License Area and evaluate whether NWE is in compliance with this Agreement, and for purposes of taking any other actions City believes are

appropriate to protect City's interest in the License Area. This Section 11 does not impose any duty on City to inspect the License Area, report to NWE the results of any inspection, or assume any liability of any kind arising from inspecting or not inspecting the licensed portions of the License Area.

**Section 13. Liens.** NWE shall not incur, create, assume, or permit the creation of any lien on any portion of the License Area. NWE shall keep the License Area clear of any and all liens arising out of any work performed or materials furnished to NWE for or at the License Area, or any other obligations incurred by NWE

**Section 14. Commercial Enterprise Prohibited.** NWE shall not undertake or allow the undertaking of any commercial enterprise on the License Area, including but not limited to any sales of produce.

**Section 15. Utilities.** City shall retain sole responsibility for paying for all water, electricity, heat, sewage, storm sewer, and any other utility service used on the License Area during the term of this Agreement.

**Section 16. Termination.** In consideration of the NWE's current and future work and investment in the downtown substation and related improvements, this agreement may not be terminated by the City prior to the end of each term of the license specified in Section 3, except as provided in Section 16.

**Section 17. Termination for Breach by NWE.** If NWE breaches any of its duties or obligations under this Agreement, City may provide NWE with written notice of breach. If NWE fails to cure any such breach within thirty (30) days after receipt of notice of default, City may terminate this Agreement. Whether any such breach by NWE has been cured shall be determined by City in its sole discretion.

**Section 18. Surrendering Possession.** Upon expiration or termination of this Agreement, NWE shall peacefully leave and surrender possession of the License Area to City in order and condition as specified in this Agreement.

**Section 19. Cooperation in Surrendering Possession.** Upon expiration or termination of this Agreement, NWE's rights under this Agreement shall immediately, automatically, and without consideration terminate and revert to City. NWE and City shall cooperate in good faith in reasonable transition activities prior to and after expiration or termination of this Agreement.

**Section 20. Holding Over.** Any holding over by NWE after expiration or termination of this Agreement shall not comprise any renewal or extension of this Agreement and shall not give NWE any rights in or to the License Area; excepting those provided by separate agreement and/or established easement held by NWE.

**Section 21. Cumulative Remedies.** All of City's rights, powers, and remedies under this Agreement are cumulative and not alternative and shall be in addition to all rights, powers, or remedies available to City at law or in equity. The exercise of any one or more

of these rights or remedies shall not impair City's right to exercise any other available right or remedy.

**Section 22. Indemnification.** NWE shall defend, indemnify, and hold the City and its respective directors, officers, employees, agents, and assigns (collectively referred to as "City Parties"), harmless against all claims, liabilities, losses, damages, expenses, and attorneys' fees (together, "Losses"), including, without limitation, losses arising from any death, property damage, or injury of any nature whatsoever that may be suffered or sustained by NWE or any of NWE's employees, contractors, guests, or any other person (collectively referred to as "NWE Parties"), which may arise directly or indirectly from the exercise of rights conferred by this Agreement or NWE use or operation of or presence on the License Area, except to the extent the Loss is caused by negligence or willful misconduct of City. This Section shall survive any termination of this Agreement.

**Section 23. Waiver of Liability.** NWE releases and waives all claims against the City with respect to or arising out of (a) any death or any injury of any nature whatsoever that may be suffered or sustained by NWE from any causes whatsoever, except to the extent that such injury or death is caused by the negligence or willful misconduct of City; (b) any loss or damage or injury to any property on or about the License Area belonging to NWE, except to the extent such injury or damage is to property not covered by insurance carried (or required to be carried) by NWE and is caused by negligence or willful misconduct of City; or (c) the condition of the License Area and suitability of the License Area for uses allowed per this agreement. Subject to the prior provisions, City shall not be liable for any damage or damages of any nature whatsoever to NWE caused by explosion, fire, theft, crime, or negligent behavior, by sprinkler, drainage, plumbing, or irrigation systems, by failure for any cause to supply adequate drainage, by the interruption of any public utility or service, by steam, gas, water, rain, or other substances leaking, issuing, or flowing into any part of the License Area, by natural occurrence, riot, court order, requisition, or order of governmental body or authority, or for any damage or inconvenience which may arise through repair, maintenance, or alteration of any part of the License Area, or by anything done or omitted to be done by NWE Parties or any other person on the License Area. In addition, the City shall not be liable for any losses for which NWE is required to insure. This Section 22 shall survive any termination of this Agreement.

**Section 24. Insurance.** NWE shall, at its own cost, take out and maintain without interruption during the term of this Agreement comprehensive general liability insurance naming the City as additionally insured, affording coverage for bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than \$2,000,000 in the aggregate, and \$1,000,000 per occurrence.

**Section 25. Evidence of Insurance.** On or before City delivers possession of the License Area to NWE, NWE shall provide City with a copy of the insurance policies required by Section 23. NWE shall deliver to City evidence of each renewal or replacement of any required insurance policy at least 10 days prior to the expiration of such policy. In lieu of

the actual policies, NWE may deliver to City a certificate of insurance evidencing NWE's insurance policies, provided that City receives copies of the endorsement(s) naming City as additionally insured.

**Section 26. Hazardous Substances.** City assumes no liability for any hazardous waste on or from this Property as a result of NWE's activities. NWE, its successors and assigns, shall indemnify and hold harmless the City, its officers, employees, and agents against any and all liabilities, damages, penalties, losses, claims, demands, actions, suits, and judgments (including attorney fees and costs), and any costs or expenses incurred resulting from the presence of hazardous waste onto or from the License Area as a result of NWE's activities, including any and all costs associated with clean up or remediation that may be required. This provision shall not apply to a release of hazardous waste onto or from the License Area caused by the officers, employees, or agents of the City. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.

**Section 27. Entire Agreement.** This Agreement is the entire agreement between City and NWE and supersedes all prior or contemporaneous written and oral agreements, negotiations, correspondence, course of dealing and communications between City and NWE relating to the subject License Area.

**Section 28. Modification.** No modification of this Agreement shall be valid or binding unless such modification is in writing and signed by both NWE and City.

**Section 29. Severability.** If any provision in this Agreement is held by valid court order to be invalid or unenforceable, the other provisions shall remain enforceable, and the invalid or unenforceable provision shall be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

**Section 30. Waiver.** Any waiver of any term of this Agreement must be in writing. Failure, neglect, or delay by a party at any time to enforce the provisions of this Agreement will not be considered a waiver of that party's rights under this Agreement. Any waiver shall not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

**Section 31. No Third-Party Beneficiaries.** Except as specifically provided in Section 22 and Section 23 of this Agreement, this Agreement is for the exclusive benefit of City and NWE, and not for the benefit of any third party.

**Section 32. Notices.** Notices and consents under this Agreement must be in writing and delivered by mail, courier, email, or fax to the addresses set out on the signature page of this Agreement. Notices given in the manner provided by this Section 32 shall be considered delivered two (2) business days after deposit in the mail, or the first business day after delivery in person, by fax, or by email.

**Section 33. Governing Law; Venue.** This Agreement shall be governed by and construed pursuant to Montana law. The venue for any dispute arising from this Agreement shall be in the Fourth Judicial District, Missoula County, Montana.

**Section 34. Attorney Fees and Costs.** In the event of any legal proceedings instituted either by NWE or City to enforce the terms of this Agreement, the parties shall bear their own attorney's fees and costs.

**Section 35. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. Transmission of Agreement in PDF format by email with executed counterparts constitutes effective delivery.

**NorthWestern Energy**

By: *Mike Cassidy*

Name: Michael Cassidy

Title: Reality Specialist

**City of Missoula**

By: *John Engen*  
John Engen (May 24, 2022 13:46 MDT)

Name: John Engen

Title: Mayor

Attest

*Marty Rehbein*  
Marty Rehbein (May 24, 2022 14:05 MDT)

Marty Rehbein, CMC, City Clerk

# EXHIBIT A

Property subject to this Agreement

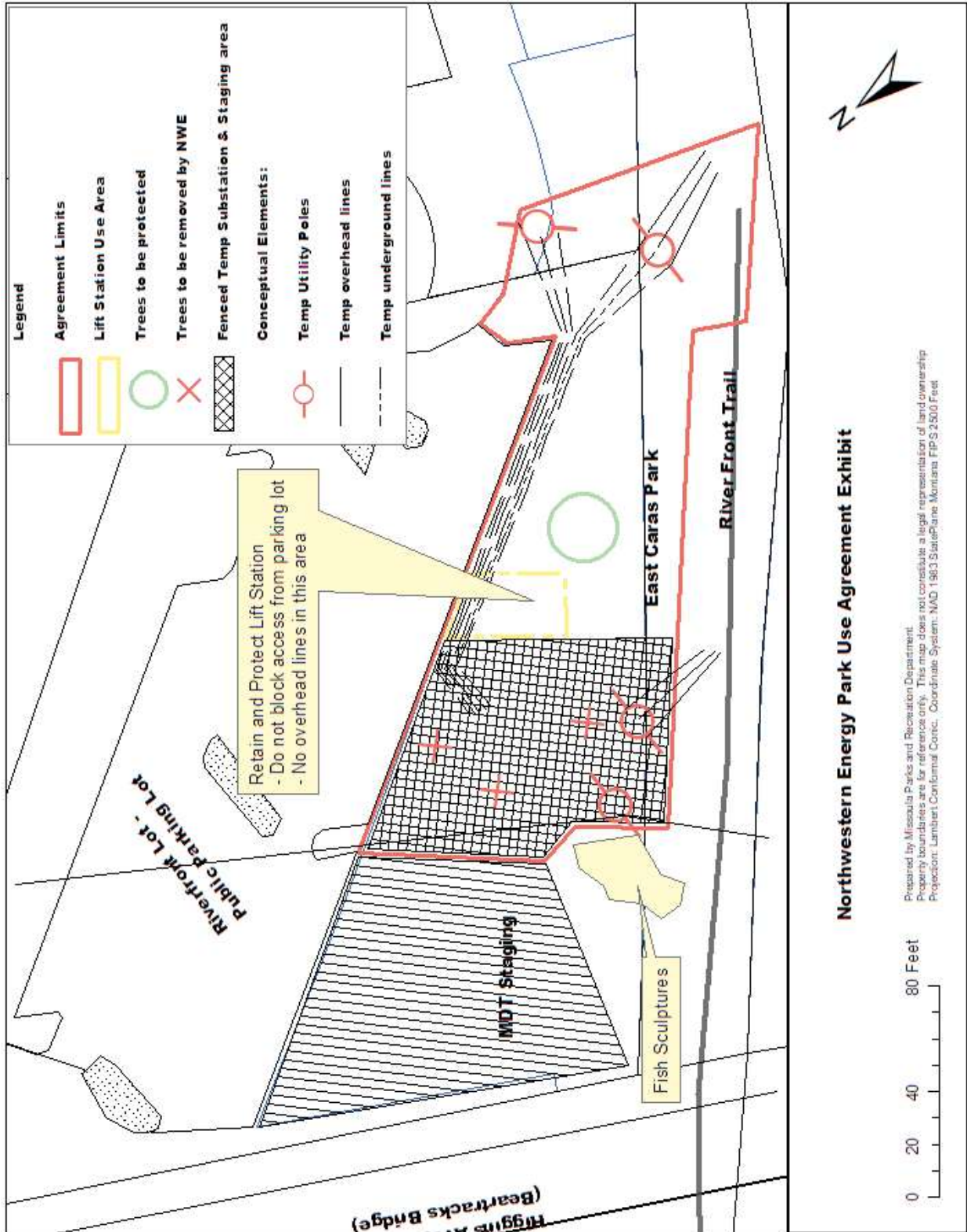
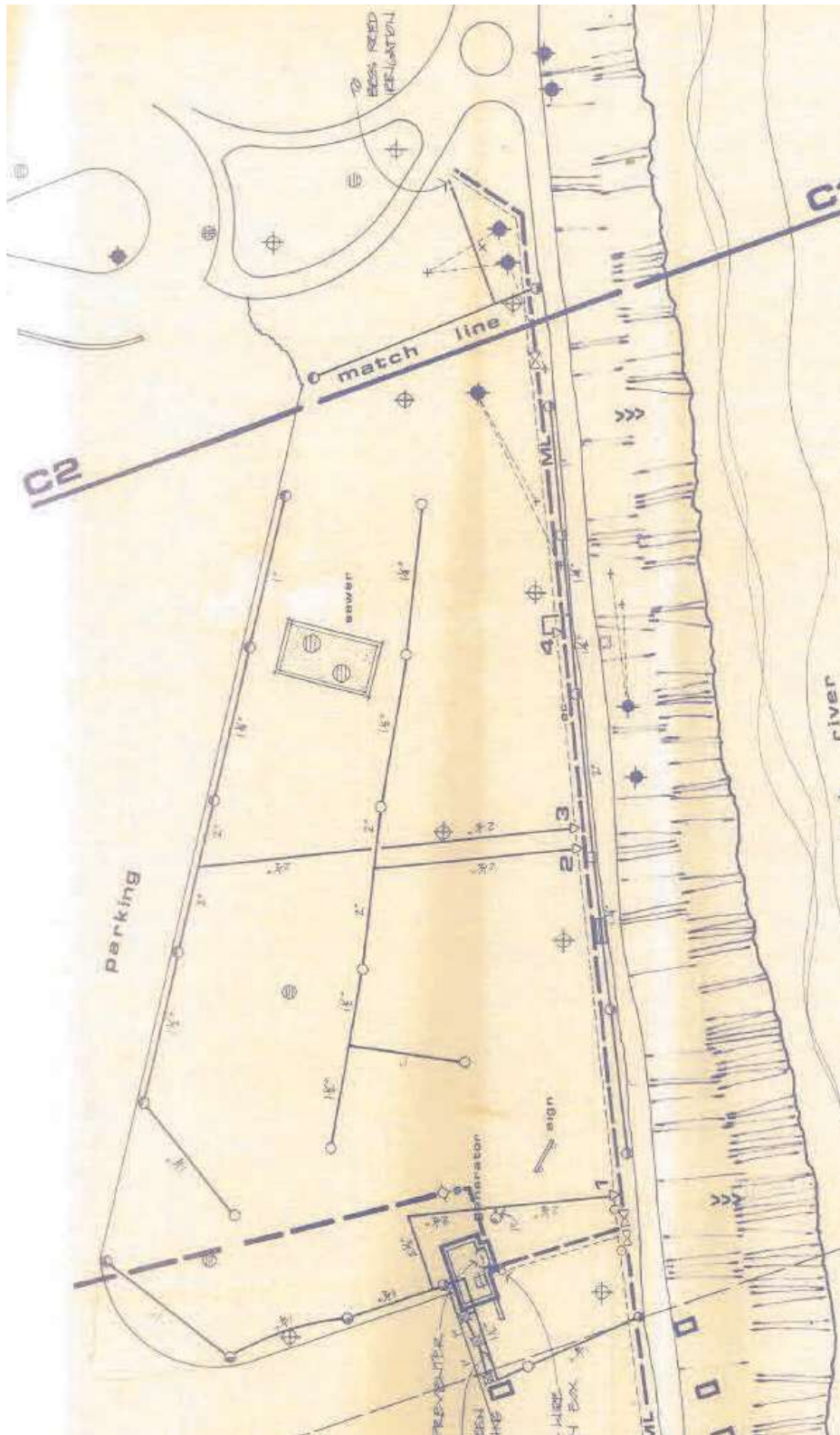




Exhibit B  
Park Irrigation Plan



# Exhibit C

## Cost Estimate for East Caras Parkland Restoration

East Caras - Parkland Restoration Costs Related To Northwestern Energy Agreement						
Estimate Date: 4/16/2022						
<b>SCHEDULE GR: PROJECT GENERAL REQUIREMENTS</b>						
Item	Description	Qty. (Total)	Unit	Unit Cost	Sub-Total	
GFR1	Mobilization/Demobilization	1	EA	1,500.00	\$	1,500.00
<b>SUB-TOTAL SCHEDULE GR</b>					<b>\$</b>	<b>1,500.00</b>
<b>SCHEDULE A: TEMPORARY FACILITIES(SITE PROTECTION &amp; BMPS)</b>						
Item	Description	Qty. (Total)	Unit	Unit Cost	Sub-Total	
A1	Reserved Parking spaces	3	EA			
A1	Orange Construction Fence	792	LF	2.00	\$	1,584.00
<b>SUB-TOTAL SCHEDULE A</b>					<b>\$</b>	<b>1,584.00</b>
<b>SCHEDULE B: SITE Restoration</b>						
Item	Description	Qty. (Total)	Unit	Unit Cost	Sub-Total	
B	Flut repairs (import soil, rake, reseed if in viable turf area.	300	SF	2.50	\$	750.00
B1	Stump Grinding	3	EA	120.00	\$	360.00
B2	Aerate (2x cross pattern) turf to be saved/like restoratio	11,624	SF	0.75	\$	8,718.33
B3	Import & place 2" compost - areas to be sodded	52	CY	38.00	\$	1,994.23
B4	Disc/Fill to 6" depth for compaction relief (new sod areas)	8,500	SF	0.25	\$	2,125.00
B5	Fire grade for sod	8,500	SF	\$0.25		2,125.00
B6	Supply and place sod	8,500	SF	0.90	\$	7,650.00
B7	Sod Establishment (30 days & 3 mowings) (P&R direct cost)	1	LS	1,500.00		1,500.00
<b>SUB-TOTAL SCHEDULE B</b>					<b>\$</b>	<b>25,222.55</b>
<b>SCHEDULE C: Irrigation</b>						
Item	Description	Qty. (Total)	Unit	Unit Cost	Sub-Total	
	Lateral Line repair/replacement - trench, bedding, Sched 40 PVC, valves, swing joints, heads	20,124	SF	2.50	\$	50,310.00
<b>SUB-TOTAL SCHEDULE C</b>					<b>\$</b>	<b>50,310.00</b>
<b>SCHEDULE 1: TOTAL BID OF SCHEDULES GR, A, B, C, D</b>						
<b>TOTAL ESTIMATED COST</b>					<b>\$</b>	<b>78,616.55</b>
<b>SCHEDULE E: ADMIN &amp; CONTINGENCY</b>						
Item	Description	Qty. (Total)	Unit	Unit Cost	Sub-Total	
DA1	15% contingency		LS		\$	11,792.48
DA2	5% admin (project management)		LS		\$	589.62
DA3	Bidding and Plan Preparation		LS		\$	1,000.00
<b>SUB-TOTAL SCHEDULE E</b>					<b>\$</b>	<b>13,382.11</b>
<b>TOTAL PROJECT COST ESTIMATE</b>					<b>\$</b>	<b>105,380.77</b>
Derates costs included to address restoration/repair work outside of fenced substation area						



Total use area: 22,166 SF  
 Fenced substation and staging area: 8,500 SF  
 Hardscapes: 2,032 SF  
 Area of "light" restoration: 11,624 SF  
 Potential maximum extent of irrigation repairs: 20,124.44 SF