



## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** Revised Development Agreement

**REQUEST:**

Consider approval of revised Development Agreement with MBR Properties, LLC for Paradise Valley Additions.

**BACKGROUND INFORMATION:**

With the [March 12, 2024](#), rejection of bids for SE 582 and WPSP 392 underground improvements in Paradise Valley Addition, MBR representatives and City staff have finalized a plan for moving these projects forward. MBR requests to modify the existing Development Agreement to construct the water and sanitary sewer improvements within the development by standard three-way agreement and separately bid the storm sewer improvements through an assessed sewer improvement district. The portions of the existing Development Agreement related to improvements constructed with the South Washington Street reconstruction project remain mostly unchanged.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve the revised Development Agreement with MBR Properties, LLC for Paradise Valley Additions.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

1. Development Agreement - Paradise Valley

# DEVELOPMENT AGREEMENT

## PARADISE VALLEY ADDITION AND PARADISE VALLEY SECOND ADDITION

The City of Bismarck (the “**City**”) and MBR Properties, LLC (“**MBR**”) make the following Agreement (“**Agreement**”) with regard to public infrastructure improvements on public right-of-way and on lands owned by MBR and depicted in **Exhibit “A”** (Improvements) attached hereto and incorporated herein by reference, such lands in and being platted as Paradise Valley Addition and Paradise Valley Second Addition, located in Section 21, T138N, R80W, Burleigh County, North Dakota.

In exchange for the mutual agreements of the parties under this **Agreement**, the parties hereby agree to the following items, terms, conditions, and obligations.

### A. PREVIOUS AGREEMENTS

The previous development agreement between the City and MBR regarding utility installation, approved by the City on November 28, 2023, is nullified and superseded by this Agreement.

### B. MUNICIPAL UTILITIES

Municipal improvements consist of water lines, sanitary sewer lines, sanitary sewer lift stations, sanitary sewer force main, storm sewer lines, storm sewer laterals, storm sewer inlets, a storm sewer lift station, storm sewer force main, related appurtenances, and incidentals.

Design and construction of the improvements will be divided into multiple construction projects. The first being sanitary and stormwater forcemains, upsized gravity storm sewer, and related appurtenances within the project limits of the South Washington Street Reconstruction, Project AC-NHU-1-981(137), City project HC-158 which serve and benefit Paradise Valley and Paradise Valley Second Additions. These improvements will be further divided into sanitary improvements to be wholly paid for by MBR (referenced as **HC-158 Developer Improvements**) and storm improvements to be included in a special assessed Sewer Improvement District benefitting all lots within Paradise Valley and Paradise Valley Second Addition (referenced as **SE-584 Improvements**). See Exhibit A.

The City agrees to design and construct the HC-158 Developer Improvements. MBR agrees to pay for the HC-158 Developer Improvements and the City's incurred consultant costs for design and construction observation associated with the improvements. The City agrees to design and construct the SE-584 Improvements under the HC-158 project. All incurred costs for design, construction, and construction observation associated with the SE-584 improvements will be assessed to the benefiting properties within the SE-584 district. HC-158 was bid through the North Dakota Department of Transportation (NDDOT) at their February 16, 2024, bid letting. The City of Bismarck awarded the project on February 27, 2024, contingent on the NDDOT concurrence. The NDDOT provided concurrence on February 29, 2024.

The other construction projects will be those municipal improvements within the first phase of development of Paradise Valley and Paradise Valley Second Additions (collectively **SE-582** and **WPSP-392 Improvements**). See Exhibit A. The City will agree to special assess all eligible stormwater improvements to the benefiting lots within Paradise Valley and Paradise Valley Second Additions following typical City assessment project practice. MBR will agree to pay for construction costs for all water and sanitary sewer improvements following typically three-way agreement practice.

#### **i.MBR Responsibilities**

1. MBR will issue a letter of credit or have funds available via an escrow account in favor of the City for the design engineering, construction bid price with 10 percent contingency, estimated construction engineering costs of the HC-158 Developer Improvements, and one (1) percent City project management oversight fee, for a total amount of \$476,240.70, see Exhibit B, attached hereto and incorporated herein by reference. MBR shall issue the letter of credit or provide an escrow account contemporaneously with the execution of this agreement. MBR shall respond to a City request for payment within 7 days of notification.
2. MBR will make payment to the City for water and sanitary sewer plan reviews and construction observation of WPSP-392 for City project management oversight following standard three-way process. Payment will be for actual hours spent plus overhead.
3. MBR shall deed the lift station lots to the City. Warranty deeds for the sanitary and storm lift station lots shall be provided to the City after the project is substantially complete, but prior to the City accepting either the SE-582 or WPSP-392 Improvements.

#### **ii.City Responsibilities**

1. The City had the HC-158 Developer Improvements and SE-584 Improvements

designed by its consultant. The City bid the HC-158 Developer Improvements and SE-584 Improvements as part of AC-NHU-1-981(137), City project HC-158, through the North Dakota Department of Transportation.

2. The City will hire a consultant to perform construction engineering services for the sanitary sewer construction of HC-158 Developer Improvements and storm sewer construction of SE-584. For any required change order causing an increase in the cost of the sanitary sewer items above the available contingency amount paid by MBR, the City will notify MBR in writing prior to the City approving the change order. The City shall have final determination on approval of all change orders.
3. Upon closeout of the HC-158 Developer Improvements, and after receipt from MBR of warranty deeds for the lift station lots, the City shall return any unused portion of the MBR payment from item i.1.
4. Upon acceptance of the WPSP-392 Improvement project, the City will assume the operation and maintenance of the improvements.

## **C. GENERAL TERMS**

- i. For the HC-158 Developer Improvements, SE-582 Improvements, and WPSP-382 Improvements, Engineering fees incurred by the City either through a consultant contract or use of City engineering staff time associated with the improvements described in this Agreement will be allocated to each improvement and will be funded per the responsibilities as identified within this Agreement. If an improvement cost will be special assessed, the allocated construction engineering fee will be special assessed provided the City is a party to the contract generating the fee.
- ii. All work shall proceed only after the necessary permits and approvals have been obtained. Unless otherwise modified by this Agreement, all City development policies regarding public improvements must be followed.
- iii. All financial contributions by MBR for the HC-158 Developer Improvements shall be remitted to the City promptly following receipt of a written notice from the City.
- iv. Any quantity overruns or change orders on the project after the award will be funded per the responsibilities as identified within this Agreement.
- v. Successors and Assigns. This Agreement shall apply to, inure to the benefit of, and be binding upon and enforceable against the parties hereto and their respective transferees, successors, and assigns.

**MBR Properties, LLC**

\_\_\_\_\_  
Bradley A. Balerud, Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared Bradley A. Balerud, known to be to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public

**MBR Properties, LLC**

\_\_\_\_\_  
Randall J. Rhone, Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared Randall J. Rhone, known to be to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public

**MBR Properties, LLC**

\_\_\_\_\_  
Steve R. Mariner, Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared Steve R. Mariner, known to be to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public

**MBR Properties, LLC**

\_\_\_\_\_  
Greg P. Mariner, Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared Greg P. Mariner, known to be to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public

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

**City of Bismarck**

\_\_\_\_\_  
Michael T. Schmitz  
President, Board of City  
Commissioners

Attest: \_\_\_\_\_  
Jason Tomanek  
City Administrator

Exhibit “A” – “B”  
To  
Development Agreement

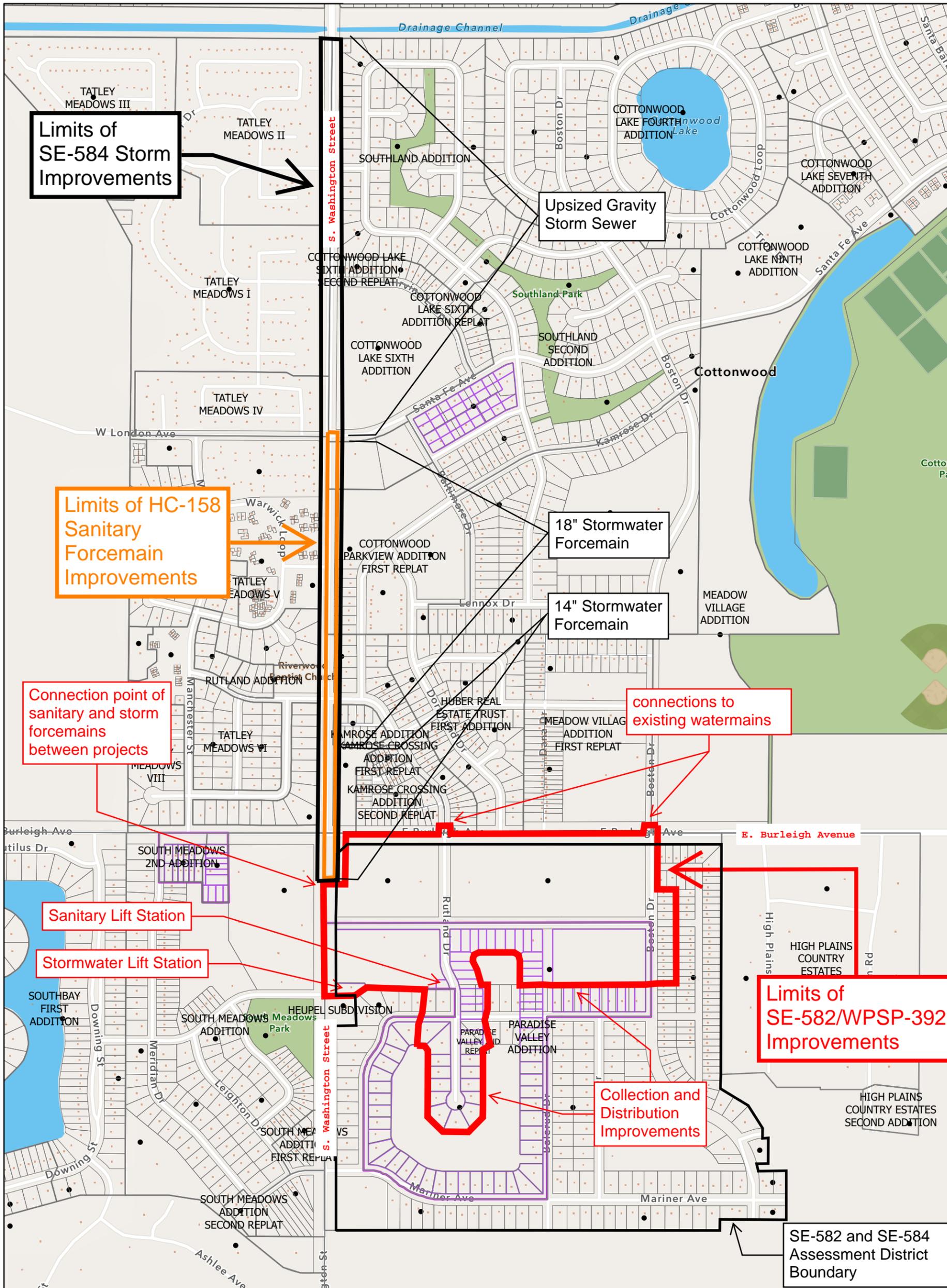
Exhibit “A” – Project Delineation and Improvement Map

- See the one page following this page.

Exhibit “B” – HC-158 Developer Improvements

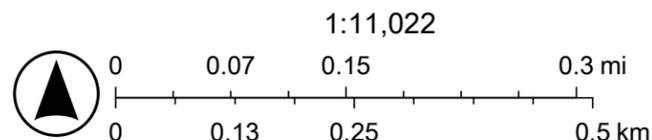
- See the one page following this page.

# Exhibit "A"



10/10/2023

- City Parcels (Not Replatted)
- Blocks
- Subdivisions
- Pending Lots
- Pending Subdivisions
- Address



Esri Community Maps Contributors, City of Bismarck, State of North Dakota, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

# Exhibit B

## HC-158 Developer Improvements

Sanitary Sewer Forcemain						
					Contractor Bid Prices	
Spec	Code	Description	Qty	Unit	Unit Price	Total Price
724	9024	FORCEMAIN 10IN	3015	LF	\$120.00	\$361,800.00
724	583	TAPPING SLEEVE AND VALVE 24IN X 10IN	1	EA	\$14,000.00	\$14,000.00
<i>Total</i>						<b>\$375,800.00</b>
Construction Total						<b>\$375,800.00</b>
10% Construction Contingency						\$37,580.00
subtotal						<b>\$413,380.00</b>
10% Construction Engineering						\$41,338.00
1% City Project Management						\$4,133.80
subtotal						<b>\$45,471.80</b>
Design Engineering						\$17,388.90
<b>Total</b>						<b>\$476,240.70</b>