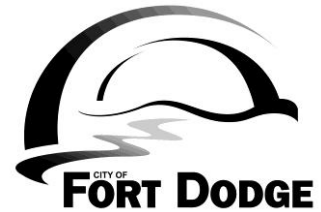


March 3, 2015

To: Mayor Bemrich and City Council

From: David Fierke, City Manager

Subject: Grant Agreement with DCA for the Gateway Features Project Implementation



ACTION: For vote Monday, March 9, 2015

Brief History

The 2008 Downtown Plan recommends designing and installing Gateway Features at key downtown entry points. In March of 2014, the City Council approved a contract with Snyder & Associates to create conceptual designs for Gateway Features at four (4) entry points to the downtown. SSMID and the City Council reviewed the concepts, which are attached.

In October of 2014 the Council approved submittal of a grant application to the Iowa Department of Cultural Affairs (DCA) to request that Iowa Great Places fund up to 50% of the cost of the project (approximately \$375,000). In December of 2014 the City was notified that the DCA would award \$125,000 to the Fort Dodge Gateway Features project.

Analysis of Issue

Construction costs for the four Gateway Feature locations have been estimated at \$635,000. See the enclosed for a breakdown of these costs. An additional \$100,000 was included to accommodate final design and construction administration, making the project a total of \$735,000. Because less funds were received from Iowa Great Places than requested, it was determined that we should split the project into two phases. The first phase of implementation will include:

- Finalization of design of all four sites (\$100,000);
- Construction of 2nd Avenue South & South 3rd Street Gateway Feature (\$150,000);
- Construction of the 6th Street Roundabout Gateway Feature (\$115,000);
- Construction of the 12th Street Roundabout Gateway Feature (\$165,000).

Alternative funding sources will be sought for Phase II of the project, which will complete implementation of the project upon the construction of the Gateway Features at North 3rd Street and Haskell Street (\$125,000 + \$20,000 for contingencies).

The enclosed grant agreement in the amount of \$125,000, and with additional funding sources, will allow for completion of Phase I of the Gateway Features. The grant agreement is effective upon approval of the agreement and will subside at project completion, or January 1, 2018; whichever occurs earlier.

Budget Impact

With contingencies, the total cost of Phase I is estimated at \$590,000. The following funding sources will provide for completion of Phase I: Ann Smeltzer Charitable Trust (\$50,000), Iowa Great Places (\$125,000), SSMID (\$50,000), Catherine Vincent Deardorf Foundation (\$50,000), City of Fort Dodge (\$100,000), and Local Business Donations (\$155,000+).

Strategic Plan Impact

- Strategy C.3.1: Primary entryway corridors into “Downtown Center” shall continue to receive priority for visual enhancements, employing special development standards, public investment, and community involvement to facilitate constructive change.
 - Design & install gateway features at key downtown entry points
 - Establish a wayfinding system for entry into downtown
- Strategy C.3.5: Pedestrian-oriented streetscape improvements including, but not limited to, sidewalks, street trees, landscaping, street lights, street furniture, trash receptacles, and signage shall be made to create and maintain an environment attractive to investment.
 - Install streetscaping on priority corridors
- Strategy D.5.5: Seek funding sources to provide sidewalks, trash receptacles, street furniture, lighting, etc., to improve pedestrian-oriented areas.

Impact on Existing Plans

The Gateway Features project implements the Downtown Plan and Envision 2030.

Committee Review / Recommendation

SSMID recommends proceeding with Phase I of the project. SSMID will provide \$50,000 in funds toward the project.

Staff Conclusions / Recommendations

Staff recommends approval of the grant agreement for Iowa Great Places funding with the Iowa Department of Cultural Affairs to implement Phase I of the Gateway Features project.

Alternatives

Deny approval; therefore, requiring other funds to be used to complete the project.

Implementation and Accountability

The Planning Division will be responsible for ensuring the terms of the grant agreement are fulfilled and all remaining match is secured.

Signed



Carissa Miller
Senior Planner

Approved



David R. Fierke
City Manager

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF THE IOWA GREAT PLACES GRANT AGREEMENT WITH THE IOWA DEPARTMENT OF CULTURAL AFFAIRS FOR FUNDING IN THE AMOUNT OF \$125,000

WHEREAS, the City of Fort Dodge, via implementation of the 2008 Downtown Plan, intends to construct the Gateway Features project;

WHEREAS, the City of Fort Dodge will abide by the terms of the Iowa Great Places Grant Agreement to received funds from the Department of Cultural Affairs in the amount of \$125,000.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT DODGE, IOWA:

1. That the Mayor and City Clerk are authorized to execute the Iowa Great Places Grant Agreement with the Iowa Department of Cultural Affairs in the amount of \$125,000; and
2. that the Department of Business Affairs, Community Growth and Engineering is authorized to conduct and supervise the activities as described in the Grant Agreement.

PASSED AND APPROVED this _____ day of _____, 2015 by the City Council of the City of Fort Dodge, Iowa.

Ayes: _____

Nays: _____

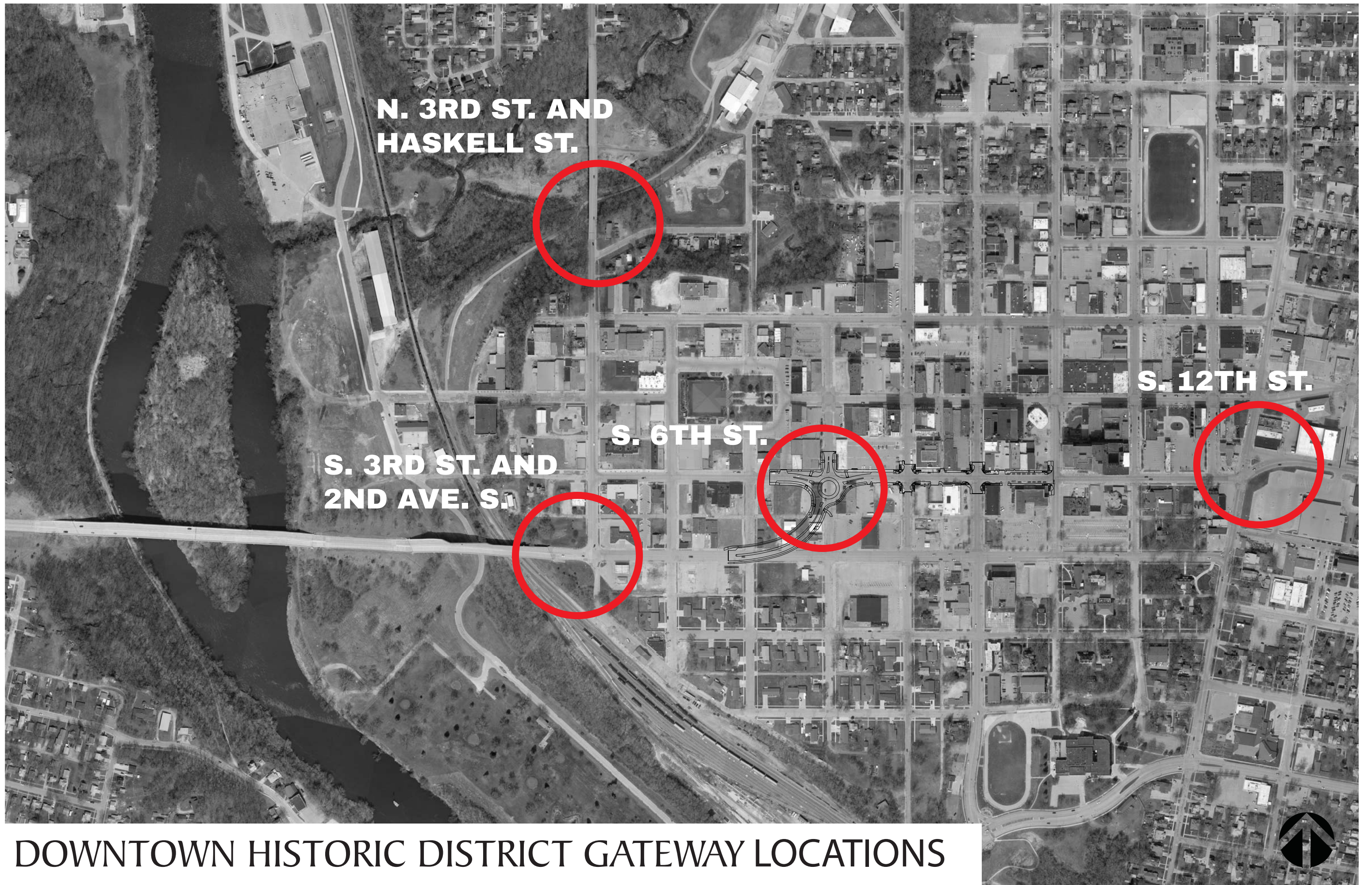
Other: _____

CITY OF FORT DODGE, IOWA

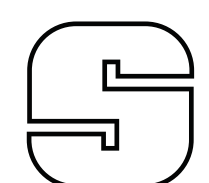
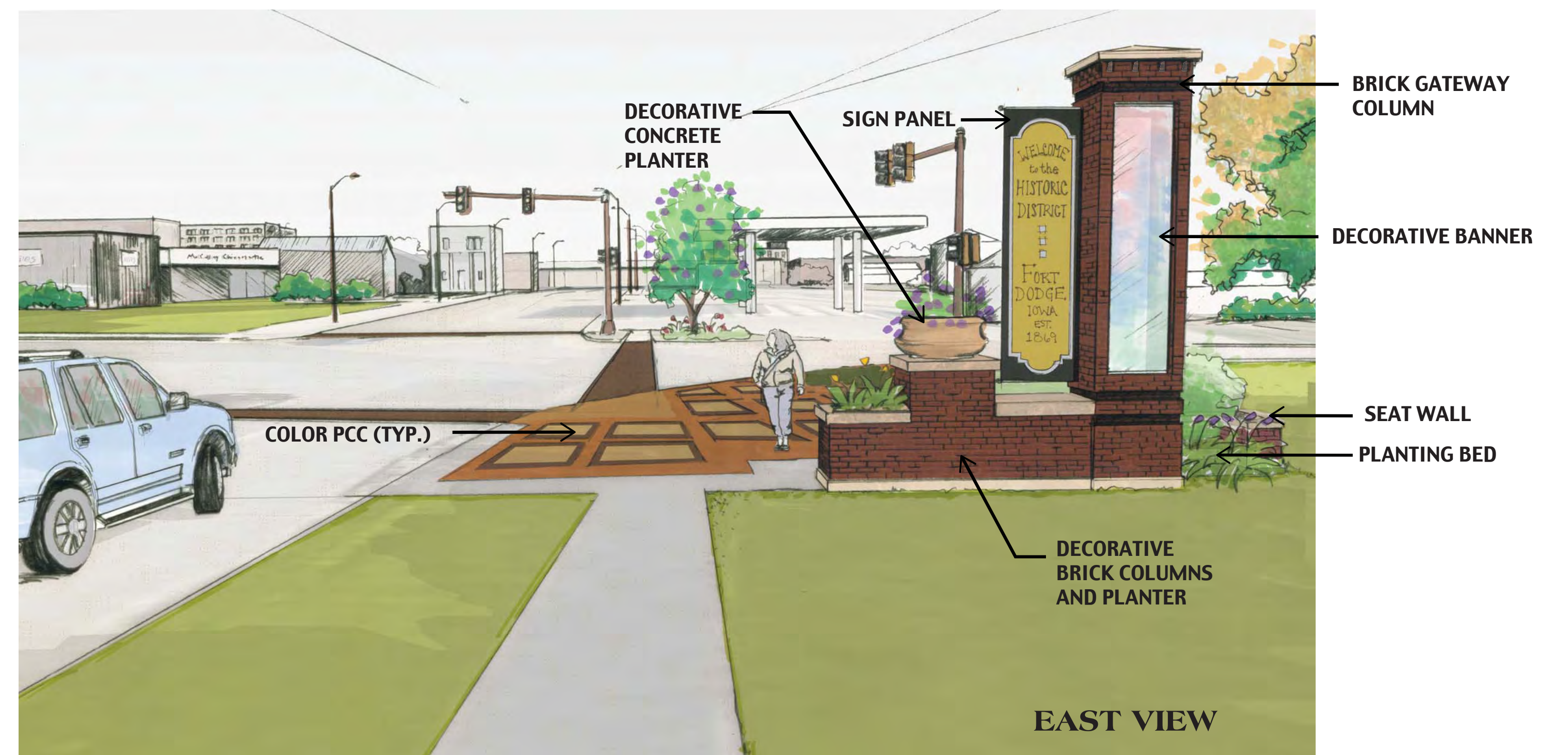
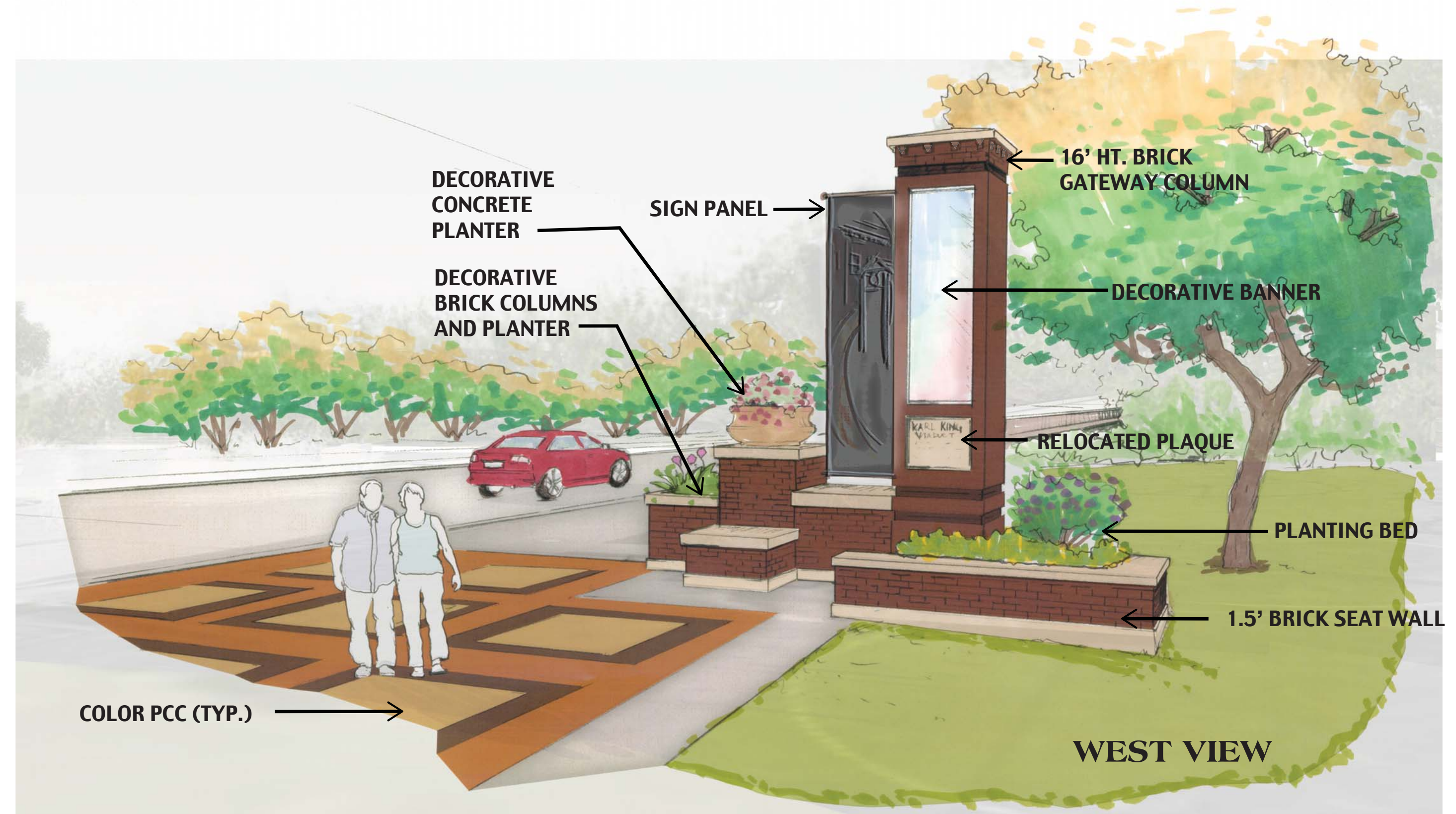
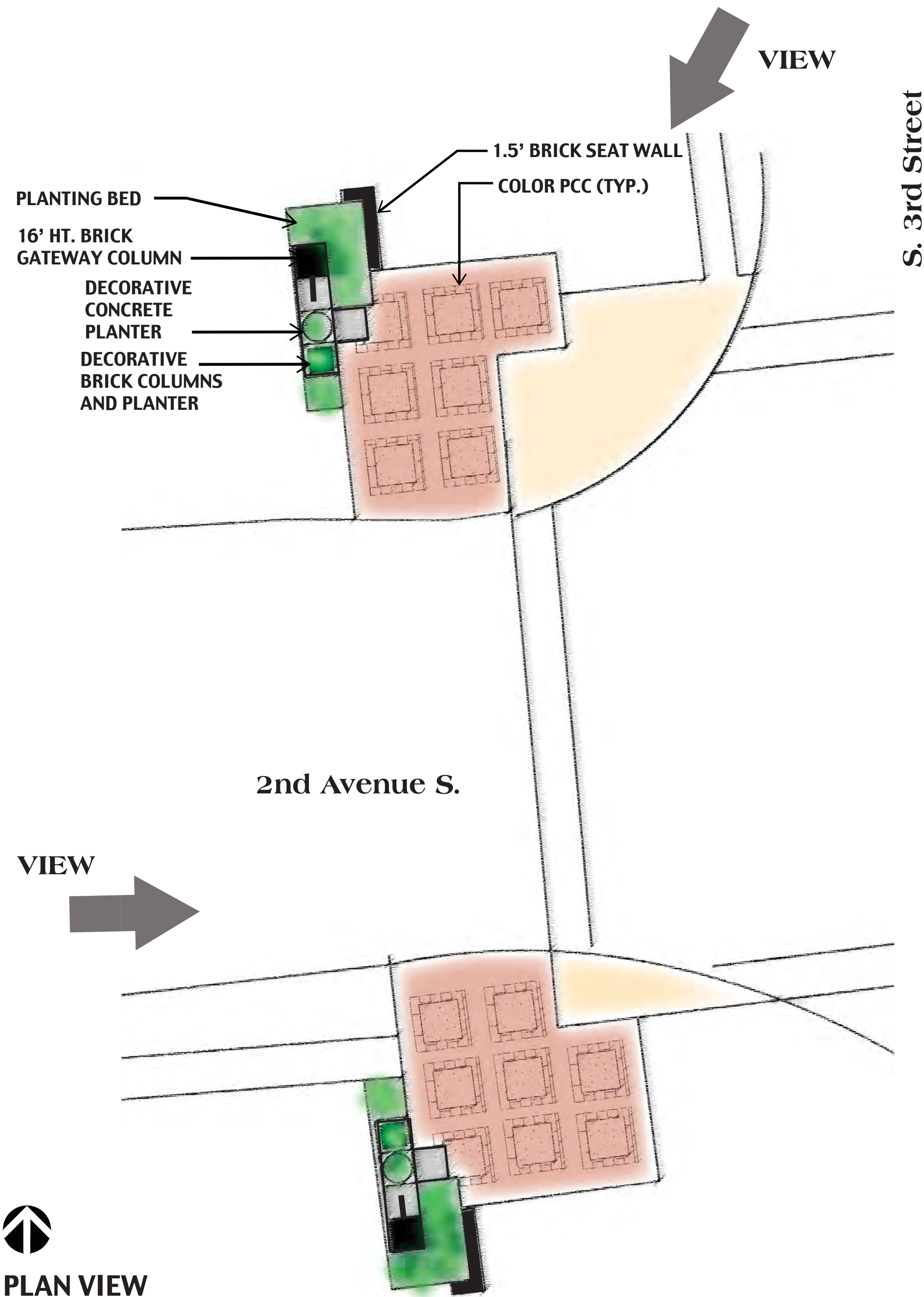
By: _____
Matt Bemrich, Mayor

ATTEST:

Jeff Nemmers, City Clerk



DOWNTOWN HISTORIC DISTRICT GATEWAY LOCATIONS





MATERIAL PRECEDENTS

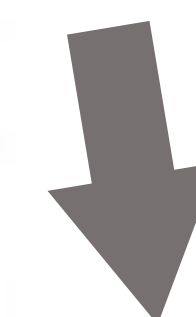


16' HT. BRICK GATEWAY COLUMN

PLANTING BED

1.5' BRICK SEAT WALL

VIEW



N. 3rd Street

Haskell Street



SIGN PANEL

16' HT. BRICK GATEWAY COLUMN

DECORATIVE BANNER

1.5' BRICK SEAT WALL

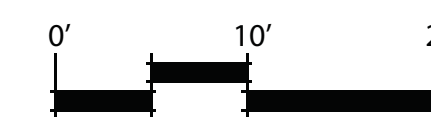
PLANTING BED

COLOR PCC

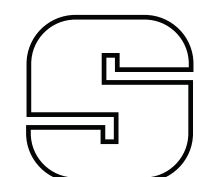
SOUTH VIEW



PLAN VIEW



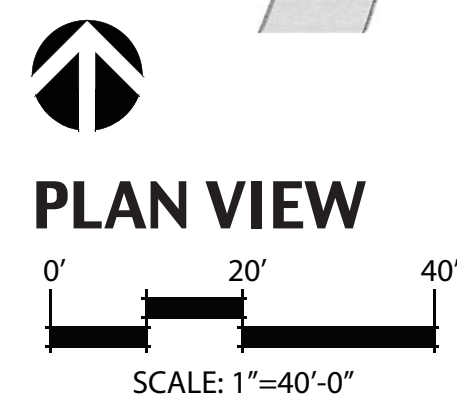
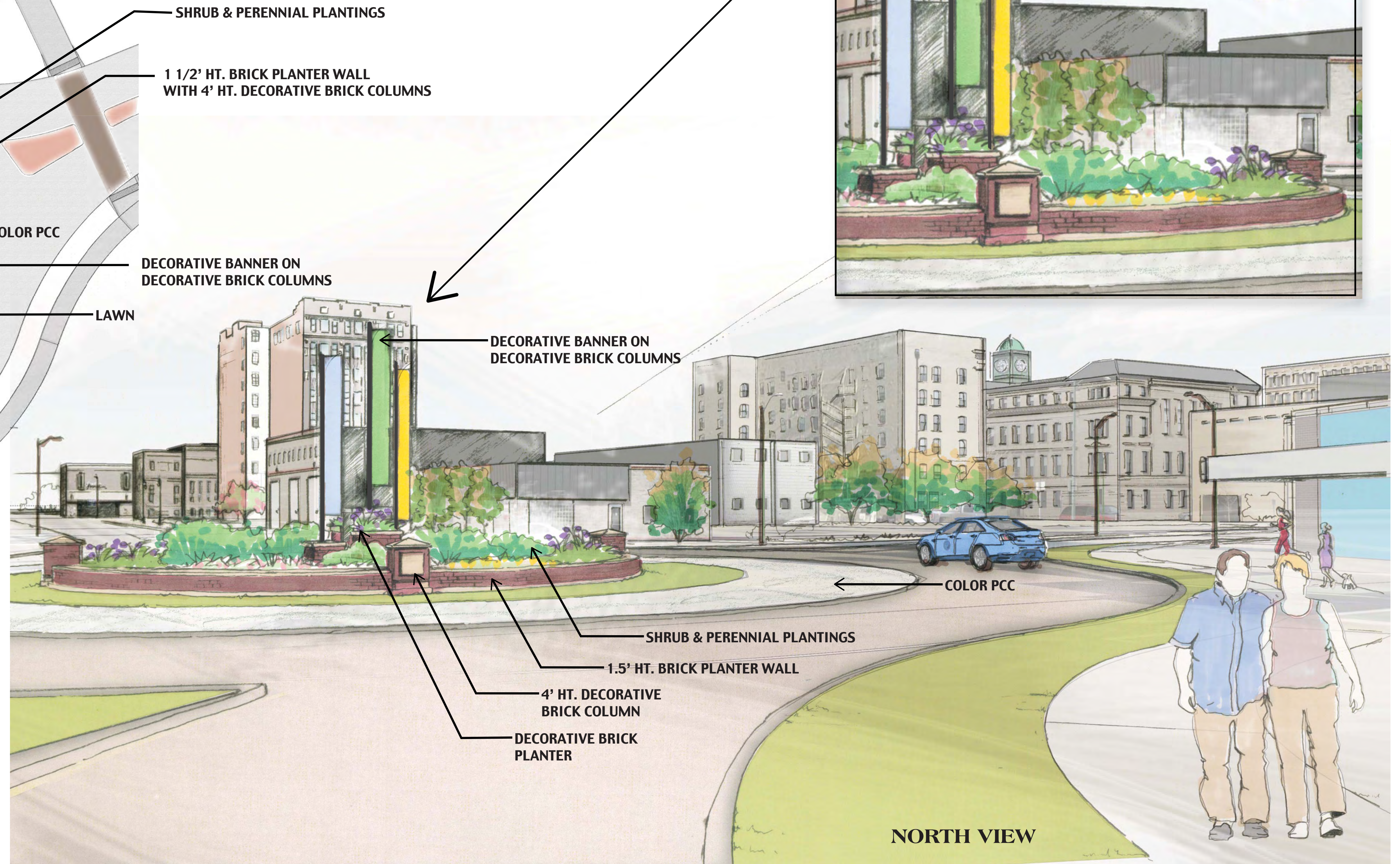
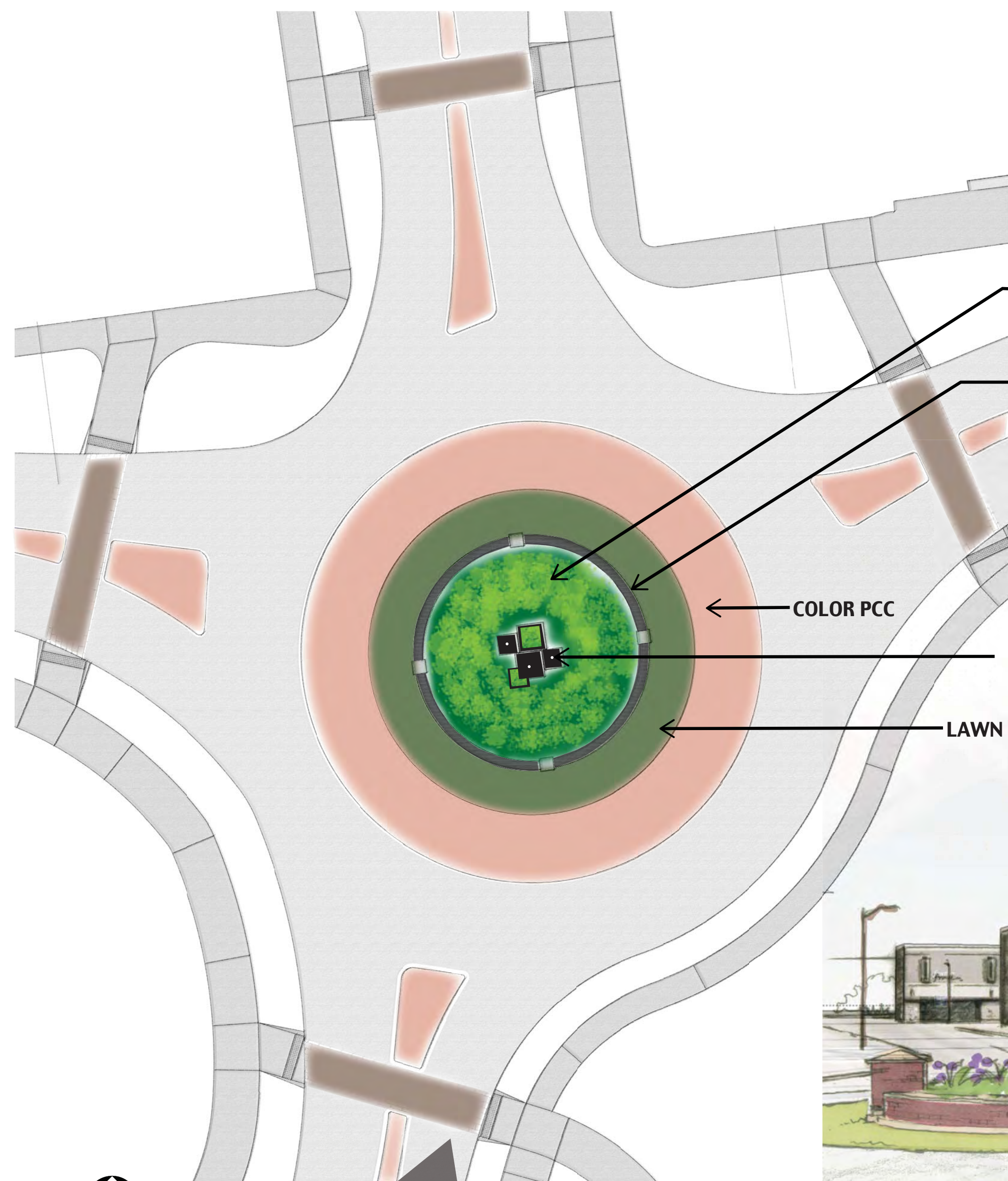
SCALE: 1"=20'-0"



SNYDER & ASSOCIATES
Engineers and Planners

REVISED CONCEPT - N. 3rd Street & Haskell Street

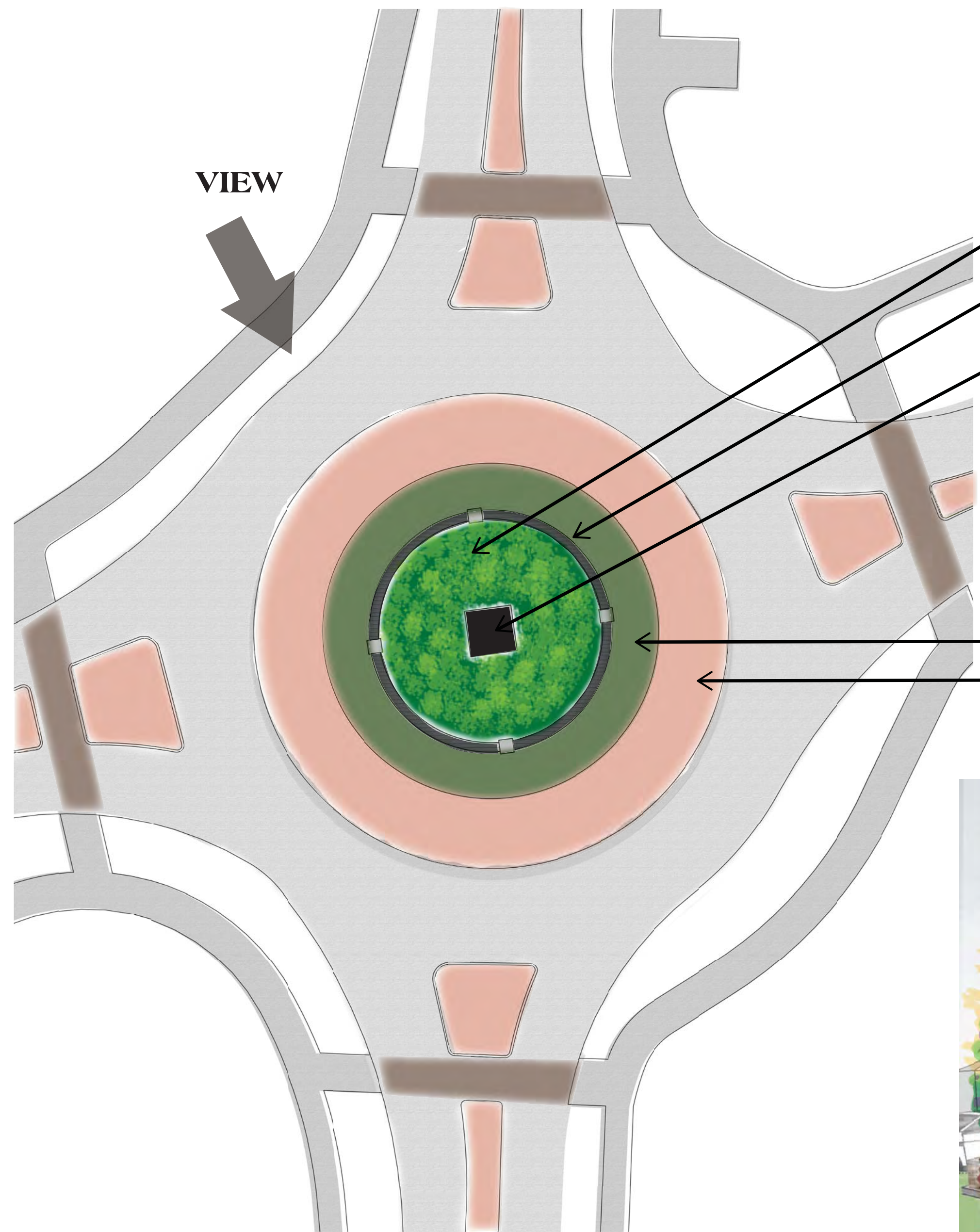
DOWNTOWN HISTORIC DISTRICT GATEWAY



PLAN VIEW

VIEW

NORTH VIEW



VIEW

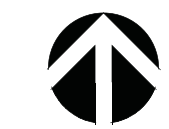
SHRUB & PERENNIAL PLANTINGS

1 1/2' HT. BRICK PLANTER WALL WITH 4' HT. DECORATIVE BRICK COLUMNS

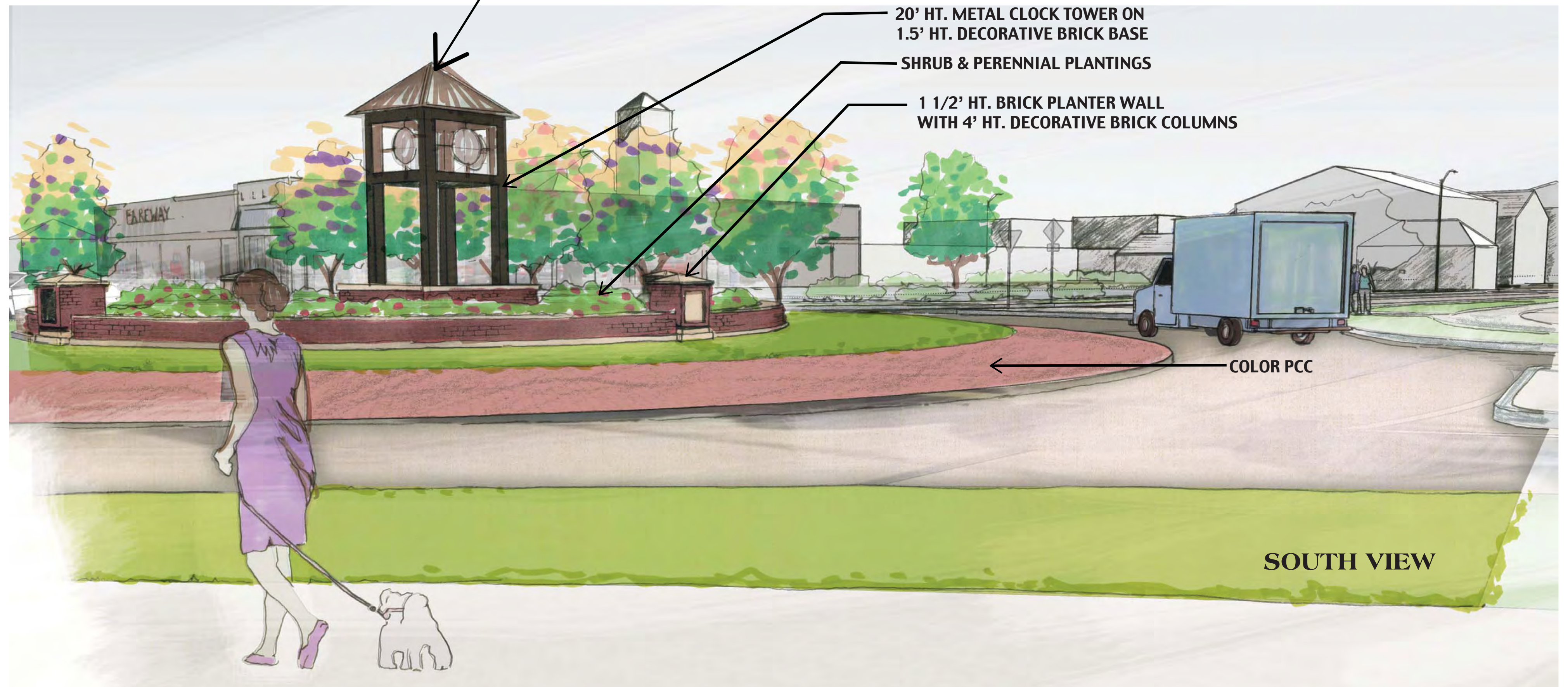
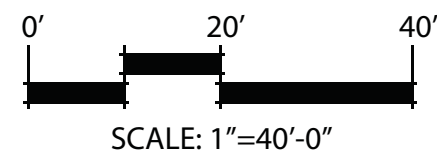
20' HT. METAL CLOCK TOWER ON 1.5' HT. DECORATIVE BRICK BASE

LAWN

COLOR PCC



PLAN VIEW



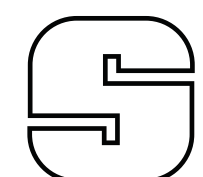
20' HT. METAL CLOCK TOWER ON 1.5' HT. DECORATIVE BRICK BASE

SHRUB & PERENNIAL PLANTINGS

1 1/2' HT. BRICK PLANTER WALL WITH 4' HT. DECORATIVE BRICK COLUMNS

COLOR PCC

SOUTH VIEW



SNYDER & ASSOCIATES
Engineers and Planners

REVISED CONCEPT - S. 12th Street Roundabout DOWNTOWN HISTORIC DISTRICT GATEWAY

6/17/2014

GATEWAY IMPROVEMENTS

Downtown Fort Dodge, Iowa

Design Concepts Budgetary Opinion of Probable Construction Costs
June 17, 2014

2nd Ave. S. and S. 3rd Street

	Item	Quantity	Unit	Unit Cost	Total
1	Earthwork	1	LS	\$3,000.00	\$3,000.00
2	Existing Pavement Removal	1	LS	\$1,000.00	\$1,000.00
3	Existing Tree Removal	1	LS	\$1,000.00	\$1,000.00
4	Color PCC Pavement	1	LS	\$40,000.00	\$40,000.00
5	Planting Allowance	2	EA	\$5,000.00	\$10,000.00
6	Seat Wall	2	EA	\$7,500.00	\$15,000.00
7	Decorative Concrete Planter	2	EA	\$2,500.00	\$5,000.00
8	3' - 6' Ht. Decorative Brick Wall with Planter	2	EA	\$16,000.00	\$32,000.00
9	16' Ht. Decorative Brick Column	2	EA	\$20,000.00	\$40,000.00
10	Site Restoration/Seeding	1	LS	\$3,000.00	\$3,000.00
Total					\$150,000.00

N. 3rd Street and Haskell Street

	Item	Quantity	Unit	Unit Cost	Total
1	Earthwork	1	LS	\$5,000.00	\$5,000.00
2	Existing Pavement Removal	1	LS	\$20,000.00	\$20,000.00
3	Existing Tree Removal	1	LS	\$2,500.00	\$2,500.00
4	Color PCC Pavement	1	LS	\$30,000.00	\$30,000.00
5	Planting Allowance	2	EA	\$2,250.00	\$4,500.00
6	Seat Wall	2	EA	\$10,000.00	\$20,000.00
7	16' Ht. Decorative Brick Column	2	EA	\$20,000.00	\$40,000.00
8	Site Restoration/Seeding	1	LS	\$3,000.00	\$3,000.00
Total					\$125,000.00

6th Street Roundabout*

	Item	Quantity	Unit	Unit Cost	Total
1	Earthwork	1	LS	\$2,000.00	\$2,000.00
2	Planting Allowance	1	LS	\$11,000.00	\$11,000.00
3	Center Decorative Brick Columns for Banners	1	LS	\$25,000.00	\$25,000.00
4	Decorative Banners and Poles	1	LS	\$10,500.00	\$10,500.00
5	4' Ht. Decorative Brick Columns	4	EA	\$5,000.00	\$20,000.00
6	1.5' Ht. Brick Planter Wall	1	LS	\$45,000.00	\$45,000.00
7	Site Restoration/Seeding	1	LS	\$1,500.00	\$1,500.00
Total					\$115,000.00

12th Street Roundabout*

	Item	Quantity	Unit	Unit Cost	Total
1	Earthwork	1	LS	\$2,000.00	\$2,000.00
2	Planting Allowance	1	LS	\$11,000.00	\$11,000.00
3	Clock Tower	1	LS	\$70,000.00	\$70,000.00
4	Clock Tower Brick Base	1	LS	\$15,500.00	\$15,500.00
5	4' Ht. Decorative Brick Columns	4	EA	\$5,000.00	\$20,000.00
6	1.5' Ht. Brick Planter Wall	1	LS	\$45,000.00	\$45,000.00
7	Site Restoration/Seeding	1	LS	\$1,500.00	\$1,500.00
Total					\$165,000.00

Subtotal \$555,000.00

15% Contingency \$80,000.00

TOTAL COST **\$635,000.00**

Note: Costs do not include permitting, land purchase, irrigation, administrative, engineering or construction services.

*Roundabout costs do not include roundabout construction or color pcc pavement.



FY2015
GRANT AGREEMENT

IOWA GREAT PLACES GRANT AGREEMENT

**RECIPIENT: City of Fort Dodge / Fort Dodge Community
Foundation & United Way**
NUMBER: 2015 -06
EFFECTIVE DATE: January 1, 2015
PROJECT NAMES: Downtown Entrance Enhancements
GRANT AWARD: \$125,000
PROJECT COMPLETION DATE: January 1, 2018

This **IOWA GREAT PLACES GRANT AGREEMENT** is made by and between the **Iowa Department of Cultural Affairs ("DCA")** and the **City of Fort Dodge / Fort Dodge Community Foundation & United Way** (the "**Recipient**").

WHEREAS, the Iowa Great Places Program ("Program") was established by the Iowa Legislature and the Governor of Iowa for the purposes of combining resources of state government in an effort to showcase the unique and authentic qualities of communities, regions, neighborhoods and districts in Iowa; and

WHEREAS, the Iowa Legislature has appropriated monies to the Iowa Great Places Fund ("Fund") established pursuant to Iowa Code section 303.3D (2005), with the stipulation that such monies be used by DCA to fund projects for identified Iowa Great Places pursuant to the stipulations provided in that section; and

WHEREAS, the Recipient has been designated as an Iowa Great Place; and

WHEREAS, the Recipient has submitted a proposal to DCA requesting monies from the Fund to help finance the Project described in this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and intending to be legally bound, DCA and the Recipient agree to the following terms and conditions:

ARTICLE 1
DEFINITIONS

As used in this Agreement, the following terms shall apply:

1.1 **AGREEMENT** means this document, the Project Plan and Project Budget. In the event of a conflict between one or more of the foregoing documents, the conflict shall be resolved according to the priority, ranked in descending order, as the documents are listed in the previous sentence.

1.2 **GRANT FUNDS** means an award of assistance from the Fund made by DCA to the Recipient pursuant to the terms and conditions of this Agreement.

1.3 **PROJECT** means the detailed work, services, and other obligations to be performed or accomplished by the Recipient as described in this Agreement, the Project Plan and Project Budget.

1.4 **PROJECT COMPLETION DATE** means the date stated above, which is the date by which the Recipient must complete the Project in order to request reimbursement.

1.5 **PROJECT SITE** means the real property on which the Project property is located.

1.6 **TERMINATION DATE** means the date this Agreement terminates, which shall occur when this Agreement is terminated by DCA pursuant to Article 10, or at the Project Completion Date.

ARTICLE 2
IDENTITY OF THE PARTIES

2.1 DCA is a public instrumentality of the State of Iowa charged with the administration of the Program.

2.2 Recipient is a legally recognized entity in the State of Iowa and, per their grant application to DCA, serves as the designated lead applicant for the Iowa Great Places Project and is subject to grant reporting requirements.

ARTICLE 3
FUNDING

3.1 **FUNDING SOURCE** Funds for the Project are limited to those monies appropriated and legally available to DCA in the Fund. The funds of the State of Iowa (“State”), other than those of the Fund, are not obligated or available to meet any

obligations of DCA created by this Agreement, and this Agreement shall not constitute an obligation or debt of DCA or the State.

3.2 **RECEIPT OF FUNDS** All disbursements of Grant Funds under this Agreement are subject to possession by DCA of sufficient legally available monies in the Fund. If the Legislature fails to make appropriations to the Fund; or if Grant Funds are de-appropriated, reduced, diverted, delayed, insufficient or unavailable for any other reason, so that, as determined by DCA in its sole discretion, DCA is unable to meet its obligations under this Agreement, then DCA shall have no obligation to fund the Project, in whole or in part.

ARTICLE 4 **TERMS OF GRANT**

4.1 **EXECUTION OF PROJECT** The Recipient shall execute the Project as described in the Project Plan and in accordance with the Project Budget.

4.2 **DISBURSEMENT OF FUNDS** Subject to the terms and conditions of this Agreement, DCA shall disburse Grant Funds to the Recipient to reimburse the Recipient for approved Project costs and expenses incurred by The Recipient consistent with the Project Plan and Project Budget. The Recipient shall designate a single Recipient to claim and receive any disbursements.

4.3 **MAXIMUM PAYMENTS** It is understood and agreed that the Grant Funds disbursed by DCA to reimburse the Recipient for Project costs and expenses shall not exceed the Grant Award unless otherwise agreed through a written amendment to this Agreement and that DCA's ultimate financial responsibility under this Grant Agreement will not exceed the Grant Award.

4.4 **RECORD RETENTION AND ACCESS** The Recipient shall maintain its books, documents and records that sufficiently and properly document The Recipient's receipt and use of Grant Funds under this Agreement for a period of at least five (5) years following the later of the Project Completion Date, Termination Date, or the completion of any required audit. The Recipient shall permit the Auditor of the State or any authorized representative of the State, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, or electronic or optically stored and created records or other records relating directly or indirectly to the Project or Grant Funds.

4.5 **RESERVED.**

4.6 **DOCUMENTATION** Within ten (10) days of its receipt of a written request from DCA, The Recipient shall deliver to DCA: (i) copies of all agreements or documents relating to the Project; (ii) copies of all invoices, receipts, statements or vouchers relating to the Project; (iii) a list of all unpaid bills for labor and materials in connection with the Project; and (iv) estimated remaining costs and expenses required to

complete the Project.

4.7 **PRIOR COSTS** No costs or expenses incurred by any Recipient prior to the Effective Date shall be reimbursed by DCA unless DCA specifically agrees, in its sole discretion and in writing, to allow and reimburse such costs and expenses.

4.8 **RESERVED.**

ARTICLE 5 **CONDITIONS TO DISBURSEMENT**

5.1 **CONDITIONS TO DISBURSEMENT** The following conditions shall be met before DCA disburses Grant Funds to any Recipient:

(a) **AGREEMENT EXECUTED** This Agreement shall have been properly executed by the Recipient and returned to DCA.

(b) **RECEIPT OF OTHER FUNDING** The Recipient shall have received and shall have documented, to the satisfaction of DCA, all matching funds and other funds, beyond the Grant Funds, necessary to complete the Project.

(c) **SUBMISSION OF RECIPIENT DOCUMENTATION** The Recipient shall have submitted the following documents to DCA:

- i. A resolution of the authorization for execution of this Agreement by the governing body overseeing the Recipient and specifying the officer authorized to execute this Agreement.
- ii. Project Plan and Project Budget.
- iii. Completed form “W-9, Request for taxpayer identification number and certification.”
- iv. All documents required pursuant to Article 6.1 hereof.
- v. Such other documents as DCA may reasonably request.

ARTICLE 6 **DISBURSEMENT OF GRANT FUNDS**

6.1 **REQUIRED DOCUMENTATION** All disbursements of Grant Funds shall be subject to receipt by DCA of a reimbursement request form (“Request for Reimbursement”) from the Recipient, which shall be submitted with itemized costs and expenses listed and supporting documentation attached. Prior to submission to DCA, the Recipient shall review each Request for Reimbursement to verify that claimed

expenditures are allowable costs and expenses. DCA shall review the Request for Reimbursement in a timely manner, and if DCA determines that: (i) all itemized costs and expenses are allowable and eligible for reimbursement, and (ii) the supporting documentation is acceptable, it shall promptly process payment to the Recipient.

6.2 **SUSPENSION OF DISBURSEMENTS** If any Recipient is in breach of this Agreement (as provided in Article 10 hereof), DCA may suspend disbursement of Grant Funds to the Recipient until such time as the breach has been cured to DCA's satisfaction. Notwithstanding anything to the contrary in this Agreement, upon a termination of this Agreement due to a breach any Recipient, DCA's obligation to disburse Grant Funds for the Project shall end as of the Termination Date.

6.3 **DISALLOWED EXPENSES** Any costs and expenses reimbursed by DCA which are subsequently determined to be unallowable through audit procedures shall be returned by The Recipient to DCA within thirty (30) days of notice of the disallowance.

ARTICLE 7 **REPRESENTATIONS AND WARRANTIES OF RECIPIENT**

To induce DCA to make the Grant Award, the Recipient represents, covenants, and warrants that:

7.1 **AUTHORITY** Recipient is duly organized and validly existing under the laws of the State of Iowa and is in good standing, and has complied with all applicable laws, regulations and orders. Recipient is duly authorized and empowered to execute and deliver this Agreement. All action on the part of the Recipient, such as appropriate resolution of their governing body for the execution and delivery of the Agreement, has been effectively taken.

7.2 **THE RECIPIENT INFORMATION** All statements and related information and materials concerning the Recipient and the Project provided to DCA are and shall be true and correct in all material respects and completely and accurately represent the subject matter thereof as of the effective date of the statements and related materials, and no material adverse change has occurred since that date.

7.3 **PROJECT PLAN** The Project Plan is a complete and accurate representation of the Project.

7.4 **CLAIMS AND PROCEEDINGS** There are no actions, lawsuits or proceedings pending or, to the knowledge of the Recipient, threatened against the Recipient affecting in any manner whatsoever the Property or the Project, Recipient's right to execute this Agreement, or the ability of the Recipient to carry out the transactions or comply with its obligations contained in this Agreement.

7.5 **COMPLIANCE WITH LAWS AND REGULATIONS** The Recipient and their employees, agents, officers, directors, contractors and subcontractors shall

comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement..

7.6 **ELIGIBILITY OF EXPENSES** The Recipient understands and acknowledges that the governmental appropriation of monies for the Fund places limitations on the types of expenditures for which Grant Funds can be used and that the Recipient will not be reimbursed for expenses that fall outside such limitations. The Recipient represent and warrant that all Project expenses submitted by the Recipient for reimbursement hereunder will be eligible expenses under the terms of the appropriations.

7.7 **RENEWAL OF REPRESENTATIONS** The representations and warranties of this Article 7 are made as of the Effective Date of this Agreement and shall be deemed to be renewed and restated by the Recipient at the time of each request for disbursement of funds.

ARTICLE 8 **COVENANTS OF RECIPIENT**

The Recipient covenant to DCA that:

8.1 **NON-ASSIGNMENT** The Recipient will not assign this Agreement or otherwise transfer any of its rights hereunder or delegate any of its obligations hereunder, without the prior written consent of DCA, and any such attempted assignment, transfer or delegation without DCA's prior written consent shall be void.

8.2 **NOTICE OF MEETINGS** The Recipient will notify DCA at least three (3) business days in advance of all meetings of their governing bodies at which the subject matter of this Agreement or Project is proposed to be discussed. The Recipient will provide DCA with copies of the agenda and minutes of such meetings and expressly agree that DCA shall have the right to send a representative to attend any and all such meetings.

8.3 **COMPLIANCE WITH LAWS AND REGULATIONS** In planning, developing, operating and maintaining the Project and the Project Property, the Recipient will comply with any and all applicable federal, state, and local laws, rules, ordinances, regulations and orders.

ARTICLE 9 **INDEMNIFICATION**

9.1 **INDEMNIFICATION BY RECIPIENT** The Recipient and their successors and permitted assigns shall defend, protect, indemnify and hold harmless the DCA, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and

expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement ("Claims"), including, but not limited to, any Claims related to, resulting from, or arising out of:

(a) Any violation or breach of any term or condition of this Agreement by or on behalf of any Recipient, including, without limitation, the furnishing or making by any Recipient of any statement, representation, warranty or covenant in connection herewith, that is false, deceptive, or materially incorrect or incomplete; or

(b) Any act or omission of any Recipient, including, without limitation, any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of any Recipient, its agents, officers, officials, directors, employees, board members, subsidiaries, affiliates, contractors or subcontractors; or

(c) Any Recipient's performance or attempted performance of this Agreement; or

(d) Failure by any Recipient or their agents, officers, officials, directors, employees, board members, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, federal and international laws, rules, ordinances and regulations.

9.2 **SURVIVAL** The Recipient's duties as set forth in this Article 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential Claim is made or discovered by DCA or any other Indemnitee.

9.3 **DEFENSE OF CLAIM** DCA shall reasonably cooperate with the Recipient to facilitate the defense of any Claim against DCA. DCA reserves the right to participate in the defense of any such Claim.

ARTICLE 10 **TERMINATION**

10.1 **TERMINATION FOR CAUSE BY DCA** DCA may terminate this Agreement upon written notice for the breach by any Recipient of any material term, condition, provision or covenant of this Agreement, if such breach is not cured within the time period specified in DCA's notice of breach or any subsequent notice or correspondence delivered by DCA to The Recipient, provided that cure is feasible. In addition, the Department may terminate this Agreement effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- (a) Any Recipient furnishes any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, misleading or materially incorrect or incomplete;
- (b) Any Recipient or any of any Recipient's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- (c) Dissolution of any Recipient or any parent or affiliate of Recipient owning a controlling interest in any Recipient, or termination or suspension of any Recipient's business;
- (d) Any Recipient's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited;
- (e) Any Recipient has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;
- (f) DCA determines or believes any Recipient has engaged in conduct that has or may expose the DCA or the State of Iowa to material liability;
- (g) Any Recipient or any corporation, shareholder or entity having or owning a controlling interest in any Recipient: (i) becomes insolvent or bankrupt; (ii) admits in writing its inability to pay its debts as they mature; (iii) makes an assignment for the benefit of creditors; (iv) applies for or consents to the appointment of a trustee or receiver for the Recipient or for the major part of its property; (v) has a trustee or receiver appointed for it or for all or a substantial part of its assets, and the order of such appointment is not discharged, vacated or stayed within sixty (60) days after such appointment; or (vi) bankruptcy, reorganization, arrangement, insolvency, or liquidation proceedings or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against any Recipient and, if instituted against Recipient is consented to, or, if contested by any Recipient, is not dismissed by the adverse parties or by an order, decree or judgment within sixty (60) days after such institution;
- (h) In DCA's sole determination, any Recipient has not made substantial progress toward completion of the Project within one hundred eighty (180) days after the Effective Date of this Agreement, or if any Recipient fails to complete the Project by the Project Completion Date;
- (i) In DCA's sole determination, the Project is not operated and

maintained at a professional level consistent with the highest industry standards, or is no longer serving and providing a public use or benefit consistent with the public purposes forming the basis for the Grant Award;

(j) If the Recipient expends Grant Funds for purposes other than for payment of approved itemized costs and expenses submitted by the Recipient in a Request for Reimbursement; and

(k) The Recipient fails to receive the matching funds and other funds, besides the Grant Funds, necessary to complete the Project under the terms of this Agreement.

10.2 **TERMINATION DUE TO LACK OF FUNDS OR CHANGE IN LAW**

Notwithstanding anything in this Agreement to the contrary, DCA shall have the right to terminate this Agreement immediately, without penalty and without advance notice, as a result of any of the following:

(a) The Legislature or Governor of the State fails to appropriate funds sufficient in the sole opinion of DCA to allow DCA either to meet its obligations under this Agreement or to operate as required to fulfill its obligations under this Agreement.

(b) Program funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by DCA to make reimbursements hereunder are insufficient or unavailable for any other reason as determined by DCA in its sole discretion.

(c) If DCA's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified, or if the DCA's duties, programs or responsibilities are modified or materially altered.

(d) If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the DCA's ability to fulfill any of its obligations under this Agreement.

10.3 **MUTUAL TERMINATION FOR CONVENIENCE** This Agreement may be terminated, in whole or in part, upon the mutual agreement of the parties for any reason.

10.4 **NON-EXCLUSIVE REMEDY** DCA's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to DCA, and DCA shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

10.5 EFFECT OF TERMINATION

(a) If this Agreement is terminated by DCA pursuant to Article 10.1 hereof, The Recipient shall repay all Grant Funds received by The Recipient within thirty (30) days of DCA's written request;

(b) If this Agreement is terminated by DCA pursuant to Article 10.2 hereof, or by agreement of the parties pursuant to Article 10.3 hereof, disbursements shall be paid for approved, documented Project costs and expenses incurred by The Recipient through the Termination Date within thirty (30) days of receipt by DCA of a Request for Reimbursement for such costs and expenses, subject to legally available Grant Funds. Any costs and expenses reimbursed by DCA which are subsequently determined to be unallowable through audit procedures shall be returned by The Recipient to DCA within thirty (30) days of notice of the disallowance.

ARTICLE 11 RESERVED

ARTICLE 12 GENERAL TERMS AND PROVISIONS

12.1 BINDING EFFECT This Agreement shall be binding upon and shall inure to the benefit of DCA and The Recipient and their respective heirs, successors, legal representatives and assigns.

12.2 TIME IS OF THE ESSENCE Time is of the essence with respect to The Recipient's performance of its obligations under this Agreement.

12.3 IOWA GREAT PLACES RECOGNITION The Project shall recognize, in a manner acceptable to DCA, the financial contribution to the Project made by the State through the Program.

12.4 SEVERABILITY Each provision of this Agreement shall be deemed to be severable from all other provisions of the Agreement and, if one or more of the provisions of the Agreement shall be declared invalid, the remaining provisions of the Agreement shall remain in full force and effect.

12.5 CHOICE OF LAW AND FORUM The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the proceeding shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if such court has jurisdiction. If however, such court lacks jurisdiction

and jurisdiction lies only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to DCA or the State of Iowa.

12.6 **MODIFICATION** Neither this Agreement nor any documents incorporated by reference in connection with this Agreement may be changed, waived, modified, amended or discharged except through a writing executed by both parties. Examples of situations where amendments are required include, without limitation, extensions of the Project Completion Date or material changes to the Project. DCA will consider whether an amendment request is so substantial as to necessitate re-evaluating DCA's decision to provide a Grant Award for the Project. An amendment will be denied by DCA if it substantially alters the circumstances under which the Project funding was originally approved or if it does not meet requirements set forth in Iowa Code Sections 303.3C or 303.3D.

12.7 **NOTICES** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to DCA:

Iowa Department of Cultural Affairs
State of Iowa Historical Building
600 E. Locust St.
Des Moines, IA 50319-0290
Attn: Director

If to Recipient:

(a) Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature obtained by the carrier.

(b) From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

12.8 **WAIVERS** Except as specifically provided for in a waiver signed by duly authorized representatives of DCA and the Recipient, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

12.9 **CUMULATIVE RIGHTS** The various rights, powers, options, elections and remedies of DCA and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed DCA and the State by law, and shall in no way affect or impair the right of the DCA or the State to pursue any other contractual, equitable or legal remedy to which DCA or the State may be entitled. The election by DCA or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.10 **LIMITATION OF FINANCIAL OBLIGATION** It is agreed by the Recipient that DCA shall not, under any circumstances, be obligated financially under this Agreement except to disburse Grant Funds according to the terms of the Agreement.

12.11 **ENFORCEMENT EXPENSES** The Recipient shall pay upon demand any and all reasonable fees and expenses of DCA, including the fees and expenses of DCA's attorneys (including, without limitation, the reasonable value of time of the Attorney General's Office), experts and agents, in connection with the enforcement of any of the rights of DCA under this Agreement.

12.12 **HEADINGS** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction and interpretation of this Agreement.

12.13 **EVENT OF DCA DISSOLUTION** The Recipient hereby acknowledges that DCA is a public instrumentality of the State and that in the event that DCA is dissolved for any reason, the State is entitled to enforce any right, title or interest held by DCA hereunder, and all of Recipient's obligations hereunder are owed to the State.

12.14 **SURVIVAL** The parties' rights and obligations under Articles 4.4, 4.5, 4.8, 8.1, 8.2, 8.3, 8.4, 8.5, 9, 10.6, and 12.11 shall survive expiration or termination of this Agreement for any reason.

12.15 **FINAL AUTHORITY** DCA shall have the final authority to assess whether the Recipient has complied with the terms of this Agreement. DCA's decision shall be final and binding on all questions concerning Recipient's compliance with the terms hereof.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal

sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement, effective as of the Effective Date.

DEPARTMENT OF CULTURAL AFFAIRS:

BY: _____
Mary Cownie, Director

DATE: _____

RECIPIENT

BY: _____
Matt Bemrich

TITLE: Mayor

DATE: _____

BY: _____
Jeff Nemmers

TITLE: City Clerk/Finance Director

DATE: _____