

6. **Consideration of Adopting Resolution 2023-04 Authorizing a Contract with Rhet Architecture, Fargo, ND, in the amount of \$10,000 for façade renderings connected to Block 52 Façade Improvement Project proposals for 149 and 155 West Broadway (JT)**

A. **REFERENCE AND BACKGROUND:**

The EDA is asked to consider adopting resolution 2023-04 authorizing a professional services contract with Rhet Architecture, Fargo, ND, in the amount of \$10,000 for building façade renderings connected to Block 52 façade improvement proposals for 149 West Broadway and 155 West Broadway. Both identified property owners desire to participate in the Façade Improvement Forgivable Loan Program and need architectural sketch renderings to achieve full completed application submittal status. The EDA previously funded the Block 35 architectural renderings for the buildings in that block. The purpose of the renderings is to provide the applicants and the EDA clarity on the intended appearance of the finished façade. The renderings are used as a reference for the contractor on the required project components and materials.

Under the contract proposal, the fee charge would be \$5,000 per building for a total cost of \$10,000. The deliverables resulting from the proposed contract include:

- Three (3) exterior renderings for Mattress Store (149 West Broadway)
- Three (3) exterior renderings for Lucille Murray’s Dance Studio (155 West Broadway)
- Wall section drawings as required to communicate building materials

Staff also interviewed Rhet Fiskness, owner of Rhet Architecture, to ensure that he understood the EDA’s overall objectives of the Façade Improvement Program as well as the desire to have the Block 52 buildings be uniquely individualized and retain a certain level of historic characteristics. Please note that since this is a professional services contract, the EDA is allowed – by statute - to forgo soliciting competitive quotes for the requested services.

The submittal deadline for architectural drawings is proposed is May 1, 2023. This would allow the EDA to review the renderings at the regular meeting on May 10, 2023. Based on this timeline, the façade improvement funding approval considerations for each building would be on the May 24 or June 14 regular meetings. If the EDA authorizes the façade loan funding at either of these meetings, construction of the projects could start in June or July.

A1. Budget Impact: The cost of the scope of work outlined in the proposal is \$10,000. Funding for the architectural renderings would be sourced through the EDA General Fund budget line item for Redevelopment related activities. This

line item currently has sufficient funding available to pay for the proposed contract total fee. The EDA Attorney reviewed the contract for format and revised it to reflect EDA standard liability language limitations, etc. The anticipated cost for legal counsel review of the contract is expected to range from \$650 to \$825.

A2. Staff Workload Impact: The Community & Economic Development Coordinator and Economic Development Manager have time allocated to tasks involved in coordinating and guiding this effort. No other staff are needed to complete these work tasks.

B. ALTERNATIVE ACTIONS:

1. Motion authorizing a contract with Rhet Architecture, Fargo, ND, in the amount of \$10,000 for façade renderings connected to Block 52 Façade Improvement Project proposals for buildings located at 149 and 155 West Broadway.
2. Motion of other.

C. STAFF RECOMMENDATION:

City staff recommends Alternative #1. Rhet Architecture, Fargo, ND, is the firm that Buchholz Construction and Block 52 Holdings utilized in the design and layout of the Block 52 mixed-use redevelopment project. Rhet Architecture has a strong working relationship with Buchholz Construction and continues to perform work on final, minor details of the redevelopment project. Since Buchholz Construction/Block 52 Holdings is involved in the façade funding request through its likely ownership of the east wall of the mattress store at this time (new structural east wall was constructed on Block 52 Holdings property), it makes sense to utilize the partner team that designed the mixed use building as well.

D. SUPPORTING DATA:

- A. Resolution No. 2023-04
- B. Rhet Architecture Contract
- C. Site Aerial

EDA RESOLUTION NO. 2023-04

**RESOLUTION APPROVING A CONTRACT
FOR ARCHITECTURAL SERVICES
BETWEEN THE CITY OF MONTICELLO
ECONOMIC DEVELOPMENT AUTHORITY
AND RHET ARCHITECTURE**

BE IT RESOLVED BY the Board of Commissioners ("Board") of the City of Monticello Economic Development Authority (the "Authority") as follows:

Section 1. Recitals.

1.01. The Authority recognizes the need to encourage investment in commercial and retail buildings in the downtown area of the City of Monticello, Minnesota (the "City") in order to maintain the economic viability of the City and its Downtown/Central Community District and as such, has established a program to provide forgivable loans to eligible properties in the City's downtown to improve the façades of existing commercial and retail buildings (the "Façade Program") and on November 9, 2022, the Authority adopted revised guidelines for the Façade Program (the "Guidelines").

1.02. The Guidelines require that prior to granting a loan (a "Loan") under the Façade Program, the Authority must receive architectural renderings of the façade(s) in order to determine the final scope of work with the applicant and the applicant's contractor.

1.03. The Authority has received letters of interest from multiple applicants stating their desire to apply for a Loan or Loans to pay a portion of the costs of certain façade improvements including structural and aesthetic work (the "Improvements") at certain real property located at 149 and 155 West Broadway Street in the City (the "Property").

1.04. To determine the scope of work of the Improvements and comply with the Guidelines, the Authority wishes to enter into a contract for limited architectural services with Rhet Architecture, a North Dakota corporation, a form of which is presented to the Board (the "Contract").

Section 2. Contract Approved.

2.01. The Authority hereby approves the Contract in substantially the form presented to the Board, together with any related documents necessary in connection therewith, including without limitation all documents, exhibits, certifications, or consents referenced in or attached to the Contract (the "Contract Documents").

2.02. The Board hereby authorizes the President and Executive Director, in their discretion and at such time, if any, as they may deem appropriate, to execute the Contract Documents on behalf of the Authority, and to carry out, on behalf of the Authority, the

Authority's obligations thereunder when all conditions precedent thereto have been satisfied. The Contract Documents shall be in substantially the form on file with the Authority and the approval hereby given to the Contract Documents includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by legal counsel to the Authority and by the officers authorized herein to execute said documents prior to their execution; and said officers are hereby authorized to approve said changes on behalf of the Authority. The execution of any instrument by the appropriate officers of the Authority herein authorized shall be conclusive evidence of the approval of such document in accordance with the terms hereof. This resolution shall not constitute an offer and the Contract Documents shall not be effective until the date of execution thereof as provided herein.

2.03. In the event of absence or disability of the officers, any of the documents authorized by this resolution to be executed may be executed without further act or authorization of the Board by any duly designated acting official, or by such other officer or officers of the Board as, in the opinion of the City Attorney, may act in their behalf. Upon execution and delivery of the Contract Documents, the officers and employees of the Board are hereby authorized and directed to take or cause to be taken such actions as may be necessary on behalf of the Board to implement the Contract Documents.

2.04. This resolution and the execution of the Contract Documents does not guarantee that a Loan will be granted for the Improvements. The Authority reserves the right to approve or reject Façade Program applications on a case-by-case basis, taking into consideration factors considered appropriate by the Authority, in addition to established policies, criteria, and potential benefits. Meeting the criteria does not guarantee an application will be approved. Approval or denial of an application, including one for the Improvements, is at the sole discretion of the Authority.

APPROVED this 12th day of April, 2023, by the Board of Commissioners of the City of Monticello Economic Development Authority.

Steve Johnson, EDA President

ATTEST:

Jim Thares, Executive Director

RHET ARCHITECTURE

Proposal for Limited Architectural Services

Agreement Date: March 23, 2023

Project Name: Broadway Storefront facelifts

Project Client: Monticello Economic Development Authority

Client Address: 505 Walnut Street, Monticello, MN 55362

Phone Number/s (763)295-2711

Email _____

Project Address: Broadway Ave, Monticello, MN

Proposal Type: Limited Architectural Service

Project Summary: Exterior storefront face-lift

Basic Compensation: \$5,000.00 Fixed Fee – Sleep Concepts Mattress Store
\$5,000.00 Fixed Fee – Lucille Murray Dance Studio

The Client and the Architectural Firm RHET Architecture, LLC shall agree to the following limited architectural service proposal:

- I. **SCOPE OF SERVICES:** Services not set forth and listed in this Agreement are specifically excluded from the scope of the Firm's services. The Firm assumes no responsibility to perform any services not specifically listed.
 - a. **Budget**
Construction Budget (not specified)
For Limited Architectural Service, the Firm is not responsible for construction budget and cannot control variables related, including but not limited to construction costs and material selection.
 - b. **Project Team**
Owner: City of Monticello Economic Development Authority (EDA)
Owner's Representative: Jim Thares, Monticello EDA
Owner's Representative: Hayden Stensgard, Monticello EDA
City of Monticello Economic Development Authority (EDA) Project Manager: Mark Buchholz, Buchholz
Construction Architect: Rhet Fiskness, RHET Architecture

c. Services

Builders Construction Drawings:

- (3) Exterior renderings per building
- Wall section drawings as required to communicate building materials

d. Timeline

March 31 - EDA agenda deadline

April 12 - EDA fee proposal approval meeting

April 29 - Architectural drawings deadline

May 1 - EDA agenda deadline

May 10 - EDA design review meeting

e. SERVICE LIMITATIONS:

Design in this proposal does not include:

1. Construction details unless requested by owner;
2. Interior design/decorating or detailing;
3. Bidding or Negotiation;
4. Preliminary estimate of construction cost;
5. Site survey, soil survey;
6. Civil, mechanical or electrical engineering;
7. Selection of materials;
8. Exterior and interior finish products to be suggested but not specified.
9. Construction observation, verification, or testing.

f. ADDITIONAL SERVICES: Additional Services offered, in addition to the proposal at the hourly rates may include any of the following services:

1. Drawing revisions due to changes in pre-design and programming instructions, project size, quality or complexity or Client's failure to make decisions in a timely manner;
2. Not used.
3. Additional design renderings;
4. Assist in obtaining bids or negotiated proposals: bidding requirements, fixtures allowances, general conditions and supplementary conditions, specifications and supplementary drawings; Establish a list of prospective bidders or contractors; Respond to or provide clarifications to prospective bidders; and Evaluate proposals and determine successful bids or proposals. Minimum fee: \$ 2,500.00.
5. Selection of any interior and exterior materials, windows, doors, etc.;
6. Contractor Negotiations assistance;
7. Availability for questions and clarifications;
8. Shop Drawings review;
9. Selection of any colors and finishes;
10. Selection of light fixtures, lighting layout;
11. Observation of the Construction Work for compliance with plans;
12. Review Monthly Requests for Payment;
13. Interior Furnishing Design / Furniture Design & Selection Services;
14. Assemble final punchlist for contractor/s; or
15. Final Inspection.

For the above-listed Additional Services, the Client shall compensate the Firm at the hourly rate listed below.

Current Hourly Compensation

\$140.00 Principal Architect Rate

\$130.00 Project Architect Rate
\$120.00 Project Manager Rate
\$105.00 Project Designer
\$65.00 Administrative Staff Rate and Travel time

- II. **BASIC COMPENSATION:** Flat fee for Services of \$5,000 for each property. Modifications to the drawings during the construction that results in redesign and re-issuing the architectural drawings shall be compensated on an hourly basis.
- III. **CADD PLAN FILES DISCLAIMER:** The information contained on the electronic files for the above listed project have been created by RHET Architecture to assure the accuracy of these documents, yet RHET Architecture cannot guarantee that these documents contain the complete and accurate information or that no changes or modifications have been made to these documents. The recipient(s) of these file types agrees that RHET Architecture cannot be held responsible for problems arising from files which have been converted for use in non-native applications. (for example AutoCAD files converted to Micro Station, REVIT, etc.). Since revisions or additions to the design fields may occur at any time, the recipient agrees to indemnify, defend, and hold harmless RHET Architecture, its officers, agents and employees from and against any and all claims, suits, losses, damages or costs, including reasonable attorney's fees, arising from the use of outdated CADD design files.
- IV. **GENERAL CONDITIONS:** The Firm shall perform the services outlined in this agreement for the stated fee arrangement. Where applicable, proposed fees constitute our best estimate of the charges required to perform the services defined. Except as provided otherwise, the project scope will not be modified without written mutual agreement. Where project scope is expanded by the Client, Client will be responsible for payment for all services resulting there from. For those projects involving conceptual or process development services, activities often cannot be fully defined during initial planning. As the project progresses, if facts are uncovered which may alter the scope, the Firm will inform the Client of such situation so that changes in scope and compensation can be negotiated as required. The Firm will provide all services in accordance with generally accepted professional practices. The Firm will not provide or offer to provide services inconsistent with or contrary to such practices nor make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code.
- V. **CODE COMPLIANCE:** The Firm shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations in effect as of the date of this Agreement. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the Firm to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement.
- VI. **DISPUTE RESOLUTION:** In an effort to resolve any conflicts that arise during the design of the Project the Client and the Firm agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation.
- VII. **PAYMENT DUE:** Invoices shall be submitted by the Firm monthly and are due within thirty (30) calendar days of the receipt. The Firm will not provide backup documentation with submitted invoices. If the Client takes exception to any part of the invoice, including the amount or estimated work complete, the Client will notify the Firm within thirty (30) days. Without notification, the Client agrees not to dispute any part of the invoice or withhold any payment.
- VIII. **INTEREST:** If payment in full is not received by the Firm within thirty (30) calendar days of the

due date, invoices shall bear interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) of the PAST DUE amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

- IX. **COLLECTION COSTS:** If the Client fails to make payments when due and the Firm incurs any costs in order to collect overdue sums from the Client, the Client agrees that all such collection costs incurred shall immediately become due and payable to the Firm. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable staff costs at standard billing rates for the Firm's time spent in efforts to collect. This obligation of the Client to pay the Firm's collection costs shall survive the term of this Agreement or any earlier termination by either party.
- X. **SUSPENSION OF SERVICES:** If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Firm may suspend performance of services upon thirty (30) calendar days' notice to the Client. The Firm shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, the Firm shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Firm to resume performance.
- XI. **TERMINATION:** In the event of termination of this Agreement by either party, the Client shall, within thirty (30) calendar days of the date of termination, pay the Firm for all services rendered and all reimbursable costs incurred by the Firm up to the date of termination, in accordance with the payment provisions of this Agreement.

The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Firm not less than seven (7) calendar days' written notice. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or the Firm's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

- XII. **SET-OFFS, BACKCHARGES, DISCOUNTS:** Payment of invoices shall not be subject to any discounts or set-offs by the Client unless agreed to in writing by the Firm. Payment to the Firm for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.
- XIII. **INDEMNIFICATION:** The Firm agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Firm's performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Firm is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Firm, its officers, directors, employees and subconsultants (collectively, Firm) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor the Firm shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

- XIV. **CERTIFICATIONS GUARANTEES AND WARRANTIES:** The Firm shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence the Firm cannot ascertain. The Client also agrees not to make resolution of any dispute with the Firm or payment of any amount due to the Firm in any way contingent upon the Firm signing any such certification.
- XV. **OWNERSHIP OF INSTRUMENTS OF SERVICE:** All reports, drawings, specifications, computer files, field data, notes, models and other documents and instruments prepared by the Firm as instruments of service shall remain the property of the Firm and the Client. The Firm and the Client shall retain all common law, statutory and other reserved rights, including, without limitation, the copyrights thereto.
- XVI. **PROMOTIONAL RIGHTS:** The Firm shall maintain the right to include photographic and artistic representations of the Project design for promotional and professional materials. The Firm shall be given reasonable access to the Project to make such representations. The promotional materials shall not include the Client's confidential or proprietary information. The Client shall provide professional credit for the Firm in the Client's promotional materials for the Project.
- XVII. **USE OF INNOVATIVE DESIGN AND TECHNOLOGIES:** The Client understands and agrees that state-of-the-art or innovative products, technologies or methods may be used on the Project and that these lack a proven history of successful application and performance. The Client acknowledges that these technologies are being incorporated into the Project to accomplish recognized objectives, but due to their unproven and innovative nature, there is a significant possibility that those objectives may not be realized and may result in undesirable consequences. The Firm will conduct a reasonable level of investigation and analysis, and this is the limitation of the Firm's obligation for the performance of these technologies. The Client has weighed the relative risks and rewards and accepts the risk of incorporating the innovation(s) into the project.
- XVIII. **ASSIGNMENT:** Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by the Firm as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.
- XIX. **LIMITATION OF LIABILITY:** In recognition of the relative risks and benefits of the Project to both the Client and the Firm, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Firm to any action by the Client, and the Firm agrees to limit the liability of the Client to any action by the Firm, for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Firm to the Client and/or the Client shall not exceed the Firm's total fee for services rendered on this Project.

- XXII. **INSURANCE.** Prior to starting the Services and during the full term of this Agreement, the Firm shall procure and maintain, at Firm's expense, as follows:
- a. Workers Compensation insurance in accordance with Minnesota law;
 - b. Professional Liability Insurance covering any damages caused by an error, omission or any negligent act
 - c. Automobile insurance for owned, hired and non-owned vehicles];

Coverage shall be sufficiently broad to cover to all duties and obligations undertaken by the Firm in this Agreement including duties related to indemnification. Insurance must be on an "occurrence" basis, and, other than Workers Compensation, the limits of such policies must be no less than \$1,000,000 per occurrence and \$1,500,000 aggregate.

- XXIII. **DATA PRACTICES ACT COMPLIANCE.** The Firm acknowledges that all data provided, produced, or obtained under this Agreement shall be protected, maintained, and administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (the "Act"), and that with regard to such data The Firm must comply with the Act as if it were a government entity. The Firm will immediately report to the City any requests from third Parties for information relating to this Agreement.
- XXIV. **AUDIT DISCLOSURE.** Under Minn. Stat. § 16C.05, subd. 5, The Firm's books, records, documents, and accounting procedures and practices relevant to this Agreement, including books and records of any approved subcontractors, are subject to examination by the City and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years after the termination of this Agreement.
- XXV. **OWNERSHIP OF DOCUMENTS.** All plans, diagrams, analysis, reports and information generated in connection with the performance of this Agreement (the "Information") shall become the property of the City, but the The Firm may retain copies of such documents as records of the services provided. The City may use the Information for any reasons it deems appropriate without being liable to the Firm for such use. The Firm shall not use or disclose the Information for purposes other than performing the Work contemplated by this Agreement without the prior consent of the City.
- XXVI. **GOVERNING LAW.** This Agreement shall be controlled by the laws of the State of Minnesota. Any disputes, controversies, or claims arising under this Agreement shall be heard in the state or federal courts of Minnesota and the Parties waive any objections to jurisdiction.

I have read and understand the contract:

The signature indicates that you have read and understand the contract. The following signatures indicate this proposal is acceptable and in agreement with your understanding. Please retain a copy for your records and return the other signed copy to Rhet Fiskness, Architect.

XX. **Offered by:**



3/28/2023

Rhet Fiskness, AIA

Date

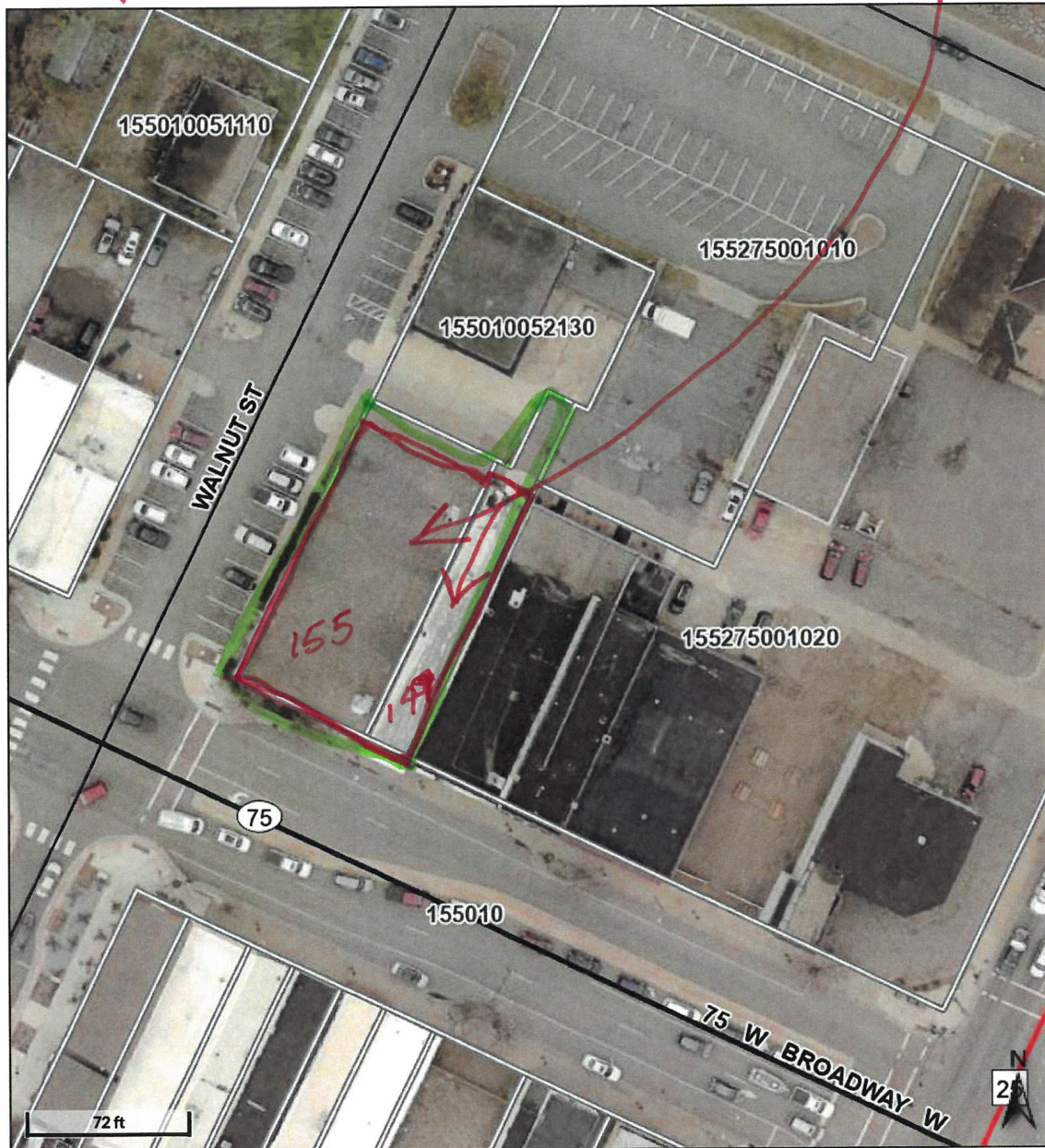
Accepted by:

Signature

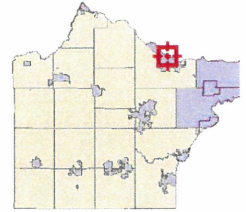
Date

BLOCK 52
 Facade Improvement {149 + 155 West Broadway} 4/05/2023

Beacon™ Wright County, MN
 Proposal



Overview



Legend

Roads

- CSAHCL
- CTYCL
- MUNICL
- PRIVATECL
- TWPCCL

Highways

- Interstate
- State Hwy
- US Hwy

City/Township Limits

- c
- t
- Parcels
- Torrens

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