

**ADDENDUM TO AGENDA
CITY OF ISANTI
CITY COUNCIL MEETING
TUESDAY, JULY 17, 2018 – 7:00 P.M.
CITY HALL**

- E. Proclamations/Commendations/Certificate Awards
- F. Approve City Council Minutes
- G. Announcements
- H. Council Committee Reports
- I. Public Hearings
- J. Business Items

K. Consent Agenda

ADD K. 7 Resolution 2018- XXX Adoption of Transfer/ Donation of Parcel in Redevelopment TIF District No. 9 to City of Isanti and Authorization to Conduct Environmental Testing

- L. Other Communications

Adjournment



Request for City Council Action

To: Mayor Wimmer and City Council Members

From: Sean M. Sullivan, Economic Development Director

Date: July 17, 2018

Subject: Consider Adoption of Resolution 2018- ____ Transfer/ Donation of Parcel in Redevelopment TIF District No. 9 to City of Isanti and Authorization to Conduct Environmental Testing

Background:

The City was donated the property at 100 Dahlin NE in 2016 and demolished the substandard structure. Recently, the City was approached by ownership of vacant Babinski Foundation property regarding its interest in acquiring the property identified as Tax ID Parcels 16.040.0230 and 16.040.0240 (the "Property"). The Property is adjacent to 100 Dahlin Avenue NE. The item was reviewed at DOAC on June 7, 2018 and direction was given to work with the owner to see if terms of a deal could be agreed upon. The owner has decided it would be willing to transfer/donate the Property to the city for a nominal cost. Staff is recommending that the City conduct a Phase 1, and possibly a Phase 2 Environmental if needed before agreeing to accept the transfer/donation of the Property. Staff has received a quote for \$1,800 from Carlson McCain to conduct a Phase 1 Environmental on the Property. Staff has used this environmental firm in the past and is confident that price is competitive and the quality of work is excellent.

Requested Action:

Consider Adoption of Resolution 2018- ____ Transfer/ Donation of Parcel in Redevelopment TIF District No. 9 to City of Isanti and Authorization to Conduct Environmental Testing

Attachment:

- 1) Resolution 2018- ____ Transfer/ Donation of Parcel in Redevelopment TIF District No. 9 to City of Isanti and Authorization to Conduct Environmental Testing

RESOLUTION 2018-__

**TRANSFER/ DONATION OF PARCEL IN REDEVELOPMENT TIF DISTRICT NO. 9
TO CITY OF ISANTI AND AUTHORIZATION TO CONDUCT
ENVIRONMENTAL TESTING**

WHEREAS, Parcel Nos. 16.040.0230 and 16.040.0240 (the "Property") are vacant parcels located in Redevelopment TIF District No. 9 adjacent to City of Isanti owned land; and

WHEREAS, Staff has been in contact with legal counsel from the Babinski Foundation, the owner of the Property, and the owner has expressed a willingness to transfer/donate the Property to the City of Isanti at a nominal cost; and

WHEREAS, the environmental condition of the Property is unknown and needs to be defined prior to the City considering transfer/donation of the Property; and

WHEREAS, Staff has obtained the attached quote from Carlson McCain for the Phase 1 Environmental for Property for (\$1,800) which staff is recommending be conducted prior to the City considering acceptance of the donation of the Property;

WHEREAS, Carlson McCain conducted the Environmental Phase 1 on 100-102 Dahlin Ave NE which is adjacent to the Property, the work was timely and accurate and Staff recommends using the same firm.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Isanti, Minnesota authorize:

- 1) City Staff to work with the City Attorney and land owner on the details to finalize the transfer/donation of the Property.
- 2) Awarding the attached contract to Carlson McCain to conduct a Phase 1 Environmental and if needed, a Phase 2 Environmental in a total amount for Phase 1 and Phase 2, not to exceed \$5000 with the funding source to be EDA 511 – Land Acquisition and to amend the EDA budget to reflect that change.

This Resolution hereby approved by the Isanti City Council this 17th day of July 2018.

Attest:

Mayor George A. Wimmer

Katie Brooks
Human Resources/City Clerk



July 16, 2018

Mr. Sean Sullivan
Economic Development Director - City of Isanti
110 First Avenue Northwest
Isanti, Minnesota 55040

Re: Scope of Work and Cost Estimate
Phase I Environmental Site Assessment
Parcel ID Nos. 16.040.0230 & 16.040.0240 - Isanti, Minnesota

Dear Sean:

Carlson McCain, Inc. (Carlson McCain) is pleased to provide this Scope of Work and Cost Estimate to conduct a Phase I Environmental Site Assessment (ESA) for the above referenced Parcels (also referred to as the Property). It is our understanding that the City of Isanti is considering acquisition of the Property. Our Scope of Work and Cost Estimate to conduct this Task is provided in the following Sections.

Purpose and Objectives

The purpose of conducting a Phase I ESA is to provide information about the general environmental character of the Property; and satisfy one of the requirements to qualify for the *innocent landowner, contiguous property owner, or bona fide prospective purchaser* limitations on Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability in accordance with 42 USC §9601(35)(B), if the need should arise. That requirement includes conducting "all appropriate inquiry into the previous ownership and uses of the Property consistent with good commercial and customary practice."

Scope of Work

The Phase I ESA will be conducted following guidelines established by the American Society for Testing and Materials (ASTM), "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, Standard E1527-13".

The Scope of Work to be provided by Carlson McCain to conduct the Phase I ESA for this Property includes the following:

- Site Location – Describe the location of the Property, by street address, township and municipality, county, and United States Geological Survey (USGS) Quadrants to the nearest 1/4 section.
- Uses of the Property – Identify obvious uses of the Property from the present, back to the Property's first developed use, or back to 1940, whichever is earlier.
- Uses of Properties in Surrounding Area – Identify uses of surrounding parcels, to the extent that this information is revealed in the course of researching the Property.
- Site Reconnaissance – Visit the Property in an effort to visually or physically determine the presence of underground or aboveground storage tanks (USTs or ASTs) including types of materials stored, refuse disposal, wells, septic systems, sumps, pits, ponds, lagoons, catchment basins, retention ponds, areas of surface soil staining, stressed vegetation, or any other obvious indication of a contamination source. Adjacent properties will also be assessed to determine if they are potential sources of contamination.

*Scope of Work & Cost Estimate to Conduct a Phase I ESA
Parcel ID Nos. 16.040.0230 & 16.040.0240 - Isanti, Minnesota*

- Site Maps - Provide historic and current topographic maps that designate the locations of pertinent site features, structures and potential sources of contamination.
- Database File Search - Conduct a database file search of all applicable State, Federal and Tribal regulatory agencies to determine the presence of known contaminated sites near the Site.
- Information Requests - Inquire via letter or telephone interview with local officials regarding their knowledge of the Property. A reasonable attempt will be made to contact at least one staff member of the local fire department, State or local health department, local engineering and/or public works department, planning and development personnel of the city, county and other development authorities, zoning and assessment personnel of the city or county, the county solid waste officer, the county hazardous waste officer, and the local fire department inspector.
- Water Supply - Identify the source of potable water for the Property.
- Aerial Photographs - Provide and review copies of aerial photographs, or reasonable facsimiles, to check for altered land use, previous storage, etc.
- Sanborn Maps - Provide and review copies of historic Sanborn fire insurance maps, or reasonable facsimiles, to check for altered land use, previous storage, etc.
- City Directories - Review historic city directories that have been published to determine the history of occupancy.
- Other Historical Records - Review as necessary, other historical records including but not limited to provided previous environmental reports, property tax files, recorded land title records, building department records, zoning department records and other reasonably ascertainable historical sources that identify past uses of the Property.
- Interviews - Reasonable attempts will be made to obtain information from past and present owners, operators, and occupants of the Property.

All information gathered during the Phase I ESA will be presented in a single comprehensive Report for the Property. The Report will identify recognized environmental conditions (RECs), Historic RECS, Controlled RECs and de minimis conditions. Please note recommendations are not required by the ASTM Standard. However, we will be happy to discuss recommendations (if any) with you, upon completion of the Report.

Users Responsibilities

In accordance with ASTM, several tasks are to be provided by the User and will help identify the possibility for RECs in connection with the Property. The following tasks are expected to be completed by the User and this information provided to Carlson McCain:

- Completion of search for environmental liens;
- Activity and land use limitations that are in place on the Property or that have been filed or recorded in a registry;
- Specialized knowledge or experience of the person seeking to qualify for the *Landowner Liability Protection*;
- Relationship of the purchase price to the fair market value of the Property if it were not contaminated;
- Commonly known or reasonably ascertainable information about the Property; and
- The degree of obviousness of the presence or likely presence of contamination at the Property, and the ability to detect the contamination by appropriate investigation.

Assumptions/Conditions

- No attempt will be made to perform a compliance audit involving regulatory permit review for any on-site operations or adjacent areas of concern identified during this Assessment, or for any planned use of the Property.
- Carlson McCain will be provided with the names and telephone numbers of key contacts for the Property.
- It will be necessary to contact only those agencies specified in the proposed Scope of Work to obtain information on current and prior ownership, land use, and regulatory compliance. Furthermore, it is assumed that all information compiled from these agencies can be obtained without conducting on-site interviews with departmental staff.
- The site reconnaissance will only be performed across areas of the Property which are readily accessible at the time of inspection.
- Access to the Property will not be restricted.

Cost Estimate

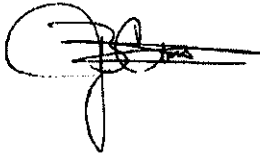
Our Cost Estimate to complete the Scope of Work as outlined above is \$1,800 and will be billed as a lump sum upon completion of the Project. This cost includes all labor, expenses and subcontractor research fees.

Closing

We will be able to initiate the Project immediately following your authorization to proceed. Please note the ASTM Standard requires that a minimum of 20 working days be given to regulatory agencies to provide files that may be useful in evaluating your Property; however, we expect that we can complete the Report within three weeks upon receiving authorization to proceed. We appreciate the opportunity to submit this Scope of Work and Cost Estimate. If you have any questions or comments, please feel free to send me an e-mail at jcrowl@carlsonmccain.com or call me at (763) 489-7907. If you would like us to proceed, please review the attached Standard Terms & Conditions, sign below and return a copy to us for our records. We look forward to working with you on this Project.

Sincerely,

Carlson McCain, Inc.



James B. Crowl III, P.G.
Senior Hydrogeologist

Accepted by:

Name, Title and Date

STANDARD TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional Services are not subject to, and Carlson McCain can not provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by a client are specifically objected to.
2. **CHANGE OF SCOPE.** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by Client. For some projects the scope may not be fully definable during the initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. Carlson McCain will promptly provide Client with an amendment to this Agreement to recognize such change, which shall be deemed approved if not objected to within 15 days of receipt by Client.
3. **SAFETY.** Carlson McCain has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, Carlson McCain specifically disclaims any authority or responsibility for general job site safety and safety of persons other than Carlson McCain employees.
4. **DELAYS.** If events beyond the control of Client or Carlson McCain, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, acts of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 90 days, Carlson McCain shall be entitled to an equitable adjustment in compensation.

In the event that the project is delayed by Client and such delay exceeds 30 days, Carlson McCain shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

5. **TERMINATION / SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. Client shall pay Carlson McCain for all Services, including any expenses, incurred prior to termination.

In the event that either party defaults in its obligations under this Agreement (including Client's obligation to make the payments required hereunder), the non-defaulting party may, after seven (7) days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

6. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by Carlson McCain is supplied for the general guidance of the Client only. Since Carlson McCain has no control over the competitive bidding or market conditions, Carlson McCain cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to client.
7. **RELATIONSHIP WITH CONTRACTORS.** Carlson McCain shall serve as Client's professional representative for the Services, and may make recommendations to Client concerning actions relating to Client's contractors. However, Carlson McCain specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences, or procedures or construction selected by Client's contractors.
8. **CONSTRUCTION/CONTRACTOR OVERSIGHT.** For projects involving construction or contractor oversight, Client acknowledges that under generally accepted professional practice, interpretations of construction documents or field plans in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. Client agrees to hold Carlson McCain harmless from any claims resulting from performance of construction-related or contractor oversight services by persons other than Carlson McCain.

9. **INSURANCE.** Carlson McCain will maintain insurance coverage for Comprehensive General, Automobile and Worker's Compensation in amounts in accordance with legal, and Carlson McCain's business, requirements. Certificates evidencing such coverage will be provided to Client upon request.
10. **INDEMNITIES.** To the fullest extent permitted by law, Carlson McCain shall indemnify and save harmless Client from and against loss, liability, and damages sustained by Client, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of Carlson McCain, its agent or employees.

To the fullest extent permitted by law, Client shall defend, indemnify, and save harmless Carlson McCain, its agents, employees, and representatives from and against loss, liability, and damages (including reasonable litigation costs) arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses, alleged to be caused by any of the following: a) any substance, condition, element, or material or any combination of the foregoing (i) produced, emitted or released from Project, (ii) tested by Carlson McCain under this Agreement, or (iii) used or incorporated by Carlson McCain in the Services; or b) operation or management of the Project. Client also agrees to require its construction contractor, if any, to include Carlson McCain as an indemnitee under indemnification obligation to Client.

11. **LIMITATIONS OF LIABILITY.** No employee or agent of Carlson McCain shall have individual liability to Client. Client agrees that, to the fullest extent permitted by law, Carlson McCain's liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, Carlson McCain's negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by Carlson McCain under this Agreement. If Client desires a limit of liability greater than that provided above, Client and Carlson McCain shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to Carlson McCain for assumption of such additional risk.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL CARLSON MCCAIN BE LIABLE TO CLIENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.

12. **ACCESS.** Client shall provide Carlson McCain safe access to any premises necessary for Carlson McCain to provide services.
13. **REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by Client for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by Carlson McCain for the specific purpose intended, shall be at the Client's risk. Client agrees to defend, indemnify, and hold harmless Carlson McCain from all claims, damages, and expenses (including reasonable litigation costs), arising out of such reuse or alteration by Client or others acting through Client.
14. **AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.
15. **ASSIGNMENT.** Except for assignments a) to entities which control, or are controlled by, the parties hereto, or b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.
16. **STATUTES OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.
17. **PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.
18. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

19. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including Client's contractors, if any.
20. **SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.
21. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.
22. **LIEN RIGHTS.** Carlson McCain hereby gives notice that, pursuant to Minnesota Statute Chapter 514, and as stated in the contract, it retains the right to file a lien against real property in the event of non-payment of invoices for engineering, landscape architecture, surveying, planning or environmental services performed with respect to the subject property. The lien will be prepared and filed in accordance with pertinent laws of the State of Minnesota.
23. **CONSEQUENTIAL DAMAGES.** Neither Carlson McCain nor CLIENT will be liable for any indirect, incidental, special or consequential damages (including loss of anticipated profits, business interruption or good will of other economic or commercial loss) relating to the services rendered.
24. **RELATIONSHIP OF PARTIES.** Carlson McCain will act solely as an independent contractor of the CLIENT and not as the CLIENT agent for any purpose. Neither Carlson McCain nor the CLIENT may enter into any agreement or assume any obligation for the other, and nothing herein may be construed to establish any partnership, joint venture or principal-agent relationship between Carlson McCain and the CLIENT.
25. **SUCCESSORS AND ASSIGNS.** The CLIENT and Carlson McCain each binds itself, its successors, assigns and legal representatives to the other party with respect to all provisions of the contract/agreement. Neither the CLIENT nor Carlson McCain shall assign, set over or transfer his interest in the contract/agreement, in whole or in part, without the prior written consent of the other, and any act in derogation hereof, shall, at the option of the non-assigning party, render the written contract/agreement terminated.
26. **ARBITRATION.** All claims, disputes and other matters in question arising out of, or relating to, the contract/agreement or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise in writing. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law in the State of Minnesota. Notice of the demand for arbitration shall be filed in writing with the other party to the contract/agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event, shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitation. Arbitration will not limit Carlson McCain's mechanic's lien rights. All arbitrations will be conducted in Hennepin County, Minnesota.

The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Arbitration of claims arising from the contract/agreement shall not be consolidated with any other arbitration proceedings except by written consent of the parties.
27. **ENTIRE AGREEMENT.** The CLIENT'S engagement of Carlson McCain to perform work represents the CLIENT'S acceptance of the terms and conditions contained herein, which constitute the entire understanding between Carlson McCain and the CLIENT and supersede any previous communication, representations or agreements by either party, whether oral or written. The terms and conditions contained herein take precedence over the CLIENT'S additional or different terms and conditions that may be contained in any purchase order, work order, invoice, gate pass, acknowledgment form, manifest or other document forwarded by the CLIENT to Carlson McCain to which notice of objection is hereby given. Unless otherwise agreed to in writing by an officer of Carlson McCain, the CLIENT'S engagement of Carlson McCain is limited to these terms and conditions. Carlson McCain's commencement of performance will not be deemed or constructed as acceptance of the CLIENT'S additional or different terms and conditions.

No change of any of the terms or conditions herein will be valid or binding on either party unless in writing and signed by an owner or an officer of the CLIENT and by an officer of Carlson McCain. If any of the provisions hereof are invalid under any applicable statute or rule or law or law, such provisions re, to that extent, deemed omitted, but the remaining terms and conditions of the contract/agreement will remain otherwise in effect. There are no understandings, agreements representations or warranties, express or implied, that are not specified herein respecting the subject hereof.

28. **APPLICABLE LAW.** The contract/agreement shall be governed by the laws of the State of Minnesota.
29. **EEO/AA.** Carlson McCain is an Equal Employment Opportunity/Affirmative Action Employer.