



August 18, 2016

Board of City Commissioners
Bismarck, ND

Dear Commissioners:

The Board of City Commissioners is scheduled to meet in regular session on Tuesday, August 23, 2016 at 5:15 p.m. in the Tom Baker Meeting Room, City/County Office Building, 221 North Fifth Street, Bismarck, North Dakota.

Invocation will be presented by a Chaplain from the Bismarck Police Department.

Future City Commission meetings are scheduled as follows:

- September 13 & 27, 2016
- October 11 & 25, 2016
- November 8 & 22, 2016

BOARD OF CITY COMMISSIONERS

1. Consider approval of the minutes of the regular meeting on August 9, 2016.
2. CONSENT AGENDA
 - A. Consider approval of expenditures.
 - B. Consider approval of personnel actions.

Documents:

[Personnel Actions for August 23 meeting.pdf](#)

- C. Consider calling for a public hearing on the request from DCN, LLC (dba Dakota Carrier Network), to apply for a broadband franchise.

Documents:

[Dakota Carrier Network application for franchise agreement.pdf](#)

- D. Consider request to call for a public hearing on a request from A & B Pizza South, Inc. to locate a new class I-2 liquor license at 600 South Fifth Street, Space 212, Kirkwood Mall (dba A & B Pizza).

Documents:

[A and B Pizza Kirkwood.pdf](#)

- E. Consider request to call for a public hearing on a request from BWR-Bismarck, Inc. to locate a new class F-1 liquor license at 4424 North 15th Street (dba Buffalo Wings & Rings).

Documents:

[Buffalo Wings and Rings.pdf](#)

- F. Consider request to call for a public hearing to transfer a Class F-1 liquor license at 1800 North 12th Street from WR Bismarck Ventures Limited Partnership (dba Minerva's) to Kelly Midwest Ventures Limited Partnership (dba Capital Street Grill & Bar).

Documents:

[Capital Street Grille and Bar.pdf](#)

- G. Consider request to call for a public hearing on Ordinance 6232 relating to placement of poles in right-of-way restricted.

Documents:

[Ordinance 6232.pdf](#)

- H. Consider the following requests from the City Administration Department:

- 1) Approval of the amendment to the artwork agreement for items on display at the Bismarck Event Center.
- 2) Approval to provide financial contribution to support the North Dakota League of Cities Annual Conference.

Documents:

[Amendment to artwork agreement at Event Center.pdf](#)
[Support for ND League of Cities Annual Conference.pdf](#)

- I. Consider the following requests from the Bismarck Airport:

- 1) Approve the upgrade of the radio system at the airport with Electronic Communications Inc. for \$6,500.
- 2) Approve the Engineering Services Agreement with Kadmas, Lee & Jackson (KLJ) for Wetland Monitoring.

Documents:

[Airport radio system upgrade.pdf](#)
[Airport KLJ Wetland Monitoring Agreement.pdf](#)

- J. Consider request from the Community Development Department for approval of Corrective Ordinance 6139 regarding the annexation of Heritage Park Addition and call for a public hearing on the request. Staff recommends approval.

Documents:

[Corrective ordinance for annexation of Heritage Park Addition.pdf](#)

- K. Consider the following requests from the Engineering Department:

- 1) Approval of the NDDOT Discharge Permit and the Companion Agreement with Cherry Tree, LLP.
- 2) Approval of the Temporary Encroachment Agreement with Community Contractors, Inc.
- 3) Approval of Contract Change Order No. 1 with Northern Improvement in the amount of \$40,000 for the installation of edge drain pipe in Unit 3 of Street Improvement District 16-506.

Documents:

[NDDOT discharge permit and cherry tree agreement.pdf](#)
[Temporary Encroachment Agreement with Community Contractors Inc.pdf](#)
[Change Order Street Improvement District 16 506 Unit 3.pdf](#)

L. Consider the following requests from the Finance Department:

- 1) Approval of contract with AssetWorks for Work Order Management System.
- 2) Approval of the extension of the consulting contract the city has with Plante & Moran.

Documents:

[Approve contract with AssetWorks for Work Order Mgmt System.pdf](#)
[Approve contract extension with Plante and Moran.pdf](#)

M. Consider the following requests from the Human Resources Department:

- 1) Approval of the St. Alexius Employee Assistance service agreement for the period of September 1, 2016 to August 31, 2017.
- 2) Approval of the Bismarck State College Learning Partners agreement for the period of August 1, 2016 through June 30, 2017.

Documents:

[Employee Assistance Service Agreement.pdf](#)
[BSC Learning Partners Agreement.pdf](#)

N. Consider request from the Bismarck Parking Authority for authorization to sole source contract repairs at the Parkade Ramp.

Documents:

[Request for sole source contract work on Parkade Ramp.pdf](#)

O. Consider the following requests for resolutions relating to Park Improvement District 16-002 (construction of neighborhood park amenities including playground equipment, a picnic shelter, and parking lot)

- Receiving Bids and Ordering Preparation of Engineer's Statement
- Awarding Contract
- Approving Contract and Contractor's Bond

Documents:

[Park Improvement District 16 002 Resolutions.pdf](#)

P. Consider request from the Public Works Utility Operations Department for approval of Change Order No. 5 with Crow River Construction, LLC for a \$10,942.80 deduction to the contract amount for the Southport Lift Station and Forcemain project.

Documents:

[Change Order with Crow River Construction for Southport Lift Station.pdf](#)

Q. Addendum Item - Consider request from the Finance Department for approval of the use of Rural Road Sales Tax funding for Unit 4 of Street Improvement District 492 (roadway lighting).

Documents:

[Rural road funding for lighting street improvement district 492.pdf](#)

R. Addendum Item - Consider request from Bismarck Parks and Recreation District to execute warranty deed for Schaumberg Arena.

Documents:

[Request from Park District for Warranty Deed for Schaumberg Arena.pdf](#)

REGULAR AGENDA

3. Heartview Foundation Opioid Treatment Program.

(Note: The title for this item has been revised and attachments have been added since it was originally posted)

Documents:

[Opioid addiction handouts.pdf](#)
[Opioid addiction fact sheet.pdf](#)

4. Receive South Bismarck Watershed stormwater presentation by Apex Engineering.

(No attachment)

5. Consider request from the Metropolitan Planning Organization (MPO) to allow Bis-Man Transit to locate a public transportation point on the south side of Front Avenue between 5th and 7th Street.

Documents:

[BisMan Transit request for bus stop on Front Ave between 5th and 7th.pdf](#)

6. Addendum Item - PUBLIC HEARING on a request from a new owner of Bismarck Yellow Cab to obtain a new Taxi Cab License. Due to damage the vehicle recently sustained, repairs will need to be made to the vehicle prior to the applicant putting it into service. After examination of the repairs by the Police Department, the owner will be issued a license to operate by City Administration.

Documents:

[Bismarck Yellow Cab new owner new taxi license with updated reviews.pdf](#)

7. PUBLIC HEARING on Ordinance 6219 relating to the creation of the Bismarck Animal Advisory Board (revised since the original introduction on July 12, 2016).

Documents:

[Ordinance 6219 revised.pdf](#)

8. PUBLIC HEARING on Ordinance 6226 relating to city rights-of-way.

Documents:

[Ordinance 6226.pdf](#)

9. PUBLIC HEARING on Ordinance 6227 relating to rules and regulations for granting gaming site authorization.

Documents:

[Ordinance 6227.pdf](#)

10. Consider the following requests relating to Koch Creek Commercial Subdivision, requested by Michael Koch. Bismarck Planning and Zoning Commission recommends approval.

- PUBLIC HEARING on Ordinance 6228 relating to a zoning change from the A-Agriculture zoning district to the CG-Commercial zoning district.
- Approval of the final plat.

Documents:

[Koch Creek Commercial Subdivision Zoning Change Ordinance 6228 and Final Plat.pdf](#)

11. PUBLIC HEARING on Ordinance 6229 relating to a zoning change from the PUD-Planned Unit Development zoning district to the RM15-Residential zoning district for Lots 1-3, Block 1, Sonnet Heights Subdivision, requested by Boustead Enterprises, LLC. Bismarck Planning and Zoning Commission recommends approval.

Documents:

[Zoning change Lots 1 to 3 Block 1 Sonnet Heights Subdivision.pdf](#)

12. PUBLIC HEARING on Ordinance 6230 relating to a zoning change from the R5-Residential and R10-Residential zoning districts to the Conditional R10-Residential and RM15-Residential zoning districts for Lots 14-19, Block 4, South Meadows Addition, requested by Investcore, Inc. and Microvest, LLC. Bismarck Planning and Zoning Commission recommends approval.

Documents:

[Zoning change Lots 14 to 19 Block 4 South Meadows Addition.pdf](#)

13. PUBLIC HEARING on Ordinance 6231 relating to a zoning change from the P-Public zoning district to the PUD-Planned Unit Development zoning district for part of Lot 21, Lounsberry Outlots (Saxvik Elementary School), requested by Bismarck Public Schools. Bismarck Planning and Zoning Commission recommends approval.

Documents:

[Zoning change part of Lot 21 Lounsberry Outlots Saxvik Elementary.pdf](#)

14. Consider request from the Engineering Department to receive and consider disposition of bids for Solid Waste Utility Project LF16-01.

Documents:

[Bids for solid waste utility project LF16 01.pdf](#)

15. Consider request from the Engineering Department to receive and consider disposition of bids for Sewer Utility Project 16-68.

Documents:

[Bids for sewer utility project 16 68.pdf](#)

16. Consider request from the Engineering Department to order the repair of hazardous sidewalks deemed unsafe for pedestrian traffic.

(Note: These property owners have already been notified of the need to make repairs as directed by this Board)

Documents:

[Engineering request to order repair of hazardous sidewalks.pdf](#)

17. Receive project updates on North Washington Street and Quiet Rail Zone.

Documents:

[Project updates on North Washington Street and Quiet Rail Zone.pdf](#)

18. Consider the following requests from the Bismarck Airport regarding the Vehicle Parking Concession (pay parking lot) Requests for Proposals (RFP) at the airport terminal:

- Receive proposals and consider selection committee's recommendation to award (these will be provided at the meeting); and
- Approval of the format for the Concession Agreement.

Documents:

[Airport terminal pay parking lot RFP and agreement.pdf](#)

19. Addendum Item - Consider request from the Finance Department for approval of the 2016 Budget Adjustment for the loan prepayment to the Liability Insurance Fund.

Documents:

[2016 Budget adjustment for Liability Insurance Fund.pdf](#)

20. Consider other business.

(No attachment)

Phone: 701-355-1300 ★ FAX: 701-222-6470 ★ 221 N. Fifth St. ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503
www.bismarcknd.gov ★ TDD 711 ★ An Equal Opportunity-Affirmative Action Employer



PERSONNEL ACTIONS FOR THE MEETING ON Aug. 23, 2016

Full-Time and Part-Time Appointments

Red Horn, Dawnelle Concessions	Event Center	Part time appointment @ \$12.00/hr. 8/12/2016
Schumann, Sharon Concessions	Event Center	Part time appointment @ \$12.00/hr. 8/12/2016
Sivesind, Jessica Concessions	Event Center	Part time appointment @ \$12.00/hr. 8/12/2016
Stroklund, Cheryl Concessions	Event Center	Part time appointment @ \$12.00/hr. 8/12/2016
Wroblewski, Brianne Concessions	Event Center	Part time appointment @ \$12.00/hr. 8/12/2016
Glass, Aaron Building Maintenance Tech	Public Works	Probationary appointment @ \$20.40/hr. 9/12/2016

Separations

Others

Hammer, Molly Communications Specialist	Communications	Leave w/out pay 8/12/2016 pay period
Anderson, Edward Scott Firefighter	Fire	Return to full duty status 8/7/2016
Heid, Thomas Acting Fire Captain	Fire	Assume Acting Officer duties 7/22 – 8/5/2016
Victor, Shane Acting Fire Captain	Fire	Assume Acting Officer duties 8/2 – 8/14/2016
Jacobson, Eric Waste Service Worker	Public Works	Leave w/out pay 8/12/2016 pay period
Volk, Houston Heavy Equipment Operator	Public Works	Leave w/out pay 8/12/2016 pay period

August 11, 2016

Keith Hunke, City Administrator
City of Bismarck
221 N. Fifth Street
Fourth Floor
Bismarck, ND 58506

RE: Proposed DCN Franchise Agreement with City of Bismarck

Dear Mr. Hunke:

Enclosed is a final draft of a proposed Franchise Agreement between DCN, LLC and the city of Bismarck. The draft agreement reflects the edits and changes of DCN and the city of Bismarck.

DCN herewith makes application for the franchise to permit DCN to deploy fiber facilities and wireless data equipment within the City of Bismarck right-of-way, and public structures, all as provided in the proposed agreement. DCN will not use its franchise to offer cable television services. Please let me know when this matter will be taken up by the City so that I or another DCN representative can be present to answer questions.

Very truly yours,



Seth Arndorfer

SA
Enclosures

cc (w/enc.): David J. Hogue
Charles Whitman

Seth Arndorfer
CEO

sarndorfer@dakotacarrier.com

4202 Coleman St.
Bismarck, ND 58503

701-323-3030 direct
701-226-2278 cell
701-323-3030 fax

www.DakotaCarrier.com

RESOLUTION APPROVING FRANCHISE

A Resolution granting to DCN, LLC, a North Dakota limited liability company ("DCN"), its successors and assigns, a franchise and right to construct, maintain and operate, within and upon, in and under the streets, alleys, public grounds, poles, street lights, and public structures of the City of Bismarck ("City"), North Dakota, a Broadband Services System.

WHEREAS, pursuant to law, the City has the power to grant a non-exclusive franchise for a term of no more than 20 years; and,

WHEREAS, pursuant to City ordinance, the City may grant a franchise, by resolution, following public hearing; and,

WHEREAS, on the ____ day of September, 2016, a public hearing was held by the Board of City Commissioners; and,

WHEREAS, it is in the public interest that a franchise be granted to DCN, LLC, for the provision of Broadband Services, which includes the deployment of fiber and other telecommunications infrastructure, wireless and small cell technology and equipment.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota:

Article I. Definitions. As used herein, the following words and terms are defined as follows:

1. "City" means the City of Bismarck, North Dakota.
2. "Franchise" means all of the rights and obligations extended by City to Grantee herein.
3. "Grantee" means DCN, LLC.
4. "Broadband Services" means internet access, voice services, Ethernet transport and other IP based services. It includes all the equipment necessary to facilitate wireless and dedicated telecommunications and data transmission.

Article II. Grant of Authority. There is hereby granted by the City to the Grantee, subject to the conditions contained herein, the right and privilege to occupy and use the streets, alleys, public ways of the City as now or hereafter constituted, necessary or proper for the maintenance and operation in the City of a Broadband Services system consisting of cables, fiber, small cell technology and equipment, and electronics connected therewith for the purpose of constructing, maintaining, and operating, within, upon, and under the same, a Broadband Services system for public and private use.

Article III. Grantee's Obligations. Grantee shall maintain an efficient distribution system for Broadband Services for public and private use at such reasonable rates as may be required by

any federal or state agency having jurisdiction thereof.

Article IV. Non-Exclusive Grant. The right to use and occupy the streets, alleys, public ways, poles, street lights, public structures, and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use to any person at any time during the period of this Franchise. The Grantee shall use its best efforts to, when available, utilize existing poles or conduit in the placement of its cables or other facilities and avoid the disturbance of the right-of-way as much as possible.

Article V. Compliance with Applicable Laws and Ordinances. The Grantee shall at all times during the life of this Franchise, be subject to all lawful exercises of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.

Article VI. Insurance and Indemnification. Grantee shall maintain, at all times during the term of the Franchise, liability insurance, or a self-insurance program in the minimum amount of Five Hundred Thousand (\$500,000.00) Dollars insuring Grantee against any and all damages, losses or claims of any nature arising out of Grantee's operations under the Franchise. A copy of the policy, or a statement outlining the coverages and funding level of the Grantee's self-insurance program shall be filed with the City at the time of acceptance of the Franchise. In addition, upon the request of the City, evidence of payment of required premiums, copies of endorsements, and notices of cancellation or non-renewal, or notice of material changes in the self-insurance program or its funding levels, shall be provided to the City, during the term of the Franchise. Grantee agrees to protect and save harmless City from any claims for damages or injuries resulting from Grantee's operations under the Franchise, and to defend and indemnify City against all claims, actions, proceedings, costs, damages and liabilities, including attorney's fees arising therefrom. The City shall be named as an additional insured for all of the Grantee's activities under this Franchise.

Article VII. Reservation of Rights. The City reserves any right it may have, under its police power, or otherwise, to control or regulate the use of the streets, alleys and public grounds by Grantee, and to enact all ordinances necessary and proper in the exercise of that power. This grant is subject to all applicable federal, state and local laws, regulations and orders of governmental agencies. The City also reserves the right, pursuant to state laws and rules and regulations of the Public Service Commission and the City's Home Rule Charter, as such charter may be amended from time to time, and City ordinances as such ordinances may be amended from time to time, to impose, by ordinance, a reasonable franchise tax for revenue purposes applicable to all franchises of like kind. If during the term of this Franchise, the City enacts an ordinance regulating the use of rights-of-way in the City that requires compensation and collects right-of-way fees from all Broadband Services providers on a competitively neutral and nondiscriminatory basis, then Grantee shall, within sixty (60) days after request by City, pay the fees required by such ordinance. However, in the event Grantee deems such fee to be unreasonable, Grantee may release its franchise to City and extinguish all future liability for any such fee. Any provision of such ordinance which may conflict or violate applicable law shall be invalid and unenforceable even if such ruling, interpretation or regulation is enacted subsequent to the execution of the Franchise, it being the intention of both the City and the Grantee to preserve any rights or remedies at law; however, the grant of this Franchise is not a waiver of any rights or obligations under the law. This Franchise does not include the right for Grantee to offer a traditional fee based multi-channel subscription

cable television service, and the City specifically reserves any and all regulatory authority, including the right to charge a franchise or use fee, that may be hereafter legislated.

Article VIII. Conditions on Street Occupancy.

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

2. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or trees or green areas, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, or City Forester, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, or trees or green areas, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for the duration of this franchise and one year after its expiration.

3. Relocation. In event that at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other Grantee fixtures at its own expense. In the event it shall become necessary for the City to perform street, water, sanitary sewer or storm sewer maintenance or construction at the location of the poles, wires, cables, underground conduits, manholes and other Grantee fixtures of the Grantee, Grantee shall promptly temporarily relocate its installation at its sole expense upon notice from the City to relocate. For purposes of this section, "reasonable notice" means written plans or diagrams that depict which Grantee facilities must be removed or relocated.

4. Placement of Fixtures. The Grantee shall not place any installation where the same will interfere with any other utility installation or with the usual travel on said streets, alleys and public ways. The City shall not permit other franchisees to place utilities or other installation that will interfere with Grantee's facilities or Broadband Services.

5. Temporary removal of wire for Building Moving. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower any of its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same and the Grantee shall have the authority to require payment in advance. The Grantee shall be given at least forty-eight (48) hours notice to arrange for temporary wire changes.

6. The Grantee shall provide the City with GIS location data with regard to the Grantee's facilities installed pursuant to this franchise on an annual basis. If the information provided is included in the City's GIS that is available to the public, it shall not identify the owner of the facilities.

Article IX. Approval of Transfer. The Grantee shall not transfer or sell any rights under this Franchise to another party without City Commission approval. No transfer of this Franchise or any rights granted under this Franchise shall be effective until the Grantee has applied for and been granted approval of the transfer by the City Commission.

Article X. City Rights in Franchise.

1. City Rules. The City reserves the right to adopt such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall not be in conflict with this Franchise or with the laws of the State of North Dakota or the United States.

2. The Grantee must follow City-established requirements for placement of facilities in the right-of-way, including the specific location of facilities in the right-of-way, and must install facilities in such a manner that minimizes interference with the use of the right-of way by others, including other Broadband Services providers. The Grantee shall comply with all rules regarding utility installations in the City right-of-way as set by the City Engineer. To minimize the disruption of public passage or infrastructure, to prevent or relieve the exhaustion of right-of-way capacity, or to protect environmentally sensitive areas, the City may require, as a condition of issuing any permit for erection of new poles or excavation for the placement of underground cables, that the Grantee provide pole space or empty or oversize conduits for the purpose of accommodating the City or other entities wishing to utilize the right-of-way.

3. The Grantee shall abide by and follow the permitting and approval requirements contained in Chapter 10-04-01 "Excavation Permit Required" of the City's Ordinances, as such may be amended.

4. Upon the end of the term or any extension or prior abandonment by the Grantee, the Grantee shall, at its own expense, remove any of its above ground cable or other above ground infrastructure and restore the City right-of-way to its original condition, if so required by the City.

Article XI. Term and Acceptance.

1. This Franchise and the rights herein granted shall take effect and be in force from and after the final passage and upon written acceptance by the Grantee and shall continue in force and effect for a period of 20 years after the date of acceptance. If acceptance is not filed within thirty (30) days of approval of this Resolution of Franchise by the City Commission, the provisions of this Franchise shall be null and void. Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations. The Grantee may request renewal of this Franchise.

2. This Franchise may be renewed for an additional fifteen (15) years if (1) the Grantee has substantially complied with the material terms of this Franchise and with applicable law; and (2) the Grantee remains financially, legally, and technically

qualified. Grantee and City may, after affording the public any required notice and opportunity for comment, renew this Franchise.

Article XII. Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the City or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid.

The notices or responses to the City shall be addressed as follows:

City of Bismarck Administration
221 N. 5th Street
Fourth Floor
Bismarck, ND 58501
Attention: City Administrator

The notices or responses to the Grantee shall be addressed as follows:

DCN, LLC
4202 Coleman Street
Bismarck, ND 58503
Attention: Chief Executive Officer

The City and the Grantee may designate such other address or addresses from time to time by giving notice to the other

APPROVAL

Approved at the _____, 2016 Bismarck City Commission meeting.

Keith Hunke
City Administrator

Mike Seminary
President and Mayor, Bismarck
City Commission

CITY OF BISMARCK
APPLICATION FOR RETAIL
ALCOHOLIC BEVERAGE LICENSE
(PARTNERSHIP OR CORPORATION)

LIQ2016-0015
7-25-16 *WJD*

License _____
Class I-a

- New License Application
- Renewal
- Transfer
- Relocation

NOTE: This application must be made under oath and be accompanied by required fees.

CHECK ONE: Liquor and Beer
 Beer
 Wine (Restaurants)

CHECK ONE: On-Sale Only
 Off-Sale Only
 On and Off Sale

The undersigned states that the following information is true and correct.

NAME OF PARTNERSHIP OR CORPORATION A+B pizza South Inc.
DATE OF INCORPORATION 1-1-07 PHONE 702-3108
ADDRESS _____ CITY, STATE, ZIP _____
IF OUT OF STATE CORPORATION, IS CORPORATION REGISTERED IN NORTH DAKOTA? N/A
NAME AND ADDRESS OF REGISTERED AGENT David Barth
[REDACTED] Mandan, ND 58554
CERTIFICATE NUMBER 0 PHONE [REDACTED]
NAME OF BUSINESS FOR WHICH LICENSE IS REQUESTED A+B Pizza South Inc.
BUSINESS ADDRESS [REDACTED] Bismarck, ND 58504
MAILING ADDRESS 311 S. 7th St CITY, STATE, ZIP Bismarck, ND 58504
PRIMARY CONTACT David Barth PHONE [REDACTED]
EMAIL [REDACTED]

LIST ALL OFFICERS OR DIRECTOR OF CORPORATION OR PARTNERS, AND % OF OWNERSHIP (Attach separate sheet, if necessary)

NAME David Barth ADDRESS/CITY/STATE [REDACTED] Mandan, ND 58554
DATE OF BIRTH [REDACTED] M/F M RACE Cauc DRIVER'S LICENSE # AND STATE ISSUED [REDACTED] ND
OCCUPATION Business owner TITLE owner %OWNERSHIP 100
NAME _____ ADDRESS/CITY/STATE _____
DATE OF BIRTH _____ M/F _____ RACE _____ DRIVER'S LICENSE # AND STATE ISSUED _____
OCCUPATION _____ TITLE _____ %OWNERSHIP _____
NAME _____ ADDRESS/CITY/STATE _____
DATE OF BIRTH _____ M/F _____ RACE _____ DRIVER'S LICENSE # AND STATE ISSUED _____
OCCUPATION _____ TITLE _____ %OWNERSHIP _____

MANAGER'S NAME David K. Burtin ADDRESS/CITY/STATE Same as above

DATE OF BIRTH _____ M/F _____ RACE _____ DRIVER'S LICENSE # AND STATE ISSUED _____

OCCUPATION _____ TITLE _____

LIST NAMES/ADDRESS/PERCENTAGE OF OWNERSHIP OF ANY PERSON OWNING AN INTEREST IN THE BUSINESS see above

OWNER OF BUILDING OR PREMISES _____

NOTE: If owner is other than applicant, attach a copy of lease or rental agreement. Also, all applicants must attach a copy of a blueprint or diagram on a separate sheet 11" x 8 1/2" in size, showing premises to be licensed. Show all exits, bars, dining areas, (if any) beverage coolers and beverage storage areas. Indicate which are solid walls, half walls, dividers, and movable partitions. Outline in different color ink, the area to be used for the sale and/or service of alcoholic beverages if entire building is not so used. Include the direction "North" on the diagram.

1. Are manager and all partners legal residents of the United States and the State of North Dakota, and are all officers or directors legal residents of the United States? yes If not, explain _____
2. Have any of the persons listed above been convicted of any crime within the past five years? If yes, list all convictions, dates, location and disposition or sentence of each no
3. Does the building meet all state and local sanitation and safety requirements? yes
4. a. If a transfer or change in ownership or management, list former owner and manager N/A
b. If a transfer or change in ownership, former owner must sign below:
I hereby consent to the requested transfer of this license:
_____ Date _____
5. Has applicant, or any of the persons listed above, within the past five years had any license to engage in the sale of alcoholic beverages revoked or suspended? no If yes, give details _____
6. If a new application, has applicant or any of the persons listed above, engaged in the sale or transportation of alcoholic beverages previously? no If yes, give details _____
7. Has applicant, or any of the persons listed above, within the past five years, had an application for any federal, state or local license of any type rejected or denied? If yes, give details no
8. Is there any agreement or understanding, or proposed agreement or understanding to obtain the license for another, or to operate the business for another, or as an agent for another? no If yes, give details _____
9. Has the business been sold or leased, or is there any intention to sell or lease, the business to another? no
If yes, give details _____
10. Has the applicant, or any of the persons listed above, any interest in whatsoever, directly or indirectly, any other licensed liquor establishment within or without the State of North Dakota? no If yes, give details _____
11. Will the applicant, or any of the persons listed above, be engaged in any other business other than the sale of liquor under the license applied for? no If yes, give details _____
12. Have all property taxes and special assessments currently due been paid? yes If not, explain _____

**APPLICATION FOR "OFF SALE"
SUNDAY ALCOHOL BEVERAGE LICENSE**

Name of Licensee A + B Pizza South Inc.

Class of City of Bismarck retail liquor license currently held (D,E,or N) _____

Location of licensed premises _____

Name of manager or local contact person David K. Bauth

The fee for a Sunday off-sale alcoholic beverage license is 20% of the applicant's annual retail fee. Applications made for the remainder of a partial year are prorated. One fee covers on-sale, off-sale or both. Fee enclosed _____.

I am applying for both a Sunday on and off sale license. YES _____ NO X
If yes, both applications are completed and attached. YES _____ NO X

The normal term for a Sunday alcoholic beverage license is August 1st through July 31st. Applications must be submitted by July 1st of each year. Any application submitted after July 1st of each year shall be for the remainder of the term.

The undersigned also agrees that it will observe all of the rules and regulations of its retail license in the use of this license and that this license permits only the "off sale" of alcoholic beverages.

Dated this 21 day of July, 2013

David K. Bauth
Applicant/Licensee

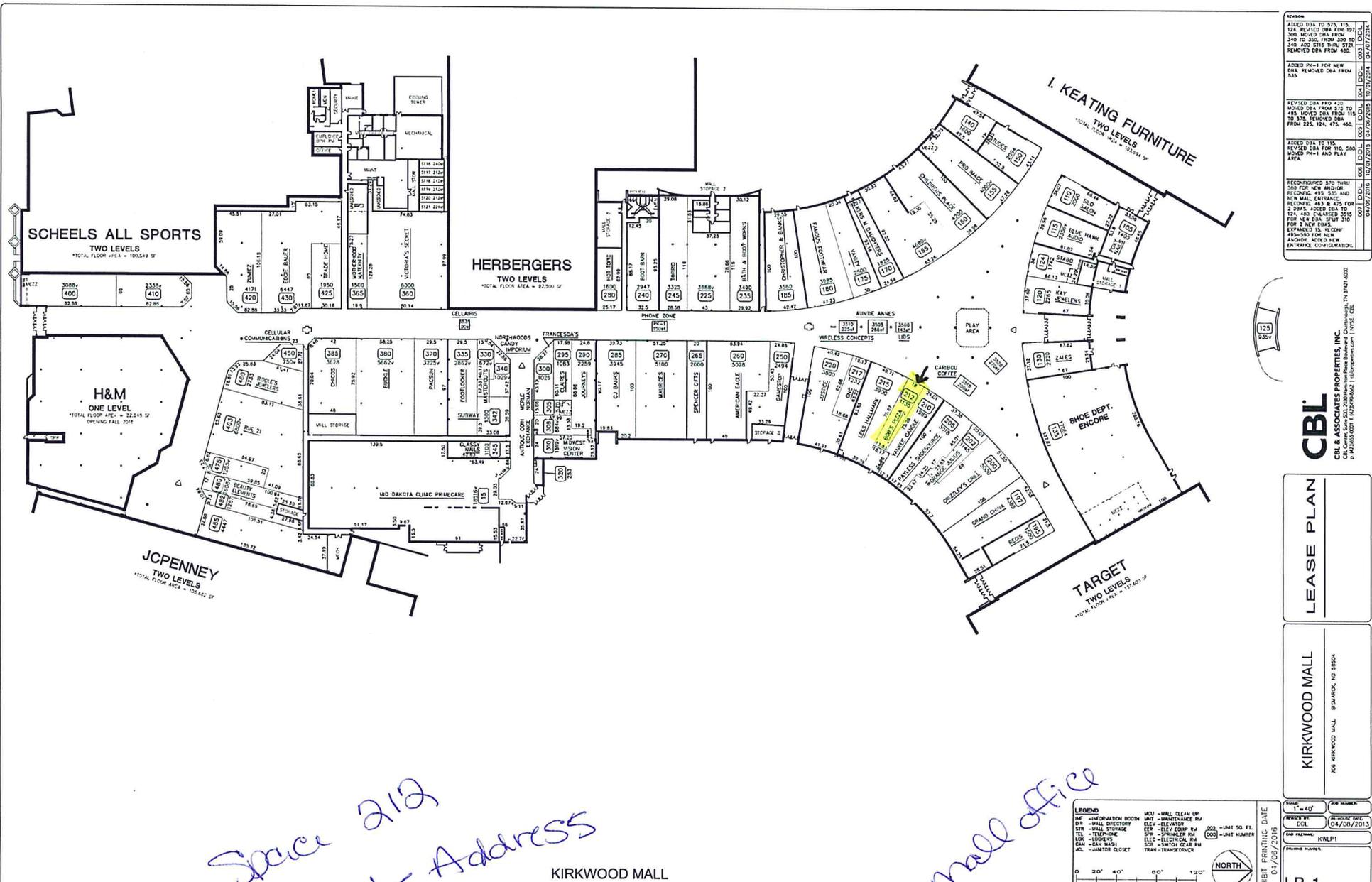


Chief of Police

Date

City Administration

Date



Space 212
Address

Mall office

*Sp 212 - 656 Kirkwood Mall
 BIS, MD*

*706 Kirkwood Mall
 Bismarck, ND 58504*

REVISED: 04/27/2016
 124 - REVISED DBA FOR 191
 300 - MOVED DBA FROM
 340 TO 300, FROM 300 TO
 340, AND 318 FROM 318
 REMOVED DBA FROM 485

ADDED PK-1 FOR NEW
 DBA, REMOVED DBA FROM
 338

REVISED DBA FROM 420
 MOVED DBA FROM 375 TO
 485, MOVED DBA FROM 110
 TO 375, REMOVED DBA
 FROM 220, 124, 375, 460

ADDED DBA TO 115
 REVISED DBA FOR 115, 240
 MOVED PK-1 AND PLAY
 AREA

RECONFIGURED 370 FROM
 360 FOR NEW ANCHOR
 RECONFIGURED 360, 330 AND
 NEW MALL ENTRANCE
 RECONFIGURED 360 & 415 FOR
 2 NEW ANCHOR DBA FOR
 174 AND ENLARGED 335
 FOR NEW DBA
 FOR 2 NEW DBA
 RECONFIGURED 124, 100, 310
 485-540 FOR NEW
 ANCHOR, ADDED NEW
 ENTRANCE, CONFIRMATION

04/27/2016 10:07:25 AM 04/27/2016 10:07:25 AM 04/27/2016 10:07:25 AM 04/27/2016 10:07:25 AM

CBL
 CBL & ASSOCIATES PROPERTIES, INC.
 14100 13th Ave SW, Suite 200, Bismarck, ND 58504
 P: 701.255.1111, F: 701.255.1111, E: info@cblproperties.com

LEASE PLAN

KIRKWOOD MALL
 706 KIRKWOOD MALL, BISMARCK, ND 58504

LEGEND IM - INFORMATION ROOM DM - MAIL DELIVERY ST - MAIL STORAGE TEL - TELEPHONE LSC - LOCKERS CAN - CAN WASH JC - JANITOR CLOSET WCJ - WALL CLEAN UP MM - MAINTENANCE RM ELEV - ELEVATOR EFC - ELEVATOR CORE RM SFP - SPRINKLER RM ELEC - ELECTRICAL RM SW - SWITCH ROOM TRM - TRANSFORMER	Scale: 1" = 40' DRAWN BY: DCL CHECKED BY: DCL DATE: 04/08/2013 EXHIBIT PRINTING DATE: 04/08/2016 UNIT NO. FT.: 200 UNIT NUMBER: (000) UNIT NUMBER: (000) UNIT NUMBER: (000)
--	---

0 20' 40' 80' 120' 160'

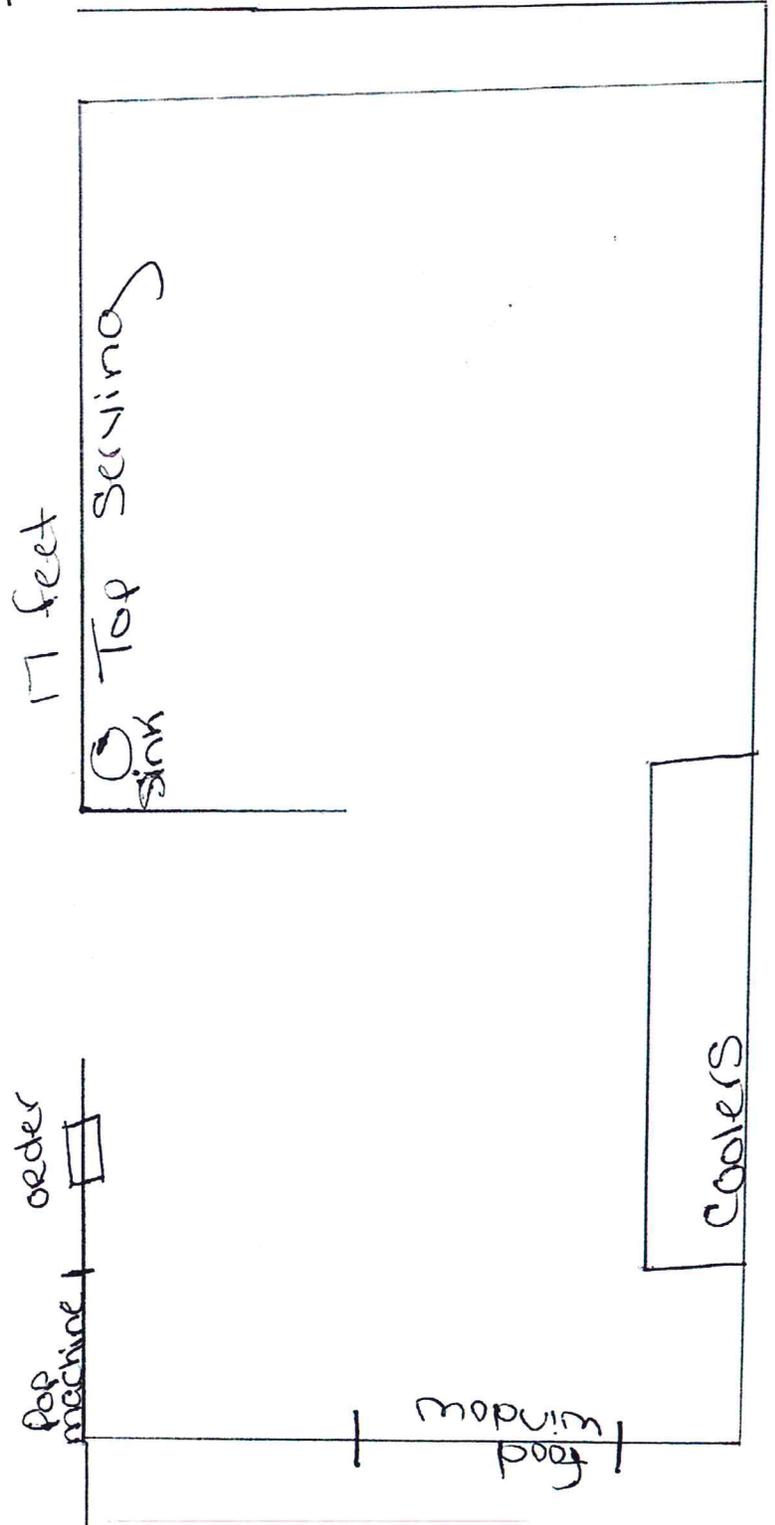
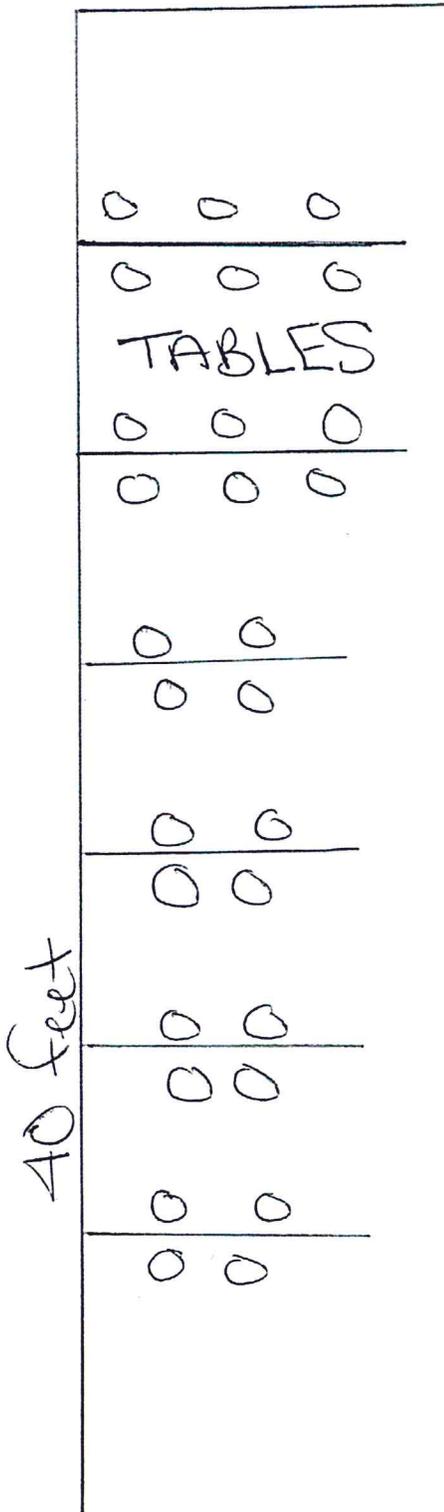
NORTH

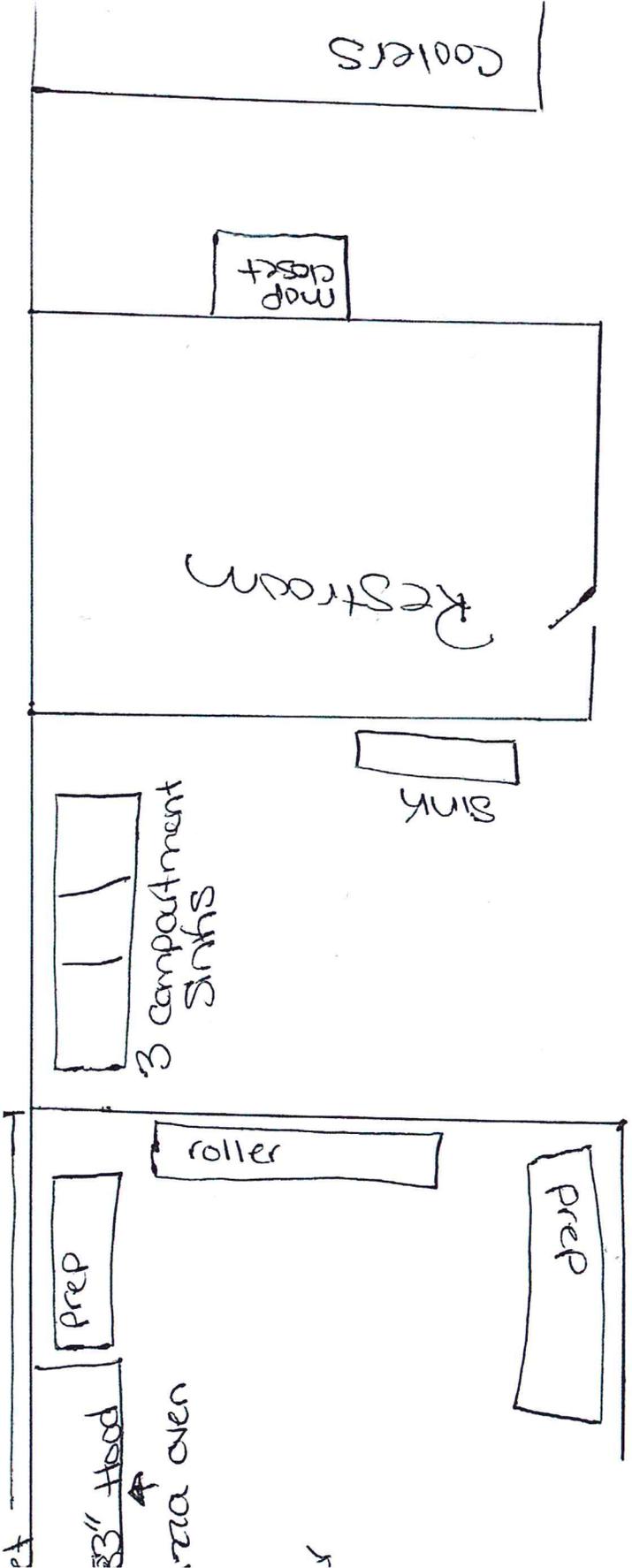
EXHIBIT PRINTING DATE: 04/08/2016

LP 1

THIS PLAN SHALL NOT BE DEEMED TO BE A WARRANTY, REPRESENTATION OR AGREEMENT ON THE PART OF THE LEASOR THAT THE SHOPPING CENTER WILL BE OR WILL CONFORM TO THE REPRESENTATIONS OR AGREEMENTS MADE HEREON WITHOUT CHARGE. LEASORS MAY FROM TIME TO TIME INCREASE, REDUCE AND/OR CHANGE THE PRISMS AREAS OR COVENANT AREAS AS LEASORS SHALL DEEM PROPER, LEASORS RESERVE THE RIGHT TO CHANGE THE GENERAL LAYOUT AND TO MAKE ALTERATIONS AND ADDITIONS TO, AND TO BUILD ADDITIONAL STORES ON THE BUILDING OR WITHIN THE COVENANT OF LEASOR OR WITHIN THE COVENANT OF LEASOR AS MAY BE NECESSARY BY APPLICABLE CODES OR AUTHORITIES. THIS PLAN IS SUBJECT TO CHANGE, AND IT IS NOT A WARRANTY, REPRESENTATION OR AGREEMENT THAT PROSPECTIVE TENANTS OR ANCHOR STORES SHOULD HEREON WILL BE TENANTS OF ANCHOR STORES AT THE EXPIRATION OF TERM OF ANY OTHER LEASOR ON THE SHOPPING CENTER.

ENTRY







License Reviews City of Bismarck

License Number: **LIQ2016-00115**

Licensee Name: **A & B PIZZA SOUTH**

Applied: **7/25/2016**

Issued:

Site Address: **600 S 5TH ST**

Expired:

City, State Zip Code: **BISMARCK, ND 58504**

Status: **PENDING**

Applicant: **BARTH, DAVID K**

Parent License:

Owner: **KIRKWOOD MALL ACQUISITION LLC**

Contractor: **<NONE>**

Details:

NEW APPLICATION FOR CLASS I-2 LIQUOR LICENSE

SPOKE TO DAVE BARTH ABOUT PROVIDING A SPECIFIC SITE MAP OF THE LOCATION SHOWING WHERE LIQUOR WILL BE STORED AND SERVED. HE WILL PREPARE IT AND BRING TO ADMIN TUES, JULY 26, 2016. WILL FORWARD TO BISMARCK PD UPON RECEIPT.

LIST OF REVIEWS

SENT DATE	RETURNED DATE	DUE DATE	TYPE	CONTACT	STATUS	REMARKS
Review Group: ADMIN-POLICE						
7/25/2016	7/25/2016	7/26/2016	COMPLETENESS CHECK POLICE	Tara Axtman	COMPLETE	background complete
Notes:						
7/25/2016	7/25/2016	7/26/2016	LT REVIEW	Gary Malo	COMPLETE	
Notes: Diagram attached. Owner/manager has clear record. Forward to DC.						
Review Group: AUTO						
7/25/2016	7/26/2016	7/26/2016	DC REVIEW	Randy Ziegler	COMPLETE	
Notes: Ok, forward to Chief.						
7/25/2016	7/25/2016	7/26/2016	COMPLETENESS CHECK ADMIN	Marla Schroeder	COMPLETE	
Notes:						
7/26/2016	8/1/2016	7/27/2016	CHIEF REVIEW	Dan Donlin	APPROVED	
Notes:						
8/1/2016	8/1/2016	8/2/2016	CITY ADMIN	Jason Tomanek	APPROVED	
Notes: Based on PD's review and approval, Administration approves.						



License Reviews City of Bismarck

8/1/2016	8/8/2016	8/2/2016	COMPLETENESS CHECK FINAL	Marla Schroeder	COMPLETE	
Notes:						

CITY OF BISMARCK
APPLICATION FOR RETAIL
ALCOHOLIC BEVERAGE LICENSE
(PARTNERSHIP OR CORPORATION)

L102016-00117
7-25-16 *HLA*

License _____
Class F-1

- New License Application
 Renewal
 Transfer
 Relocation

NOTE: This application must be made under oath and be accompanied by required fees.

CHECK ONE: Liquor and Beer
 Beer
 Wine (Restaurants)

CHECK ONE: On-Sale Only
 Off-Sale Only
 On and Off Sale

The undersigned states that the following information is true and correct.

NAME OF PARTNERSHIP OR CORPORATION BWR-Bismarck, Inc.
DATE OF INCORPORATION Feb 19, 2016 PHONE [REDACTED]
ADDRESS [REDACTED] CITY, STATE, ZIP Minot, ND 58701
IF OUT OF STATE CORPORATION, IS CORPORATION REGISTERED IN NORTH DAKOTA? _____
NAME AND ADDRESS OF REGISTERED AGENT Allan F Hauck
[REDACTED] Minot, ND 58701
CERTIFICATE NUMBER 40-633-800 Certificate of Incorporation ND PHONE _____
NAME OF BUSINESS FOR WHICH LICENSE IS REQUESTED Buffalo Wings & Rings
BUSINESS ADDRESS 4424 North 15th Street CITY, STATE, ZIP Bismarck, ND 58503
MAILING ADDRESS [REDACTED] CITY, STATE, ZIP Minot, ND 58701
PRIMARY CONTACT Al Hauck PHONE [REDACTED]
EMAIL [REDACTED]

LIST ALL OFFICERS OR DIRECTOR OF CORPORATION OR PARTNERS, AND % OF OWNERSHIP (Attach separate sheet, if necessary)

NAME Allan F Hauck ADDRESS/CITY/STATE [REDACTED], Minot, ND 58701

DATE OF BIRTH [REDACTED] M/F M RACE C DRIVER'S LICENSE # AND STATE ISSUED [REDACTED]

OCCUPATION Self-Employed TITLE President %OWNERSHIP 50%

NAME Mary K Hauck ADDRESS/CITY/STATE [REDACTED] ND 58701

DATE OF BIRTH [REDACTED] M/F F RACE C DRIVER'S LICENSE # AND STATE ISSUED [REDACTED]

OCCUPATION Self-Employed TITLE Secretary/Treasurer %OWNERSHIP 50%

NAME _____ ADDRESS/CITY/STATE _____

DATE OF BIRTH _____ M/F _____ RACE _____ DRIVER'S LICENSE # AND STATE ISSUED _____

OCCUPATION _____ TITLE _____ %OWNERSHIP _____

MANAGER'S NAME _____ ADDRESS/CITY/STATE _____

DATE OF BIRTH _____ M/F ___ RACE ___ DRIVER'S LICENSE # AND STATE ISSUED _____

OCCUPATION _____ TITLE _____

LIST NAMES/ADDRESS/PERCENTAGE OF OWNERSHIP OF ANY PERSON OWNING AN INTEREST IN THE BUSINESS _____

OWNER OF BUILDING OR PREMISES A&M Hauck Investments, LLC

NOTE: If owner is other than applicant, attach a copy of lease or rental agreement. Also, all applicants must attach a copy of a blueprint or diagram on a separate sheet 11" x 8 1/2" in size, showing premises to be licensed. Show all exits, bars, dining areas, (if any) beverage coolers and beverage storage areas. Indicate which are solid walls, half walls, dividers, and movable partitions. Outline in different color ink, the area to be used for the sale and/or service of alcoholic beverages if entire building is not so used. Include the direction "North" on the diagram.

1. Are manager and all partners legal residents of the United States and the State of North Dakota, and are all officers or directors legal residents of the United States? yes If not, explain _____

2. Have any of the persons listed above been convicted of any crime within the past five years? If yes, list all convictions, dates, location and disposition or sentence of each no

3. Does the building meet all state and local sanitation and safety requirements? yes

4. a. If a transfer or change in ownership or management, list former owner and manager _____

b. If a transfer or change in ownership, former owner must sign below:
I hereby consent to the requested transfer of this license:
_____ Date _____

5. Has applicant, or any of the persons listed above, within the past five years had any license to engage in the sale of alcoholic beverages revoked or suspended? yes If yes, give details 2014 - 3 days, sale to minor, server misread DL Birthdate
A&M Hauck, Inc. - Buffalo Wings & Rings, Minot, ND

6. If a new application, has applicant or any of the persons listed above, engaged in the sale or transportation of alcoholic beverages previously? yes If yes, give details A&M Hauck, Inc, Buffalo Wings & Rings, Minot, ND

7. Has applicant, or any of the persons listed above, within the past five years, had an application for any federal, state or local license of any type rejected or denied? If yes, give details no

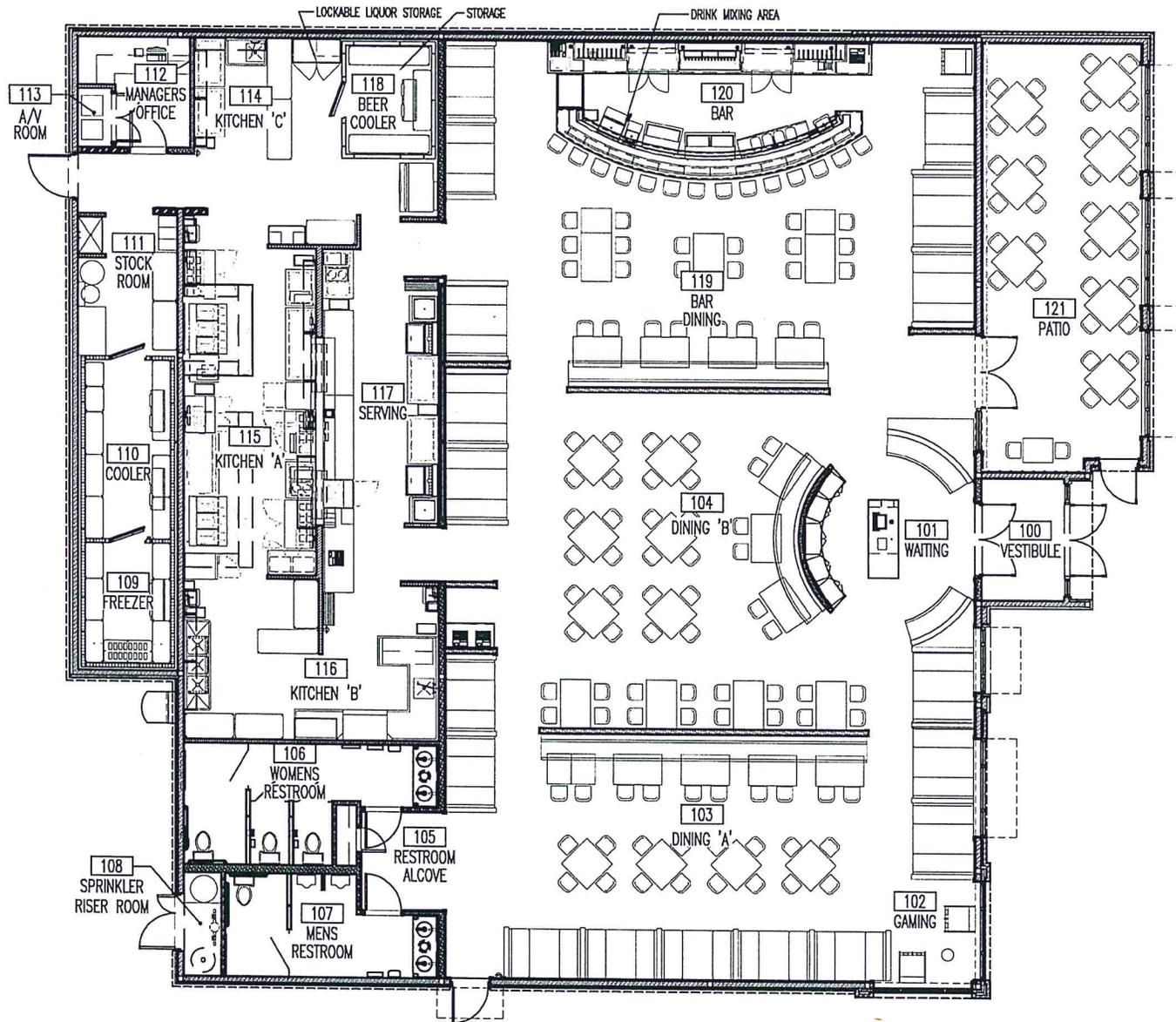
8. Is there any agreement or understanding, or proposed agreement or understanding to obtain the license for another, or to operate the business for another, or as an agent for another? no If yes, give details _____

9. Has the business been sold or leased, or is there any intention to sell or lease, the business to another? no
If yes, give details _____

10. Has the applicant, or any of the persons listed above, any interest in whatsoever, directly or indirectly, any other licensed liquor establishment within or without the State of North Dakota? yes If yes, give details _____
A&M Hauck, Inc. Buffalo Wings & Rings, Minot, ND

11. Will the applicant, or any of the persons listed above, be engaged in any other business other than the sale of liquor under the license applied for? yes If yes, give details Food and Beverage

12. Have all property taxes and special assessments currently due been paid? yes If not, explain _____



Intertech Design Services, Inc.

Architecture and Engineering

9675 Montgomery Rd. Cincinnati, Ohio 45242
 Telephone: (513) 791-5588 Fax: (513) 792-7922
 Web: www.intertechdesign.net



BISMARCK
4424 N. 15TH STREET
BISMARCK, ND 58503

INTERTECH DESIGN SERVICES, INC. HAS EXERCISED REASONABLE SKILL AND JUDGMENT IN PROVIDING PROFESSIONAL SERVICES. INTERTECH DESIGN SERVICES, INC. IS NOT A GUARANTOR OF THE PROJECT TO WHICH ITS SERVICES ARE DIRECTED, AND ITS RESPONSIBILITY IS LIMITED TO WORK SPECIFICALLY PERFORMED FOR THE CLIENT. OMISSIONS OF THE CLIENT, NOR THIRD PARTIES NOT UNDER THE DIRECT CONTROL OF INTERTECH DESIGN SERVICES, INC..

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Date 07/15/16
 Job No. 15-0505

Drawn LJD
 Checked JKR

Sheet Number
PLAN

LEASE AGREEMENT

This lease agreement is entered into between A&M Hauck Investments, LLC, referred to as "lessors," and BWR-Bismarck, Inc., referred to as "lessee."

SECTION ONE

DESCRIPTION OF PREMISES

Lessors lease to lessee the premises described as 4424 N 15th Street, Bismarck, ND.

SECTION TWO

TERM

The term of this lease agreement is twenty (20) years, beginning on 12/1/2016, and terminating on 11/30/2036, 11:59 PM.

SECTION THREE

RENT

A. The total rent under this lease agreement is [REDACTED] per year.

B. Lessee shall pay lessors the above-specified amount in installments of [REDACTED] each week, beginning on 12/1/2016, with succeeding payments due on each Tuesday of each subsequent week during the term of the lease agreement.

SECTION FOUR

USE OF PREMISES

The demised premises are to be used for the purposes of operating a restaurant. Lessee shall restrict its use to such purposes, and shall not use or permit the use of the demised premises for any other purpose without the prior, express, and written consent of lessors, or lessors' authorized agent.

SECTION FIVE

RESTRICTIONS ON USE

A. Lessee shall not use the demised premises in any manner that will increase risks covered by insurance on the demised premises and result in an increase in the rate of insurance or a cancellation of any insurance policy, even if such use may be in furtherance of lessee's business purposes.

B. Lessee shall not keep, use, or sell anything prohibited by any policy of fire insurance covering the demised premises, and shall comply with all requirements of the insurers applicable to the demised premises necessary to keep in force the fire and liability insurance.

SECTION SIX

WASTE, NUISANCE, OR UNLAWFUL ACTIVITY

Lessee shall not allow any waste or nuisance on the demised premises, or use or allow the demised premises to be used for any unlawful purpose.

SECTION SEVEN

DELAY IN DELIVERING POSSESSION

This lease agreement shall not be rendered void or voidable by the inability of lessors to deliver possession to lessee on the date set forth in Section Two. Lessors shall not be liable to lessee for any loss or damage suffered by reason of such a delay; provided, however, that lessors does deliver possession no later than December 1, 2016. In the event of a delay in delivering possession, the rent for the period of such delay will be deducted from the total rent due under this lease agreement. No extension of this lease agreement shall result from a delay in delivering possession.

SECTION EIGHT

UTILITIES

Lessee shall arrange and pay for all utilities furnished to the demised premises for the term of this lease agreement, including, but not limited to, electricity, gas, water, sewer, and telephone service.

SECTION NINE

REPAIRS AND MAINTENANCE

Lessee shall maintain the demised premises and keep them in good repair at its expense.

SECTION TEN

DELIVERY, ACCEPTANCE, AND SURRENDER OF PREMISES

A. Lessors represents that the demised premises are in fit condition for use by lessee. Acceptance of the demised premises by lessee shall be construed as recognition that the demised premises are in a good state of repair and in sanitary condition.

B. Lessee shall surrender the demised premises at the end of the lease term, or any renewal of such term, in the same condition as when lessee took possession, allowing for reasonable use and wear, and damage by acts of God, including fires and storms. Before delivery, lessee shall remove all business signs placed on the demised premises by lessee and restore the portion of the demised premises on which they were placed in the same condition as when received.

SECTION ELEVEN

PARTIAL DESTRUCTION OF PREMISES

A. Partial destruction of the demised premises shall not render this lease agreement void or voidable, nor terminate it except as specifically provided in this lease agreement. If the demised premises are partially destroyed during the term of this lease agreement, lessors shall repair them when such repairs can be made in conformity with governmental laws and regulations, within a reasonable period of time. Written notice of the intention of lessors to repair shall be given to lessee within ten business days after any partial destruction. Rent will be reduced proportionately to the extent to which the repair operations interfere with the business conducted on the demised premises by lessee. If the repairs cannot be made within a reasonable time, either party shall have the option to terminate this lease agreement.

B. Disputes between lessors and lessee relating to provisions of this section shall be arbitrated. The parties shall each select an arbitrator, and the two arbitrators selected shall together select a third arbitrator. The three arbitrators shall determine the dispute, and their decisions shall be binding on the parties. The parties shall divide the costs of arbitration equally between them.

SECTION TWELVE

ENTRY ON PREMISES BY LESSORS

Lessors reserves the right to enter on the demised premises at reasonable times to inspect them and lessee shall permit lessors to do so.

SECTION THIRTEEN

SIGNS, AWNINGS, AND MARQUEES INSTALLED BY LESSEE

Lessee shall not construct nor place signs, awnings, marquees, nor other structures projecting from the exterior of the demised premises without the prior, express, and written consent of lessors.

SECTION FOURTEEN

BUSINESS SALE SIGNS

Lessee shall not conduct "Going out of Business," "Lost Our Lease," "Bankruptcy," or other sales of that nature on the demised premises without the written consent of lessors.

SECTION FIFTEEN

NONLIABILITY OF LESSORS FOR DAMAGES

Lessors shall not be liable for liability or damage claims for injury to persons or property from any cause relating to the occupancy of the demised premises by lessee. Lessee shall indemnify lessors from any and all liability, loss, or other damage claims or obligations resulting from any injuries or losses of this nature.

SECTION SIXTEEN

LIABILITY INSURANCE

A. Lessee shall procure and maintain in force at its expense during the term of this lease agreement and any extension of such term, public liability insurance with insurers and through brokers approved by lessors. Such coverage shall be adequate to protect against liability for damage claims through public use of or arising out of accidents occurring in or around the demised premises, in a minimum amount of \$1,000,000 for each person injured, \$1,000,000 for any one accident, and replacement cost for property damage. The insurance policies shall provide coverage for contingent liability of lessors on any claims or losses. The insurance policies shall be delivered to lessors for safekeeping. Lessee shall obtain a written obligation from the insurers to notify lessors in writing at least thirty calendar days prior to cancellation or refusal to renew any policy.

B. If the insurance policies required by this section are not kept in force during the entire term of this lease agreement or any extension of such term, lessors may procure the necessary insurance and pay the premium for it, and the premium shall be repaid to lessors as an additional rent installment for the month following the date on which the premiums were paid by lessors.

SECTION SEVENTEEN

ASSIGNMENT, SUBLEASE, OR LICENSE

A. Lessee shall not assign or sublease the demised premises, or any right or privilege connected with the demised premises, or allow any other person except agents and employees of lessee to occupy the demised premises or any part of the demised premises without first obtaining the written consent of lessors. A consent by lessors shall not be a consent to a subsequent assignment, sublease, or occupation by other persons.

B. An unauthorized assignment, sublease, or license to occupy by lessee shall be void and shall terminate this lease agreement at the option of lessors.

C. The interest of lessee in this lease agreement is not assignable by operation of law without the written consent of lessors.

SECTION EIGHTEEN

REMEDIES OF LESSORS FOR BREACH BY LESSEE

Lessors shall have the following remedies in addition to their other rights and remedies in the event lessee breaches this lease agreement and fails to timely cure such default:

In the event of a breach of this lease other than the obligation to pay rent the lessors may cure such breach themselves and impose the cost thereof as additional rent, amortizable over the then balance of the lease term including a reasonable interest component. Alternatively, lessors may treat the breach as being the equivalent of a breach relating to the payment of rent.

In the event of a breach of this lease relating to the payment of rent, lessors may retake possession of the property and relet it, without such action relieving lessee of its obligation under this lease. In the event of such repossession and reletting the lessee shall be obligated to the lessors for (1) the amounts then presently owing under the lease, whether liquidated

or non-liquidated, and (2) all future payments of rent due under the lease, discounted to a net present worth value by means of a calculation thereof which employs a then reasonable rate of interest, less the net present worth value of the rent payments due under the reletting, calculated at the same rate of interest. Alternatively, lessors may retake possession of the property with or without reletting it, and may treat this lease as entirely terminated, except for the obligation on the part of the lessee to pay to lessors all amounts then presently owing under the lease, whether liquidated or non-liquidated.

Before availing themselves of the rights exercisable by them under this section, lessors shall provide lessee with five business days written notice of the claimed breach of the lease upon which the lessors intend to act, and lessee shall have five business days after their receipt of such notice to cure the breach.

SECTION NINETEEN

CONDEMNATION

Eminent domain proceedings resulting in the condemnation of a part of the demised premises, but leaving the remaining premises reasonably usable by lessee for the purposes of its business, will not terminate this lease agreement. The effect of any condemnation, where the option to terminate is not exercised, will be to terminate this lease agreement as to the portion of the demised premises condemned, and the lease of the remainder of the demised premises shall remain intact. The rental for the remainder of the lease term shall be reduced by the amount that the usefulness of the demised premises has been reduced for the business purposes of lessee. Lessee assigns and transfers to lessors any claim it may have to compensation for damages as a result of any condemnation.

SECTION TWENTY

WAIVERS

Waiver by lessors of any breach of any covenant or duty of lessee under this lease is not a waiver of a breach of any other covenant or duty of lessee, or of any subsequent breach of the same covenant or duty.

In witness, each party to this lease agreement has caused it to be executed at Minot, North Dakota, on the dates indicated below.



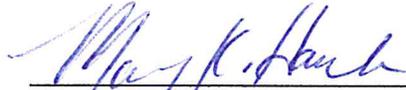
Allan F. Hauck, President
BWR-Bismarck, Inc.

Dated: 6/24/16



Allan F. Hauck, President
A&M Hauck Investments, LLC

Dated: 6/24/16



Mary K. Hauck, Secretary & Treasurer
A&M Hauck Investments, LLC

Dated: 6-24-2016



License Reviews

City of Bismarck

License Number: **LIQ2016-00117**

Licensee Name: **BUFFALO WINGS & RINGS**

Applied: **7/25/2016**

Issued:

Site Address: **4424 N 15TH ST**

Expired:

City, State Zip Code: **BISMARCK, ND 58503**

Status: **PENDING**

Applicant: **HAUCK, ALLAN F**

Parent License:

Owner: **A & M HAUCK INVESTMENTS LLC**

Contractor: **<NONE>**

Details:

NEW CLASS F-1 LIQUOR LICENSE APP

LIST OF REVIEWS

SENT DATE	RETURNED DATE	DUE DATE	TYPE	CONTACT	STATUS	REMARKS
Review Group: ADMIN-POLICE						
7/25/2016	7/26/2016	7/26/2016	COMPLETENESS CHECK POLICE	Tara Axtman	COMPLETE	background complete
Notes:						
7/26/2016	7/26/2016	7/27/2016	LT REVIEW	Gary Malo	COMPLETE	
Notes: Diagram attached. Owners have clear records. No manager listed as the building is being built and won't be open for business until 2017. Once a manager is identified a criminal history will be ran. Forward to DC.						
Review Group: AUTO						
7/25/2016	7/25/2016	7/26/2016	COMPLETENESS CHECK ADMIN	Marla Schroeder	COMPLETE	
Notes:						
7/26/2016	7/26/2016	7/27/2016	DC REVIEW	Randy Ziegler	COMPLETE	
Notes: No manager listed as the building is being built and won't be open for business until 2017. Once a manager is identified a criminal history will be ran. Forward to Chief.						
7/26/2016	8/1/2016	7/27/2016	CHIEF REVIEW	Dan Donlin	APPROVED W/CONDITIONS	
Notes: Cannot completely approve until manager is identified and a background check is completed.						
Dan						



License Reviews City of Bismarck

8/1/2016	8/1/2016	8/2/2016	CITY ADMIN	Jason Tomanek	APPROVED	
Notes: Based on PD's review and approval, Administration approves.						
8/1/2016	8/8/2016	8/2/2016	COMPLETENESS CHECK FINAL	Marla Schroeder	COMPLETE	
Notes:						

CITY OF BISMARCK
APPLICATION FOR RETAIL
ALCOHOLIC BEVERAGE LICENSE
(PARTNERSHIP OR CORPORATION)

LIQ2016-00116
7-25-16 *MJS*

License _____
Class F1

- New License Application
 Renewal
 Transfer
 Relocation

NOTE: This application must be made under oath and be accompanied by required fees.

CHECK ONE: Liquor and Beer
 Beer
 Wine (Restaurants)

CHECK ONE: On-Sale Only
 Off-Sale Only
 On and Off Sale

The undersigned states that the following information is true and correct.

NAME OF PARTNERSHIP OR CORPORATION Kelly Midwest Ventures Limited Partnership

DATE OF INCORPORATION March 2008 PHONE 701-223-8001

ADDRESS 1800 N 12th St CITY, STATE, ZIP Bismarck, ND 58501-1979

IF OUT OF STATE CORPORATION, IS CORPORATION REGISTERED IN NORTH DAKOTA? _____

NAME AND ADDRESS OF REGISTERED AGENT Diane Rieger [REDACTED]
Bismarck, ND 58504

CERTIFICATE NUMBER _____ PHONE [REDACTED]

NAME OF BUSINESS FOR WHICH LICENSE IS REQUESTED Kelly Midwest Ventures Limited Partnership

BUSINESS ADDRESS 1800 N 12th St CITY, STATE, ZIP Bismarck, ND 58501-1979

MAILING ADDRESS 3205 W Sencore Dr CITY, STATE, ZIP Sioux Falls, SD 57107

PRIMARY CONTACT Misty Nelson PHONE 605-965-1440

EMAIL [REDACTED]

LIST ALL OFFICERS OR DIRECTOR OF CORPORATION OR PARTNERS, AND % OF OWNERSHIP (Attach separate sheet, if necessary)

NAME Brenda Schmidt ADDRESS/CITY/STATE [REDACTED] Sioux Falls, SD 57108

DATE OF BIRTH [REDACTED] M/F F RACE Caucasian DRIVER'S LICENSE # AND STATE ISSUED [REDACTED]

OCCUPATION President / CEO TITLE President % OWNERSHIP 1.33%

NAME Robert Thimmon ADDRESS/CITY/STATE [REDACTED] Sioux Falls, SD 57108

DATE OF BIRTH [REDACTED] M/F M RACE Caucasian DRIVER'S LICENSE # AND STATE ISSUED [REDACTED]

OCCUPATION CEO TITLE Treasurer % OWNERSHIP .97%

NAME Thomas Morris ADDRESS/CITY/STATE [REDACTED] Dell Rapids, SD 57021

DATE OF BIRTH [REDACTED] M/F M RACE Caucasian DRIVER'S LICENSE # AND STATE ISSUED [REDACTED]

OCCUPATION Director of Development TITLE Secretary % OWNERSHIP .08%

MANAGER'S NAME Diane Rieger ADDRESS/CITY/STATE [redacted] Bismarck, ND 58503

DATE OF BIRTH [redacted] M/F F RACE Caucasian DRIVER'S LICENSE # AND STATE ISSUED [redacted]

OCCUPATION General Manager TITLE _____

LIST NAMES/ADDRESS/PERCENTAGE OF OWNERSHIP OF ANY PERSON OWNING AN INTEREST IN THE BUSINESS See attached

OWNER OF BUILDING OR PREMISES Kelly Midwest Ventures Limited Partnership

NOTE: If owner is other than applicant, attach a copy of lease or rental agreement. Also, all applicants must attach a copy of a blueprint or diagram on a separate sheet 11" x 8 1/2" in size, showing premises to be licensed. Show all exits, bars, dining areas, (if any) beverage coolers and beverage storage areas. Indicate which are solid walls, half walls, dividers, and movable partitions. Outline in different color ink, the area to be used for the sale and/or service of alcoholic beverages if entire building is not so used. Include the direction "North" on the diagram.

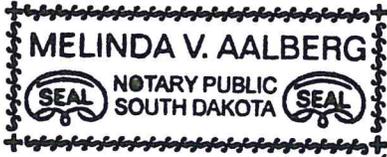
1. Are manager and all partners legal residents of the United States and the State of North Dakota, and are all officers or directors legal residents of the United States? yes If not, explain _____
2. Have any of the persons listed above been convicted of any crime within the past five years? If yes, list all convictions, dates, location and disposition or sentence of each no
3. Does the building meet all state and local sanitation and safety requirements? yes
4. a. If a transfer or change in ownership or management, list former owner and manager _____
 b. If a transfer or change in ownership, former owner must sign below:
 I hereby consent to the requested transfer of this license: _____ Date _____
5. Has applicant, or any of the persons listed above, within the past five years had any license to engage in the sale of alcoholic beverages revoked or suspended? no If yes, give details _____
6. If a new application, has applicant or any of the persons listed above, engaged in the sale or transportation of alcoholic beverages previously? yes If yes, give details Thomas Morris & Brenda Schmidt are listed as officers and owners on other Liquor Licenses. Please see listing attached
7. Has applicant, or any of the persons listed above, within the past five years, had an application for any federal, state or local license of any type rejected or denied? If yes, give details no
8. Is there any agreement or understanding, or proposed agreement or understanding to obtain the license for another, or to operate the business for another, or as an agent for another? no If yes, give details _____
9. Has the business been sold or leased, or is there any intention to sell or lease, the business to another? no If yes, give details _____
10. Has the applicant, or any of the persons listed above, any interest in whatsoever, directly or indirectly, any other licensed liquor establishment within or without the State of North Dakota? yes If yes, give details Please see attached
11. Will the applicant, or any of the persons listed above, be engaged in any other business other than the sale of liquor under the license applied for? yes If yes, give details we own Hells
12. Have all property taxes and special assessments currently due been paid? yes If not, explain _____

I hereby agree and consent that authorized officers or representatives of the city may enter the premises licensed at any time to inspect the same and records of the business, and hereby waive any and all rights under the Constitution of the United States or State of North Dakota relative to searches and seizures without issuance of or use of a search warrant, and agree that I will not claim such immunities, and that such search, inspection and seizure may be made at any time without a warrant.

I agree that I will not transfer to sell this license, if granted, without the prior approval of the governing body and in accordance with applicable ordinances.

I also agree that should any of the information contained in this application change within the period of the license, if granted, that I will inform city officials immediately and furnish such details as may be requested by such officials concerning any such changes. I also agree that should there be a change in ownership or management during the period of the license, prior approval of the Board of City Commissioners is required.

I further agree that misrepresentation, false statement, or omission in this application shall be grounds for rejection of said application or for revocation or suspension of any license granted.



My commission expires 5/2/2021

[Handwritten Signature]

Signature of Applicant

Subscribed and sworn to before me this 22 day of July, 2016

[Handwritten Signature]

Notary Public

Recommend application be: APPROVED _____ DENIED _____

Reasons for negative recommendation _____

Date: _____

Chief of Police

Date: _____

City Administration

LIQUOR LICENSE SITE DIAGRAM REQUIREMENTS

- Site diagrams are to be submitted on a plain sheet of paper, 8 1/2 x 11 inch size. There shall be one-inch margin left clear on all edges of the diagram.
- The licensed area shall be identified within the margins.
- The agency name shall be included on the diagram.
- The direction "North" shall be included on the diagram.
- The interior design of the licensed area shall be represented. This should include entrances, exits, interior doors, windows, tables, coolers, storage offices and room dividers.
- The diagram may be hand drawn, but it must be neat and reasonably accurate. Do not submit copies of construction blueprints.
- If the licensed site is part of a larger complex such as a restaurant, areas such as mixing, serving and storage must be identified.
- Do not use reference or hi-lite markers to identify areas as they do not reproduce when copied.

* Please use Minerva's site diagram as none of the licensed area will change from what they're currently using. The legal name is W.R. Bismarck Ventures Limited Partnership.

**APPLICATION FOR SUNDAY "ON SALE"
ALCOHOL BEVERAGE LICENSE**

Name of Licensee Kelly Midwest Ventures Limited Partnership

Class of City of Bismarck retail liquor license currently held NO

Location of licensed premises 1800 N 12th St Bismarck, ND 58501-1979

Name of manager or local contact person Diane Rieger

The fee for a Sunday alcoholic beverage license is 20% of the applicant's annual retail fee. Applications made for the remainder of a partial year are prorated. One fee covers on-sale, off-sale or both. Fee enclosed please send an invoice after approval

I am applying for both a Sunday on and off sale license. YES _____ NO ✓

The normal term for a Sunday alcoholic beverage license is August 1st through July 31st. Applications must be submitted by July 1st of each year. Any application submitted after July 1st of each year shall be for the remainder of the term.

The undersigned licensee certifies that it is now paying and will continuously pay the City's restaurant tax and by signing this application, consents to the release of the licensee's sales tax records by the North Dakota State Tax Department to the City of Bismarck. If such payment should cease during the term, this license shall be void and the licensee shall be ineligible for a Sunday alcoholic beverage license for the remainder of the term. The undersigned also agrees that it will observe all of the rules and regulations of its retail license in the use of this license and that this license permits only the "on sale" of alcoholic beverages.

Dated this 22nd day of July, 2016



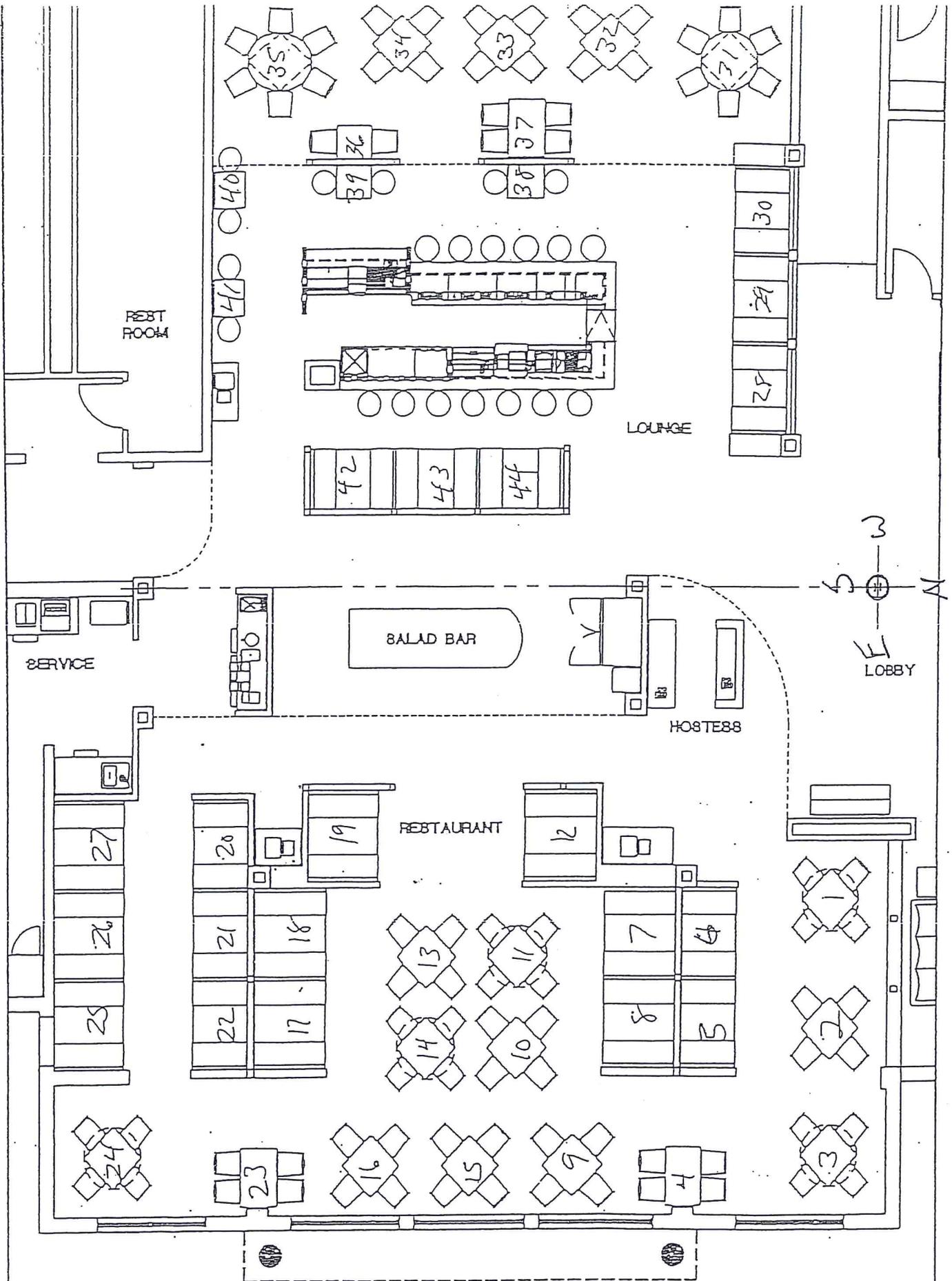
Applicant/Licensee

Chief of Police

Date

City Administration

Date



MINERVAS RESTAURANT
SEATING LAYOUT
BISMARCK, NORTH DAKOTA

Kelly Inns, Ltd. Shareholder List

Name	Address	City, State, Zip	Shares	Ownership%	Title
Aspen Dahl		Madison, SD 57042	800	0.06%	Shareholder
Fred Ening, Jr.		Spearfish, SD 57783-7083	11,026	0.87%	Shareholder
DeEtte and Edward Geddes		Dacoma, SD 57365	2,333	0.18%	Shareholder
Diane Howe		Sioux Falls, SD 57108	800	0.06%	Shareholder
Paula Howe		Sioux Falls, SD 57106	800	0.06%	Shareholder
Desiree Hortness		Madison, SD 57042	800	0.06%	Shareholder
Amber Howe		Sioux Falls, SD 57106	800	0.06%	Shareholder
Joshua Howe		Sioux Falls, SD 57106	1,660	0.13%	Shareholder
Zander Howe		Sioux Falls, SD 57106	800	0.06%	Shareholder
Justin Howe		Sioux Falls, SD 57110	800	0.06%	Shareholder
Shanna Howe		Sioux Falls, SD 57110	800	0.06%	Shareholder
Nolan Howe		Sioux Falls, SD 57110	800	0.06%	Shareholder
Everett Robert Howe		Sioux Falls, SD 57110	800	0.06%	Shareholder
Stephen M. Laird		Omaha, NE 68124	100	0.01%	Shareholder & Director
Mark J. Mueller		Dacoma, SD 57365	2,333	0.18%	Shareholder
Steven B. Mueller		Dacoma, SD 57365	2,334	0.18%	Shareholder
John P. Peterson		Canton, SD 57013	1,600	0.13%	Shareholder
Kiersten R. Peterson		Canton, SD 57013	1,600	0.13%	Shareholder
Anders J. Peterson		Canton, SD 57013	1,600	0.13%	Shareholder
Jacob P. Peterson		Canton, SD 57013	1,600	0.13%	Shareholder
Karryn L. Peterson		Canton, SD 57013	1,600	0.13%	Shareholder
Kari L. Rowe		Murfreesboro, TN 37128	1,600	0.13%	Shareholder
Elli M. Rowe		Murfreesboro, TN 37128	1,600	0.13%	Shareholder
Nora L. Rowe		Murfreesboro, TN 37128	1,600	0.13%	Shareholder
Tonya L. Rowe		Blaine, MN 55449	17,966	1.42%	Shareholder
Christian A. Roeder		Blaine, MN 55449	1,600	0.13%	Shareholder
Asher K. Rowe		Blaine, MN 55449	1,600	0.13%	Shareholder
Olivia Lynn Rowe		Blaine, MN 55449	1,600	0.13%	Shareholder
Isaac William Rowe		Blaine, MN 55449	1,600	0.13%	Shareholder
Thaddeaus Stofferahn		Humboldt, SD 57035	800	0.06%	Shareholder
Aubrey Elizabeth Stofferahn		Humboldt, SD 57035	800	0.06%	Shareholder
Elizabeth Marie Stofferahn		Humboldt, SD 57035	800	0.06%	Shareholder
Jana L. Sweetman		Sioux Falls SD 57105	527	0.04%	Shareholder
August Tilden Stofferahn		Humboldt, SD 57035	800	0.06%	Shareholder
Nichol Terveer		Brandon, SD 57005	800	0.06%	Shareholder
Troy or Suzanne Tecklenburg		Harrisburg, SD 57032	400	0.03%	Shareholder
Warren Terveer		Brandon, SD 57005	800	0.06%	Shareholder
Lake Terveer		Brandon, SD 57005	800	0.06%	Shareholder
Aftyn Terveer		Brandon, SD 57005	800	0.06%	Shareholder
Kinsley Wyn Terveer		Brandon, SD 57005	800	0.06%	Shareholder

Kelly Inns, Ltd. Shareholder List

Name	Address	City, State, Zip	Shares	Ownership%	Title
David J. Halder Revocable Living Trust, David J. Halder, Trustee		Mitchell SD 57301	750	0.06%	Shareholder
Brenda Schmidt		Sioux Falls, SD 57108	16,791	1.33%	Shareholder-Director & President
Meredith Larson		Sioux Falls, SD 57110	8	0.00%	Shareholder & Director
Dawn Koble		Maple Grove, MN 55369	300	0.02%	Shareholder
Kari Shanard Koenders		Sioux Falls, SD 57105	32,558	2.58%	Shareholder & Director
Thomas J. Morris		Dell Rapids, SD 57022	1,000	0.08%	Shareholder & Secretary
Rick or Victoria Jones Murray		Pierre, SD 57501	7,780	0.62%	Shareholder
Maria E. Nelson		Sioux Falls, SD 57105	1,000	0.08%	Shareholder
Heidi Shanard-Neuhart		Mount Vernon, SD 57363	32,557	2.58%	Shareholder
Larry Olawsky Living Trust, Larry & Marcella Olawsky, Trustees		Sioux Falls, SD 57108	10,000	0.79%	Shareholder
Marcella Olawsky Living Trust, Marcella & Larry Olawsky, Trustees		Sioux Falls, SD 57108	10,000	0.79%	Shareholder
Leah Peterson		Canton, SD 57013	25,366	2.01%	Shareholder & Director
Michael & Emily Risty, JTWROS		Baldwin ND 58521	19,138	1.51%	Shareholder
Harold D. or Linda J. Rensberger		Sioux Falls, SD 57106	5,715	0.45%	Shareholder
Michael Risty		Baldwin ND 58521	4,240	0.34%	Shareholder
Shelby Ann Pogatchnik		Farmington, MN 55024	23,378	1.85%	Shareholder
Brian Rowe		Murfreesboro, TN 37128	25,366	2.01%	Shareholder
Kevin Rowe		Blaine, MN 55449	9,000	0.71%	Shareholder
Kelly Sweet		Sioux Falls, SD 57105	3,827	0.30%	Shareholder
Jon Sweet		Sioux Falls, SD 57105	1,594	0.13%	Shareholder
Benjamin Patrick Sweetman (Patrick Sweetman, Guardian)		Sioux Falls, SD 57105	1	0.00%	Shareholder
Dan Schank		Sioux Falls, SD 57105	4,275	0.34%	Shareholder
Jeff or Anita Schoenhard		West Yellowstone, MT 59758	1,525	0.12%	Shareholder
Iris Shanard		Bridgewater, SD 57319	1	0.00%	Shareholder
Laurie J. Shanard		Burlington, VT 05401	32,557	2.58%	Shareholder
Lisa Thimjon		Sioux Falls, SD 57108	600	0.05%	Shareholder
Sarah Jane Hauge		Wayzata, MN 55391	600	0.05%	Shareholder
Ryan Thimjon		Minneapolis, MN 55408	600	0.05%	Shareholder
Jill Greenfield		Sioux Falls, SD 57108	1,200	0.09%	Shareholder
Lucas Dahl		Brookings, SD 57006	800	0.06%	Shareholder

Kelly Inns, Ltd. Shareholder List

Name	Address	City, State, Zip	Shares	Ownership%	Title
Martha Sweet		Sioux Falls, SD 57105	4,000	0.32%	Shareholder
Richard C. Sweetman		Sioux Falls, SD 57101	19,247	1.52%	Shareholder & Director
Kathleen A. Sweetman		Sioux Falls, SD 57101	9,100	0.72%	Shareholder
Erin Elizabeth Algie		San Marcos, CA 92078	9,223	0.73%	Shareholder
Kelly Sweetman Halm		San Marcos, CA 92078	9,223	0.73%	Shareholder
Thomas R. Sweetman		Sioux Falls, SD 57101	9,223	0.73%	Shareholder & Director
Gerald P. Sweetman Living Trust dated 7/29/04, Gerald P. Sweetman, Trustee		Sioux Falls, SD 57118	24,785	1.96%	Shareholder & Director
Molly O'Rourke Irgens		Minneapolis, MN 55404	17,134	1.36%	Shareholder
Patrick Sweetman		Sioux Falls, SD 57105	16,607	1.31%	Shareholder
Richard C. or Kathleen A. Sweetman		Sioux Falls SD 57101	1,318	0.10%	Shareholder
Mary Patricia Sweetman Living Trust dated 7/29/04		Sioux Falls, SD 57118	162	0.01%	Shareholder
Robert or Joan Thimjon		Sioux Falls, SD 57108	12,321	0.97%	Shareholder & Treasurer (Robert)
James Bart or Kathryn Ann Witkower	Drive	Charlottesville, VA 22903	21,816	1.73%	Shareholder
John Mason Brooks & Linda Carlson Brooks Living Trust, Linda Carlson Brooks, Trustee		Rockwall, TX 75087	39,276	3.11%	Shareholder
Henry Carlson, III		Sioux Falls, SD 57104	14,306	1.13%	Shareholder
Jane M. Carlson		Sioux Falls, SD 57108	52,278	4.14%	Shareholder
Kimberly C. Carlson		Littleton, CO 80120	47,913	3.79%	Shareholder
Gretchen E. Ela		Littleton, CO 80120	22,952	1.82%	Shareholder
Richard L. Gliszinski		Ft Collins CO 80522	2,000	0.16%	Shareholder
Jerri Johnson		Sioux Falls, SD 57110	3,431	0.27%	Shareholder
Brittany Brooks		Rockwall, TX 75087	4,240	0.34%	Shareholder
Traci Brooks		Rockwall, TX 75087	4,240	0.34%	Shareholder
Deborah W. Billion Revocable Trust		Sioux Falls, SD 57105	5,000	0.40%	Shareholder
Anna Dodd Carlson		Sioux Falls, SD 57108	4,783	0.38%	Shareholder
Elizabeth D. Carlson		Sioux Falls, SD 57108	4,783	0.38%	Shareholder
Henry Thomas Carlson		Sioux Falls, SD 57108	4,783	0.38%	Shareholder
Judy Dvoracek		Fargo, ND 58103	6,053	0.48%	Shareholder
Russell Greenfield		Sioux Falls SD 57108	10,000	0.79%	Shareholder
Gregg S. Greenfield		Sioux Falls, SD 57105	1,200	0.09%	Shareholder
John W. Gleeson Trust		Sioux City, IA 51104	10,000	0.79%	Shareholder

Kelly Inns, Ltd. Shareholder List

Name	Address	City, State, Zip	Shares	Ownership%	Title
J. Richard Borman		Kennesaw GA 30152	5,271	0.42%	Shareholder
Mary Borman		Ft Collins CO 80524	1,054	0.08%	Shareholder
Henry Carlson, Jr.		Sioux Falls, SD 57110	1,000	0.08%	Shareholder & Director
Eleanor Carlson		Sioux Falls, SD 57110	10,000	0.79%	Shareholder
John D. Darst Trust Agreement, John Darst, Trustee		Bloomington, MN 55431	7,895	0.62%	Shareholder
Rodney S. Dickey Disclaimer Trust, Susan Leach & Margaret V. Dickey, Trustees		Fort Worth TX 76109-1215	6,370	0.50%	Shareholder
David F. Dinsmore		Sioux Falls, SD 57105	17,502	1.38%	Shareholder
Mary Ann Ellis		Ft Collins CO 80522	5,271	0.42%	Shareholder
Frederick K. Ening Credit Trust, Fred Ening, Jr., Trustee		Spearfish, SD 57783-7083	25,205	1.99%	Shareholder
Mary Alice Hillier Separate Property Trust		El Cajon, CA 92021-2520	11,434	0.90%	Shareholder
Larry Howe		Sioux Falls, SD 57108	32,853	2.60%	Shareholder & Director
Ronald Howe		Sioux Falls, SD 57103-0801	35,853	2.84%	Shareholder
Sally O. Herfurth Revocable Trust		Wayzata, MN 55391	21,815	1.73%	Shareholder
Donald W. Kelpin Living Trust, Don Kelpin, Trustee		Sioux Falls, SD 57106	29,290	2.32%	Shareholder
W. Ray Laird, III		La Quinta, CA 92253	61,408	4.86%	Shareholder & Director
First Bank & Trust, N.A., Katherine M. Laird Q-TIP Trust		Sioux Falls, SD 57101-1347	53,833	4.26%	Shareholder
First Bank & Trust, N.A., W. Ray Laird, Jr. Residuary Trust		Sioux Falls, SD 57101-1347	32,005	2.53%	Shareholder
Sophie or G. Malcolm McConnell		New York, NY 10024	23,841	1.89%	Shareholder
Joan B. Olson		Sioux Falls, SD 57108	5,271	0.42%	Shareholder
Kathleen S. Rothenberger Revocable Trust Agreement dated 12/21/04, or successor trustee thereto		St. Paul, MN 55113	14,404	1.14%	Shareholder
Jill M. Rothenberger		St. Paul, MN 55113	5,271	0.42%	Shareholder
Murray Asher Rowe Trust, Murry & Helen Rowe, Trustees		Canton, SD 57013	34,174	2.70%	Shareholder
Helen Irene Rowe Trust, Helen & Murray Rowe, Trustees		Canton, SD 57013	34,174	2.70%	Shareholder
Greg Schjodt or Darci Hortness		Sioux Falls, SD 57107	16,850	1.33%	Shareholder
Dave Sweet		Sioux Falls, SD 57105	34,767	2.75%	Shareholder & Director

Kelly Inns, Ltd. Shareholder List

Name	Address	City, State, Zip	Shares	Ownership%	Title
David Wollman, Sr.	[REDACTED]	Sioux Falls SD 57106	335	0.03%	Shareholder
TOTAL			1,264,149	100.00%	

South Dakota Alcohol Beverage License
Tom Morris

1. Liquor Licenses held by Regency Midwest Ventures Limited Partnership
(Limited partner of Regency Midwest)
 - a. ClubHouse Inn & Suites, Westmont, Illinois
 - b. Arrowwood Resort by ClubHouse, Okoboji, Iowa
 - c. Park Place Hotel, Traverse City, Michigan
 - d. Arrowwood Resort & Conference Center by ClubHouse, Alexandria, Minnesota
 - e. Crown Plaza Hotel and Conference Center, Plymouth, Minnesota
 - f. ClubHouse Inn & Suites, Albuquerque, New Mexico
 - g. Best Western Ramkota Hotel, Aberdeen, South Dakota
 - h. Best Western Ramkota Hotel, Pierre, South Dakota
 - i. Best Western Ramkota Hotel, Rapid City, South Dakota
 - j. Best Western Ramkota Hotel, Watertown, South Dakota
 - k. Best Western Ramkota Hotel, Casper, Wyoming

2. Liquor Licenses Held by The Ramkota Companies, Inc. and Partnership
(Shareholder of The Ramkota Companies and limited partner of Regency CSP)
 - a. Best Western Plus Ramkota Hotel, Sioux Falls, South Dakota
 - b. Custer State Park Resort, South Dakota (Regency CSP Ventures Limited Partnership)

3. Liquor Licenses Held by Deadwood Resort, L.L.C.
(Limited partner in Regency Deadwood Ventures Limited Partnership)
 - The Lodge at Deadwood, Deadwood, South Dakota

4. Liquor Licenses Held by Grand Lake Ventures, L.L.C.
(Member)
 - Grand Lake Lodge, Grand Lake, Colorado

5. Liquor Licenses Held by Kelly Midwest Ventures Limited Partnership
(Officer and Limited Partner)
 - Best Western Kelly Inn, Minot, North Dakota
 - Staybridge Suites, Sioux Falls, South Dakota

6. Liquor Licenses Held by Kelly Midwest Ventures Limited Partnership
(Officer and Limited Partner)
 - a) Staybridge Suites, Sioux Falls, South Dakota
 - b) Holiday Inn Express, Sioux Falls, South Dakota
 - c) La Quinta Inn & Suites, Sioux Falls, South Dakota

**South Dakota Alcohol Beverage License
Brenda Schmidt**

1. Liquor Licenses Held by Kelly Midwest Ventures Limited Partnership
(Officer and Limited Partner)
 - a) Best Western Kelly Inn, Minot, North Dakota
 - b) Best Western Kelly Inn , Fargo, North Dakota
 - c) Staybridge Suites, West Des Moines, Iowa
 - d) Best Western Kelly Inn, Omaha, Nebraska
 - e) Staybridge Suites, Sioux Falls, South Dakota
 - f) Holiday Inn Express, Sioux Falls, South Dakota
 - g) La Quinta Inn & Suites, Sioux Falls, South Dakota



License Reviews

City of Bismarck

License Number: **LIQ2016-00116**

Licensee Name: **CAPITAL STREET GRILLE & BAR**

Applied: **7/25/2016**

Issued:

Site Address: **1800 N 12TH ST**

Expired:

City, State Zip Code: **BISMARCK, ND 58501**

Status: **PENDING**

Applicant: **NELSON, MISTY**

Parent License:

Owner: **KELLY MIDWEST VENT LTD PTNRSH**

Contractor: **<NONE>**

Details:

NEW CLASS F-1 LIQUOR LICENSE APP

THIS IS THE FORMER MINERVA'S RESTAURANT @ KELLY INN

LIST OF REVIEWS

SENT DATE	RETURNED DATE	DUE DATE	TYPE	CONTACT	STATUS	REMARKS
Review Group: ADMIN-POLICE						
7/25/2016	7/25/2016	7/26/2016	COMPLETENESS CHECK POLICE	Tara Axtman	COMPLETE	background complete
Notes:						
7/25/2016	7/25/2016	7/26/2016	LT REVIEW	Gary Malo	COMPLETE	
Notes: Diagram attached. Manager has clear record. Forward to DC.						
Review Group: AUTO						
7/25/2016	7/26/2016	7/26/2016	DC REVIEW	Randy Ziegler	COMPLETE	
Notes: Ok, forward to Chief.						
7/25/2016	7/25/2016	7/26/2016	COMPLETENESS CHECK ADMIN	Marla Schroeder	COMPLETE	
Notes:						
7/26/2016	8/1/2016	7/27/2016	CHIEF REVIEW	Dan Donlin	APPROVED	
Notes:						
8/1/2016	8/1/2016	8/2/2016	CITY ADMIN	Jason Tomanek	APPROVED	
Notes: Based on PD's review and approval, Administration approves.						



License Reviews City of Bismarck

8/1/2016	8/8/2016	8/2/2016	COMPLETENESS CHECK FINAL	Marla Schroeder	APPROVED	
Notes:						

CITY OF BISMARCK
Ordinance No. 6232

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 10-05-08 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO PLACEMENT OF POLES RESTRICTED.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 10-05-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Placement of Poles Restricted is hereby amended and re-enacted to read as follows:

10-05-08. Placement of Poles Restricted. A pole for the holding or conveying of any wire, ~~or wires or cables~~ or any other equipment or installation to be used in connection with the provision of cell, data, telegraph, telephone, cable television, electric lighting, or electric power service or any other utility or communication service to the public, with or without a franchise, may not be placed in any public right-of-way or other public place within the city without prior approval by the city engineer.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect following final passage, adoption and publication.



ADMINISTRATION

DATE: August 16, 2016
FROM: Keith J. Hunke, City Administrator *KJH*
ITEM: Amendment to Artwork Agreement

REQUEST

Approve amendment to Artwork agreement between Dan's Super Market, Inc, and the City of Bismarck

BACKGROUND INFORMATION

Dan's Super Market, Inc. entered into an Agreement with the City of Bismarck dated September 27, 1989, concerning Artwork gifted to the City. The name of Dan's has been changed to Rockstad Real Estate and Investments and the attached amendment is being requested the Rockstad Family. The City Attorney and Event Center General Manager have reviewed the details of the amendment and are amenable to the request. A copy of the original artwork agreement and requested amendment are attached.

RECOMMENDED CITY COMMISSION ACTION

Approve amendment to Artwork agreement between Dan's Super Market, Inc and the City of Bismarck requested by the Rockstad Family.

Amendment to Agreement

Whereas Dan's Super Market, Inc. ("Dan's") entered into an Agreement with the City of Bismarck ("City") dated September 27, 1989 ("Agreement"), concerning Artwork gifted to the City ("Work"), which Agreement is attached as Exhibit 1; and

Whereas, the name of Dan's has been changed to Rockstad Real Estate and Investments, Inc.

Therefore the parties now agree to amend the Agreement as follows:

1. Dan's rights under the Agreement are hereby assigned to Terrance Rockstad and Dona Rockstad ("Rockstad Family").
2. City hereby agrees to insure the Work identified in the Agreement for no less than \$240,000.00. Upon request, the City will provide the Rockstad Family a certificate of property insurance confirming such insurance.
3. The City agrees to reasonably preserve, protect, and maintain the Work. If the City decides not to display the Work, it will provide notice to the Rockstad Family for their input regarding the future display of the Work.
4. The Certificate of Insurance and notices to Rockstad Family shall be provided to Denise Dockter-Kambeitz, Rockstad Real Estate and Investments, P.O. Box 1538, Bismarck, ND 58502-1538. Requests and notices to the City shall be provided to Arla Lawler, Lead Legal Secretary, Bismarck City Attorney's Office, P.O. Box 5503, Bismarck, ND 58506-5503, 701-355-1340.

Dated this _____ day of _____, 2016.

City of Bismarck

By: _____

Its _____

Dated this _____ day of _____, 2016.

Rockstad Real Estate and Investments, Inc.

By: _____

Its _____

Dated this _____ day of _____, 2016.

Rockstad Family

By: _____

AGREEMENT

THIS AGREEMENT, made and entered into this 27 day of Sept, 1989, by and between DAN'S SUPER MARKET, INC. a North Dakota corporation with its principal place of business at 1100 Weiss Ave (hereinafter referred to as "Grantor") and City of Bismarck, a municipality, with its principal place of business at Bismarck Civic Center hereinafter referred to as "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of the entire right, title and interest in and to the copyrighted artwork described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as "Work");

WHEREAS, Grantor desires to gift to Grantee the entire right, title and interest in the Work, however, retain in itself all right, title and interest in the copyright for the Work and all the rights and privileges apertaining thereto, including, without limitation, the exclusive right to reproduce, prepare derivative works based upon, and distribute copies to the public by sale, as well as display the Work; and

WHEREAS, Grantee desires to receive the Work as a gift from Grantor, and acknowledges that the copyright and all rights relative thereto in the Work are to remain in the Grantor, with Grantor being considered the owner of the copyright in the Work.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereby covenant and agree as follows:

1. Grantor has gifted, and by these presents does transfer to Grantee, Grantee's successors, assigns, heirs and legal representatives the actual Work.
2. Grantor has retained ownership of the copyright in the Work, including the entire right, title and interest in and to copyright, and all the rights and privileges apertaining thereto, including, without limitation, the exclusive right to reproduce, prepare derivative works based upon, and distribute copies to the public by sale or gift as well as display said copyrighted Work.

EXHIBIT

tabbles

3. Grantee has accepted the Work as a gift from Grantor, and acknowledges that the copyright and all rights related thereto in the Work shall remain in Grantor, the owner of copyright in the Work.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

GRANTOR:

DAN'S SUPER MARKET, INC.
A North Dakota corporation

By

Tom W. Roe
Its President

Subscribed and sworn to before me
this 27 day of September 1988.

Donnie J. Keller
Notary Public

my commission expires Sept. 27, 1991

GRANTEE:

By

Maureen "Hawk" Hakman
Its Mayor

Subscribed and sworn to before me
this 2 day of September, 1988.

Dennis Schlenker
Notary Public

DENNIS SCHLENKER

PZ-322

Notary Public, Burleigh Co., ND

My commission expires Mar. 2, 1990

EXHIBIT A
DESCRIPTION OF ARTWORK

A monumental display giving tribute to North Dakota and its people, consisting of one circular display of 23 panels (each 44 inches x 72 inches) in six groupings that form a pictorial environment and bring to life the past, present, and future of North Dakota.

The media for this artwork is oil on canvas and the format for the panel grouping is broken down as follows:

- | | |
|--|----------|
| 1. "Wedding Lace" | 4 panels |
| 2. "Two Good Friends and the Quilt Parade" | 4 panels |
| 3. "Observing the Cross Weave" | 4 panels |
| 4. "Circle Unbroken" | 3 panels |
| 5. "...and unto God, we..." | 4 panels |
| 6. "...and the City Grows..." | 4 panels |

Revised 12/89



ADMINISTRATION

DATE: August 9, 2016
FROM: Keith J. Hunke, City Administrator *KJH*
ITEM: ND League of Cities Annual Conference Support

REQUEST

Approve financial contribution to ND League of Cities for Annual Conference Support.

BACKGROUND INFORMATION

The ND League of Cities will hold its 86th annual conference this year in Bismarck. The theme for the conference is *Ignite!* and it will be a fast paced, educational opportunity for all attendees. Typically, the host city contributes financially to offset some of the conference expenses. The city of Bismarck has the opportunity to support the Welcome Reception and Social activities at the ND Heritage Center, Mobile Workshop tour of Bismarck's Riverfront and Water Treatment facilities, and the conference Concurrent Sessions. The financial contribution includes \$1125 for bus transportation services and \$1375 for conference expenses.

RECOMMENDED CITY COMMISSION ACTION

Approve financial contribution of \$2500, funded from the Commission's Special Project budget, to support the ND League of Cities Annual Conference being held in Bismarck September 15-17, 2016.

HARLOW'S SCHOOL BUS SERVICE

1021 South 23rd ST - Bismarck, ND 58504
 PUPIL TRANSPORTATION / SCHOOL BUS CHARTER SERVICES Invoice # _____
 (PHONE) 701-224-1767
 (FAX) 701-224-1126

Trip # _____

TO COMPANY REPRESENTATIVE AT Bismarck, ND	CHARTER SERVICE REQUESTED	ROUND TRIP ONE WAY	X	AIR CONDITIONING NONE	LAVATORY NONE
FOR: NDLC		ORDERED BY Keith Hunke		PLEASE PROVIDE EMAIL ON NEXT LINE: khunke@bismarcknd.gov	
Address Please write in CURRENT Address 221 N. 5th St PO BOX 5503 BISMARCK			Zip Code 58506-5503	TELEPHONE (PLEASE SUPPLY PHONE #) 701-355- [REDACTED]	
EQUIPMENT POINT: Bismarck, ND	NO OF PASSENGERS-Per Bus 56 adults / 78 children <12yrs	Number of Buses Ordered 2 SCHOOL			

Pickup Detail RAMKOTA HOTEL	REPORT TIME: 9:00 AM	LEAVE TIME:	ARRIVE TIME:	LV. DATE 9/16/16
TO: tour along River Road - is Keel Boat park, then to the Water Plant, collector well, amusement park				ARR. DATE 9/16/16
RETURN FROM: RAMKOTA HOTEL	REPORT Time 11:30	LEAVE TIME:	ARRIVE TIME:	RET. DATE 9/16/16

Hourly Rate	Rate/hr	\$125.00	Hours of Use	6	\$750.00
Daily Fee (Overnight trips only)	Rate/day	\$150.00	Days		\$0.00
Mileage (Overnight trips only)	Rate/mile	\$3.15	Mileage		\$0.00
Other Charges	Rate				\$0.00

***** 3 hour minimum charge for all trips *****

Total Charge	TOTAL for trip.	\$750.00
US Funds		

SPECIAL INSTRUCTIONS:
 tour along River Road – first stop is Keel Boat park, then to the Water Plant, collector well, amusement park in Sertoma park, Dakota zoo then back to the Ramkota by 11:30am

ADDITIONAL TERMS:

PLEASE READ!

This is a QUOTE for services requested. If all terms are in agreement, please sign and return to reserve your trip.
 Thank you for choosing HarlowsSchool Bus Service.

The charge shown is the cash or check price. CREDIT CARD PAYMENTS (VISA/MSTRCRD ONLY) WILL INCLUDE 2.95% CONVENIENCE FEE. FINAL PAYMENT IS DUE " 5 DAYS BEFORE TRIP DEPARTS. (EXCEPTIONS APPROVED BY TRANSPORTATION MANAGER)

Federal Motor Carrier regulations are designed for your safety. Motor coach operators are allowed 10 hours of maximum driving time within a 15 hr period. Eight (8) hours of uninterrupted time off is required between each maximum on-duty period. If your schedule requires more on-duty time, please call to arrange for relief driver services.

****ALCOHOLIC BEVERAGES and SMOKING are prohibited on all SCHOOL BUSES ****

A rate of 10% of the total contract and signature by the party contracting the bus will be required to book this charter.

There is a 7 day cancellation policy. This will assure your reservation of the services ordered.

Your deposit is: (if required)

\$75.00

	BAL. DUE	DEPOSIT	Please fax (701-224-1127), mail or email (bismarkroutes@harlowsbussales.com) a copy of signed contract. Thank you!		
CARRIER'S REPRESENTATIVE ACCEPTING CHARTER ORDER SCOTT MESSENGER	TITLE TRANS MGR	BALANCE DUE 5 DAYS "BEFORE" THE TRIP DEPARTS. Thank you.			
PLEASE SIGN AT THE X AND RETURN ONE COPY TO THIS OFFICE					
LOCATION: BISMARCK, NORTH DAKOTA	DATE OF ISSUE 8/12/2016	SIGNATURE OF PARTY CONTRACTING CHARTER / TITLE x		Date x	

HARLOW'S SCHOOL BUS SERVICE

1021 South 23rd ST - Bismarck, ND 58504

PUPIL TRANSPORTATION / SCHOOL BUS CHARTER SERVICES Invoice # _____

Trip # _____

(PHONE) 701-224-1767

(FAX) 701-224-1126

TO COMPANY REPRESENTATIVE AT Bismarck, ND	CHARTER SERVICE REQUESTED	ROUND TRIP ONE WAY	X	AIR CONDITIONING NONE	LAVATORY NONE
FOR: NDLC		ORDERED BY Keith Hunke		PLEASE PROVIDE EMAIL ON NEXT LINE: khunke@bismarcknd.gov	
Address Please write in CURRENT Address 221 N. 5th St PO BOX 5503 BISMARCK			Zip Code 58506-5503	TELEPHONE (PLEASE SUPPLY PHONE #) 701-355-██████	
EQUIPMENT POINT: Bismarck, ND	NO OF PASSENGERS-Per Bus 56 adults / 78 children <12yrs	Number of Buses Ordered 1 SCHOOL			

Pickup Detail RAMKOTA HOTEL (SHUTTLE to HERITAGE CENTER)	REPORT TIME:	5:00 PM	LEAVE TIME:		LV. DATE 9/15/16
TO: HERITAGE CENTER (SHUTTLE to RAMKOTA) 3 hours between locations			TIME: ARRIVE	SHUTTLE	ARR. DATE 9/15/16
RETURN FROM: RAMKOTA HOTEL	REPORT Time		LEAVE TIME:	8:00 PM	RET. DATE 9/15/16
			ARRIVE TIME:		

Hourly Rate	Rate/hr	\$125.00	Hours of Use	3		\$375.00
Daily Fee (Overnight trips only)	Rate/day	\$150.00	Days			\$0.00
Mileage (Overnight trips only)	Rate/mile	\$3.15	Mileage			\$0.00
Other Charges	Rate					\$0.00

***** 3 hour minimum charge for all trips *****

Total Charge	TOTAL for trip.	\$375.00
		US Funds

SPECIAL INSTRUCTIONS:

SHUTTLE SERVICE BETWEEN RAMKOTA HOTEL AND HERITAGE CENTER BETWEEN 5PM - 8PM ON 15 SEP 2016.

ADDITIONAL TERMS:

PLEASE READ!

This is a QUOTE for services requested. If all terms are in agreement, please sign and return to reserve your trip. Thank you for choosing HarlowsSchool Bus Service.

The charge shown is the cash or check price. CREDIT CARD PAYMENTS (VISA/MSTRCRD ONLY) WILL INCLUDE 2.95% CONVENIENCE FEE. FINAL PAYMENT IS DUE " 5 DAYS BEFORE TRIP DEPARTS. (EXCEPTIONS APPROVED BY TRANSPORTATION MANAGER)

Federal Motor Carrier regulations are designed for your safety. Motor coach operators are allowed 10 hours of maximum driving time within a 15 hr period. Eight (8) hours of uninterrupted time off is required between each maximum on-duty period. If your schedule requires more on-duty time, please call to arrange for relief driver services.

****ALCOHOLIC BEVERAGES and SMOKING are prohibited on all SCHOOL BUSES ****

A rate of 10% of the total contract and signature by the party contracting the bus will be required to book this charter. There is a 7 day cancellation policy. This will assure your reservation of the services ordered. Your deposit is: (if required) **\$37.50**

	BAL. DUE	DEPOSIT	Please fax (701-224-1127), mail or email (bismarkroutes@harlowsbussales.com) a copy of signed contract. Thank you!		
CARRIER'S REPRESENTATIVE ACCEPTING CHARTER ORDER SCOTT MESSENGER	TITLE	TRANS MGR			
			BALANCE DUE 5 DAYS "BEFORE" THE TRIP DEPARTS. Thank you.		
			PLEASE SIGN AT THE X AND RETURN ONE COPY TO THIS OFFICE		
LOCATION: BISMARCK, NORTH DAKOTA	DATE OF ISSUE 8/8/2016		SIGNATURE OF PARTY CONTRACTING CHARTER / TITLE x	Date x	



Preliminary Agenda

**annual
conference**
Sept 15-17, 2016 • Ramkota • Bismarck

Ignite!

THURSDAY, SEPTEMBER 15

- 9:30 a.m. – 5 p.m. ND Planning Association Meeting (*Separate registration, see page 16*)
- 11:30 a.m. – 4:30 p.m. MFOA Meeting (*Separate registration, see page 14*)
- 1 – 5 p.m. ND Fire Chiefs Association Meeting
- 1 – 5 p.m. ND Chiefs of Police Association Meeting
- 3 – 5 p.m. NDLC Board of Directors Meeting
- 5 – 8 p.m. **Welcome Reception and Social** – North Dakota Heritage Center

FRIDAY, SEPTEMBER 16

- 7 – 11:30 a.m. **Annual Golf Scramble** – Riverwood Golf Course
- 9 – 11:30 a.m. **Mobile Workshop** – Bismarck's Riverfront
- 9 a.m. – 8:00 p.m. **Exhibitor Showcase**
- 11:45 a.m. – 1:45 p.m. **Lunch, Scholarship Awards & Opening Speaker**
Keynote: Jim Hunt, *Leading Your City from Great to AMAZING!*
- 1:45 – 2:45 p.m. **Concurrent Sessions**
- A. Truth in Taxation Statement & Tax Commissioner's Office Update
 - B. Nuts & Bolts of Planning & Zoning in Rural Communities
 - C. NDIRF: Cyber Security Issues
- 2:45 – 3:30 p.m. **Networking Break with Exhibitors**
- 3:30 – 4:30 p.m. **Concurrent Sessions**
- A. Open Records & Open Meeting Laws
 - B. Urban Transportation Study Update
 - C. Putting Social Media to Work in Your City
- 4:30 – 5:45 p.m. **General Session**
Legislative & State Budget Update
Address by Gubernatorial Candidates (invited)
- 5:45 – 7:30 p.m. **Social with Exhibitors & Silent Auction**

SATURDAY, SEPTEMBER 17

- 7:30 – 8:15 a.m. Eggs and Issues: Mayors and Large City Finance Officers Breakfast
- 7:30 – 8:15 a.m. Breakfast Buffet
- 7:45 – 8:15 a.m. Past President's Breakfast
- 8:15 – 9:30 a.m. **General Session**
Keeping the Workplace Safe – Emerging Challenges
- 9:30 – 10:30 a.m. **Concurrent Sessions**
- A. Fair Labor Standards Act Update
 - B. TBA
 - C. Blighted Housing: What Can Your City Do?
- 10:30 – 10:45 a.m. **Networking Break**
- 10:45 a.m. – Noon **Concurrent Sessions**
- A. Addressing Drug Use/Opiates in Our Cities
 - B. Legal Issues: Q&A Panel Discussion
 - C. Project Delivery: Then, Now and Tomorrow
- Noon – 1:30 p.m. **Municipal Attorneys Association Luncheon and Annual Meeting**
- Noon – 2:15 p.m. **Awards Luncheon & Closing Speaker**
Speaker: Governor Jack Dalrymple (invited)
- 2:15 – 2:45 p.m. **NDLC Annual Business Meeting**
- 2:45 – 4 p.m. **Small Cities, Big Ideas: Q&A**

*Open meetings laws do not apply to members of a city council or city commission who are attending the League's annual conference as long as the members do not discuss public business. See this month's *Ask NDLC* article on page 28 for more information.

Registration Fees

The conference registration fee is \$225 through August 31. After August 31, the fee is \$275.

The spouse/guest registration fee is \$120 through August 31. After August 31, the fee is \$135. The golf registration fee is \$70.

All cancellations must be emailed to Carissa at carissa@ndlc.org. No phone calls for cancellations will be accepted.

The cancellation deadline is Tuesday, September 7. No refund will be given and outstanding invoices must be paid for cancellations after September 7. Register online at www.ndlc.com/ac.

Bismarck

AIRPORT

DATE: August 16, 2016

FROM: Gregory B. Haug, Airport Director 

ITEM: Agenda item for August 23, 2016, Airport Radio System upgrade

REQUEST

Consider Airport Radio System upgrade.

BACKGROUND INFORMATION

On June 14, 2016 the Board approved a new radio system from Electronic Communications Inc. consisting of one Motorola repeater, 36 mobile radios, 11 portable radios with installation and setup for \$41,630.00.

Airport staff would like to add the capability for all new radios to be able to communicate directly with Airport Security and CenCom on a discreet preset channel. This is a capability the airport had with our former system, but lost when radios were converted to digital on a different set of frequencies. Electronic Communications proposed the following upgrade in order to talk to security and CenCom:

The 36 mobile and 11 portable new radios previously purchased would be programmed with a new frequency and preset 1. The following equipment would be added:

- 1 – Motorola APX4500 VHF 50 watt mobile with DES encryption (to talk to CenCom)
- 1 – Motorola XPR5380 800Mhz mobile (to talk to Bismarck Airport)
- 1 – Power Supply
- 1 – Antenna and RF cable (to be mounted on an existing pipe on roof of maintenance building)
- 1 – FCC license (need 2nd 800 Meg license for this link)
- 1 – Interface setup, programming and installation

Electronic Communications proposes a cost of \$6,500 for this upgrade. The upgrade will be funded by the airport departments approved spending plan.

RECOMMENDED CITY COMMISSION ACTION

Airport Staff recommends approval of Electronic Communications Inc. proposal of \$6,500.

STAFF CONTACT INFORMATION

Greg Haug, Airport Director, 701-355-1808, ghaug@bismarcknd.gov



AIRPORT

DATE: August 16, 2016

FROM: Gregory B. Haug, Airport Director

ITEM: Agenda Item for August 23, 2016, KLJ Wetland Monitoring Agreement

REQUEST

Consider an Engineering Services Agreement with Kadrmas, Lee & Jackson (KLJ) for Wetland Monitoring.

BACKGROUND INFORMATION

On September 9, 2014 the Board approved bids for off-site wetland mitigation. The project created wetlands that are being used to replace wetlands that are being removed from Bismarck Airport. The mitigation site was completed in the summer of 2015. As part of the mitigation, Federal Aviation Administration (FAA) requires monitoring and annual reporting on the site for up to five years. Airport staff has submitted a mitigation scope of work to FAA for review. A revised scope of work was approved by the FAA and used to develop an agreement with KLJ (Enclosure 1).

An independent fee review is not required and was not used for this agreement due to the cost of the work. KLJ proposes an hourly contract not to exceed \$55,494.91 for the mitigation work. Paying hourly allows us to pay as we go only for work completed. This is advantageous, because reports may indicate that monitoring is needed for less than the full five years. Staff believes the hours proposed and resulting costs proposed are reasonable.

The Engineering Agreement will be funded through the five year monitoring period by the approved airport spending plan. Staff will apply for a Federal Aviation Administration (FAA) grant to reimburse the entire term of work once the monitoring period ends.

RECOMMENDED CITY COMMISSION ACTION

Airport staff recommends that the Board approve the Engineering Agreement at Enclosure 1.

STAFF CONTACT INFORMATION

Greg Haug, Airport Director, 701-355-1808, ghaug@bismarcknd.gov

Enclosure:

1. KLJ Wetland Monitoring Agreement

On AUGUST 23, 2016
AGENDA

CONTRACT REVIEW FORM

DEPARTMENT

Contract between the City of Bismarck and KLS

Purpose of Contract: WETLAND MONITORING

Contract Amount: Hourly NFE \$54,494.91

Contract Period: 5 YEARS of MONITORING, Agreement DATE AUG 23, 2016

Funding Source: INITIALLY Airport Spending PLAN, DRAW FAD Grant REIMBURSEMENT when MONITORING PERIOD IS complete.

Project Number: (If needed, send copy to Fiscal) (FUTURE AIR Grant)

Comments:

After Mayor's Signature, route to: AIRPORT

Date:

Department Head Signature:

Date:

CITY ATTORNEY

Comments:

City Attorney Signature:

Date:

FINANCE

Comments:

Director of Finance Signature:

Date:

ADMINISTRATION

City Administrator Signature:

Date:

Please send copy of completed contracts to Administration.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made this 23rd of August, 2016, by and between the City of Bismarck, having an address of 2301 University Drive, P.O. Box 991, Bismarck, ND 58502, hereinafter referred to as the "OWNER", and Kadmas, Lee & Jackson, Inc., having an address of 4585 Coleman Street, Bismarck, ND 58503, hereinafter referred to as the "ENGINEER".

WITNESSETH: That the OWNER and ENGINEER, for the consideration hereinafter named, agree as follows:

I. GENERAL DESCRIPTION OF WORK TO BE PERFORMED.

The OWNER agrees to and hereby does retain and employ ENGINEER and ENGINEER agrees to perform Professional Services for the project at the Bismarck Airport, WHEREAS, the proposed project is described as follows:

- A. Wetland Mitigation Monitoring
KLJ 1516706 Task 12

The Project and those services to be performed hereunder are more particularly described in ATTACHMENT A, a part hereof, entitled "Detailed Scope of Services", and the anticipated level of effort is defined in ATTACHMENT B entitled "Hourly Rate and Cost Breakdown", both parts hereof.

II. PERIOD OF SERVICE

Compensation for ENGINEER's services as provided elsewhere in this Agreement has been agreed to in anticipation of an orderly and continuous progress of ENGINEER's services through completion. In this regard, if the services covered by this Agreement have not been completed within 24 months of the date hereof, through no fault of ENGINEER, any lump sum or maximum payment amounts shall be equitably adjusted.

III. COMPENSATION.

Compensation on this project shall be broken into separate and independent forms of compensation. The first form of compensation shall be lump sum compensation. The second form of compensation shall be cost plus fixed fee compensation. The third form of compensation shall be hourly rate compensation. Following the description of the compensation method below, a chart details the items which will be compensated on lump sum basis, cost plus fixed fee basis, and hourly rate basis. Generally speaking, those items compensated on a cost plus fixed fee are items that are currently not possible to be estimated accurately. These include, for instance, construction observation and project records phases, which are dependent upon the Contractor who is doing the construction work and the year in which it is constructed. Compensation under an hourly rate basis is typically used when the scope of services is open-ended, unknown and / or not definable. In this case, the ENGINEER shall only bill the cost and fixed fee that is used for that task. Previously audited overhead and general/administrative overhead at 187.72% shall apply to this agreement. The cost of facilities rate of 0.95% and fixed fee rate of 15% shall apply to this agreement.

A. Lump Sum Compensation.

For those work items specified below in the compensation table for lump sum payments, the OWNER shall compensate the ENGINEER for services a lump sum amount to cover all costs for completion of that work item. These costs shall include salary costs, overhead costs, direct non-salary expense, and all other expenses as defined within the latest edition of FAA Advisory Circular 150/5100-14.

The lump sum payment shall be based upon the hours and expenses provided within Attachment B that follow, and shall include a fixed fee payment. The lump sum fee made for these items shall constitute full and total compensation for all of the work necessary to complete the individual items specified in the scope of services. Changes in the scope of services as defined at the time this contract is negotiated shall reflect an additional compensation as negotiated by the ENGINEER and the OWNER. Monthly payments for those items specified below shall be based upon the percentage of work completed to date.

The table below indicates those work items covered as a lump sum payment item, and the total cost or compensation for each of these individual items. ATTACHMENT B provides the justifications for the lump sum fees.

Table A Lump Sum Compensation	
Task Item	Total Compensation
NA	NA

All payments not made within 60 days of the date of the invoice shall be subject to 1.5% per month in interest fees.

B. Cost Plus Fixed Fee Compensation.

The OWNER shall compensate the ENGINEER for services on an actual cost plus a fixed fee basis. The actual costs will consist of salary costs, overhead expenses, and direct non-salary expenses as defined in the latest edition of FAA Advisory Circular 150/5100-14. All direct salary costs and expenses may be verified by auditing at the conclusion of this project. The fixed payment, based on the schedules in ATTACHMENT B, shall not vary from the maximum specified unless the overall scope of the project changes. The table below includes the description of services, the total estimated compensation for this service, and the fixed fee payment.

Payment to the ENGINEER shall be on a monthly basis as the work progresses.

Table B Cost Plus Fixed Fee Compensation		
Task Item	Fixed Fee Payment	Total Compensation
NA	NA	NA

All payments not made within 60 days of the date of the invoice shall be subject to 1.5% per month in interest fees.

C. Hourly Rate Compensation.

The OWNER shall compensate the ENGINEER for services on an actual cost plus overhead and fixed fee basis. The actual costs will consist of salary costs, overhead expenses, and direct non-salary expenses as defined in the latest edition of FAA Advisory Circular 150/5100-14. All

direct salary costs and expenses may be verified by auditing at the conclusion of this project. The fixed fee shall be included in the hourly rate. The table below includes the description of services and the total estimated compensation for this service.

Payment to the ENGINEER shall be on a monthly basis as the work progresses. Refer to ATTACHMENT B for a detailed breakdown.

Table C Hourly Rate Compensation	
Task Item	Total Compensation
Wetland Mitigation Monitoring	\$55,494.91

All payments not made within 60 days of the date of the invoice shall be subject to 1.5% per month in interest fees.

D. GENERAL

The total compensation for all agreement costs, based on the estimated costs put forth in Attachment B shall not exceed \$55,494.91. The fixed payment for all phases, based upon the estimated costs put forth in Table B shall be a lump sum amount of \$0.00. For any form of compensation listed above, the individual compensation amounts shall not exceed the maximum amount shown unless approved in writing by the OWNER.

IV. EXTRA WORK AND SERVICES NOT INCLUDED IN THIS CONTRACT.

If the ENGINEER is of the opinion that any services it has been directed to perform is beyond the Scope of this Agreement, or that the level of effort required significantly exceeds that estimated due to changed conditions and thereby constitutes extra work, they shall promptly notify the OWNER of that fact. Extra work, additional compensation for same, and extension of time for completion shall be covered by a Supplemental Agreement entered into by both parties, prior to proceeding with any extra work or related expenditures.

V. OWNER'S RESPONSIBILITY.

To permit ENGINEER to perform the services required hereunder, the OWNER shall supply in proper time and sequence, the following at no expense to ENGINEER.

- A. Cooperate with the ENGINEER in the approval of all plans and specifications, or should they disapprove of any part of said plans and specifications, shall make a decision timely in order that no undue expense will be caused the ENGINEER because of lack of decisions. If the ENGINEER is caused extra drafting or other expenses due to changes ordered by the OWNER after the completion and approval of the plans and specifications, the ENGINEER shall be equitably paid for such extra expenses and services involved.
- B. Pay publishing costs for advertisements of notices, public hearings, request for bids, and other similar items; shall pay for all permits and licenses that may be required by local, state or Federal authorities; shall secure the necessary land, easements, and right-of ways required for the project; and shall pay the costs of all material acceptance testing during the construction phase of the project performed by independent testing laboratories.
- C. Designate in writing, a person to act as OWNER's representative with respect to the services to

be rendered under this Agreement. Such person shall have authority to transmit instructions, receive instructions, receive information, interpret and define OWNER's policies with respect to ENGINEER's services.

- D. Furnish, as required for performance of ENGINEER's services (except to the extent provided otherwise in ATTACHMENT A), data prepared by or services of others, including without limitation, core borings, probings and subsurface explorations, hydrographic and geohydrologic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data not covered in ATTACHMENT A.
- E. Provide access to, and make all provisions for ENGINEER to enter upon publicly- and privately-owned property as required to perform the work.
- F. Act as liaison with other agencies to carry out necessary coordination and negotiations; furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- G. Examine all reports, sketches, drawings, specifications and other documents prepared and presented by ENGINEER, obtain advise of an attorney, insurance counselor or others as OWNER deems necessary for such examination and render in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- H. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services or any defect in the work of Construction Contractor(s), ENGINEER's Consultants or ENGINEER.
- I. Initiate action, where appropriate, to identify and investigate the nature and extent of asbestos and/or pollution in the Project and to abate and/or remove the same as may be required by federal, state or local statute, ordinance, code, rule, or regulation now existing or hereinafter enacted or amended. For purposes of these General Provisions, "pollution" shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, alkalis, chemicals and hazardous or toxic waste. Hazardous or toxic waste means any substance, waste, pollutant or contaminant now or hereafter included within such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended.
- J. If ENGINEER encounters, or reasonably suspects that it has encountered, asbestos, or pollution, including soil contamination in the project area, ENGINEER shall cease activity in said area and promptly notify the OWNER who shall proceed as set forth above. Unless otherwise specifically provided in ATTACHMENT A, the services to be provided by ENGINEER do not include identification of asbestos or pollution, including soil contamination and ENGINEER has no duty to identify or attempt to identify the same in the project area.
- K. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project and such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the monies paid under the construction contract.
- L. Provide such observation services (except to the extent provided otherwise in ATTACHMENT A) as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

- M. Provide "record" drawings and specifications for all Existing physical plants or facilities which are pertinent to the Project.
- N. Provide written notice to ENGINEER when the project has been financially closed out by FAA.
- O. Provide other services, materials, or data as may be set forth in ATTACHMENT A.
- P. The OWNER shall agree to renegotiate the compensation should the project change appreciably from the original scope of work, a change in conditions, or additional work required by the ENGINEER. The renegotiated compensation will be based on the new project scope of work.
- Q. Provide all necessary information regarding its requirements as necessary for orderly progress of the work.

VI. COMPLETION TIME.

The ENGINEER shall complete the task item assigned as per the schedule defined in the Detailed Scope of Services for that individual task.

VII. TERMS AND CONDITIONS.

A. Ownership of Drawings and Contract Documents.

1. Original documents, such as tracings, maps, basic survey notes and sketches, charts, computations, and other data prepared or obtained under the terms of the contract, are instruments of service and shall remain the property of the ENGINEER unless otherwise agreed to by both parties. Reproducible copies of this information, including electronic copies shall be made available to the OWNER upon request.
2. ENGINEER and OWNER shall retain an ownership and property interest in all final documents created pursuant to this Agreement and any Work Order hereunder (including the right of reuse by ENGINEER at the discretion of ENGINEER) whether or not the Project is completed. OWNER may make and retain copies of Service related documents for information and reference in connection with use on the subject project by OWNER and others. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the subject project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, ENGINEER's officers, directors, partners, employees, agents, or ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, agents, and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from such unauthorized reuse. Any verification or adaptation of the Documents for extensions of the subject project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.
3. When a contract is for preliminary plans only, no commitment is implied that would constitute a limitation on the subsequent use of preliminary plans or ideas incorporated therein.

4. The ENGINEER shall provide the OWNER three (3) sets and the FAA each one (1) set of final approved plans and specifications. The ENGINEER shall provide sets of plans and specifications to bidders for a nominal cost during the bidding process. The Contractor awarded the contract shall be provided additional sets of plans and specifications as per the FAA General Provision Item 50-04. The ENGINEER shall provide reproducible copies of reports, specifications and plans (including electronic files in the form of PDFs and the software used to create the final documents) to the OWNER.

B. Standard of Care.

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

C. Limitations of Responsibility.

In the event the OWNER requests ENGINEER to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to ENGINEER for review at least 15 days prior to the requested date of execution. ENGINEER shall not be required to execute any certificates or documents that in any way would, in ENGINEER's sole judgment, (a) increase ENGINEER's legal or contractual obligations or risks; (b) require knowledge, services or responsibilities beyond the scope of this Agreement; or (c) result in ENGINEER having to certify, guarantee or warrant the existence of conditions whose existence ENGINEER cannot ascertain.

D. Opinions of Probable Construction Cost.

Since the ENGINEER has no control over the cost of labor, materials or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, opinions of probable construction costs for the project(s) provided for herein are to be made on the basis of experience and qualifications and represent a best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids, change orders or the project construction cost will not vary from the prepared opinion of probable construction costs.

E. Termination.

This Agreement may be terminated by either party, by a seven days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If this Agreement is so terminated, the ENGINEER shall be paid as provided under compensation for work completed to date of termination.

F. Dispute Resolution.

In the event of a dispute arising out of or relating to the agreement or the services to be rendered hereunder, both parties hereby agree to (1) attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party, (2) if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by both parties, and (3) if the dispute or any issues remain unresolved after the

first two steps, either party may seek to have the dispute resolved by a court of competent jurisdiction.

G. Successors and Assigns.

The OWNER and ENGINEER each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

H. Indemnification.

The ENGINEER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the ENGINEER's negligent performance of professional services under this Agreement and that of its sub-engineers or anyone for whom the ENGINEER is legally liable. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and sub-consultants (collectively, ENGINEER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER'S negligent acts in connection with the Project and the acts of its contractors, subcontractors or engineers or anyone for whom the OWNER is legally liable. Neither the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

I. Hazardous Materials.

The parties acknowledge that ENGINEER'S scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist engineers or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

J. Controlling Law.

This Agreement is to be governed by the law of the state in which the Project is located.

K. Construction Phase Services.

OWNER acknowledges that it is customary for the ENGINEER who is responsible for the preparation and furnishing of Drawings and Specifications and other construction related documents to be employed to provide professional services during the Bidding and Construction Phases of the Project, (1) to interpret and clarify the documentation so furnished and to modify the same as circumstances revealed during bidding and construction may dictate, (2) in connection with acceptance of substitute or equal items of materials and equipment proposed

by bidders and contractor(s), (3) in connection with approval of shop drawings and same submittals, and (4) as a result of and in response to ENGINEER'S detecting in advance of performance of affected work inconsistencies or irregularities in such documentation. OWNER agrees that if ENGINEER is not employed to provide such professional services during the Bidding (if the work is put out for bids) and the Construction Phases of the Project, ENGINEER will not be responsible for, and OWNER shall indemnify and hold ENGINEER (and ENGINEER'S professional associates and consultants) harmless from, all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by OWNER or others. Nothing contained in this paragraph shall be construed to release ENGINEER (or ENGINEER'S professional associates or consultants) from liability for failure to perform in accordance with professional standards any duty or responsibility which ENGINEER has undertaken or assumed under this Agreement.

L. Compliance Requirements.

ENGINEER certifies that they are in compliance with all federal, state and local laws, regulations and orders including but not limited to those regarding non-discrimination, wages and hours, workers compensation and immigration and are not currently suspended or disbarred from working on federally funded projects. Failure of compliance may result in the cancellation of any OWNER agreement and exclusion from consideration for future agreements.

M. Insurance.

Throughout the duration of this Agreement, Engineer agrees to provide evidence of insurance coverages not less than the types and amounts specified in Attachment D.

N. Affirmative Action.

ENGINEER and any Subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

VIII. FEDERAL CONTRACT PROVISIONS.

If this Agreement is to be financed in part by Federal funds, certain federally-required, contract provisions must be incorporated. These federally-required, contract provisions, included as ATTACHMENT C, are hereby incorporated herein and made a part of this Agreement. The ATTACHMENT C incorporated is for a Non-Construction Contract.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

Owner City of Bismarck
Signed _____
Name Michael C. Seminary
Title President, Board of City Commissioners
Date _____

Attest _____
Name Keith J. Hunke
Title City Administrator

Engineer Kadrmass, Lee & Jackson, Inc.
Signed _____
Name Barry Schuchard, PE
Title CPO
Date _____

Attest _____
Name Tom Neigum, PE
Title Aviation Services Manager

CERTIFICATION OF ENGINEER

I hereby certify that I am the Chief Production Officer (CPO) (title) and duly authorized representative of Kadrmass, Lee & Jackson, Inc., whose address is 4585 Coleman Street, Bismarck, ND 58503, and that neither I nor the firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above ENGINEER) to solicit or secure this contract, or
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) Paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for me or the above ENGINEER) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract; except as here expressly stated (if any):

The undersigned firm certifies that it has not been convicted of bribery or attempting to bribe an officer or employee of the State of North Dakota, nor has the firm made an admission of guilt of such conduct which is a matter of record, nor has an official, agent, or employee of the firm committed bribery or attempted bribery on behalf of the firm and pursuant to the direction or authorization of a responsible official of the firm.

I acknowledge that this certificate is to be furnished to the Federal Aviation Administration of the United States Department of Transportation in connection with this contract involving participation of Airport Improvement Program (AIP) funds and is subject to applicable state and federal laws, both criminal and civil.

The undersigned firm certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal and by execution of this contract that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the undersigned firm or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

Engineer Kadrmass, Lee & Jackson, Inc.

Signed _____

Name Barry Schuchard, PE

Title CPO

Date _____

Attest _____

Name Tom Neigum, PE

Title Aviation Services Manager



Attachment A
Detailed Scope of Services
Wetland Mitigation Monitoring
Bismarck Airport, Bismarck, ND
KLJ # 1516706

General. The work is to occur in Section 26, Township 138 N Range 78 W in Burleigh County, ND, under the terms and conditions of the Standard Agreement for Professional Services (Agreement) between the City of Bismarck (Owner) and KLJ (Engineer).

The federal work shall be performed under a Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant to the Owner. The Engineer shall perform the work under this Agreement with FAA Advisory Circulars and regulations that are current as of the effective date of the Agreement. Changes to the FAA Advisory Circulars and regulations after the date of this Agreement shall be addressed per Section V, Item P, of the Agreement.

PROJECT ADMINISTRATION

Prepare Project Scope of Services. The Engineer shall prepare a detailed scope of services. Engineer shall submit the detailed scope of services to the Owner for review and make applicable modifications as agreed upon. Engineer shall also submit a copy of the detailed scope of services to the FAA for review to verify eligibility of the project elements for the Owner.

Engineering Scope and Hour Negotiations. The Engineer shall prepare a detailed hour breakdown with the associated fees for review by the Owner.

Engineering Agreement. The Engineer shall compile the Agreement for Professional Services (Agreement), complete an internal review and execution of the Agreement for approval by the Owner.

PROJECT MANAGEMENT

The Engineer shall provide project management services to manage the completion of the project within the conditions of this agreement. Project management is crucial to the success of all projects; specifically it is crucial to this project. The Engineer has identified Tom Neigum as the Project Manager for the project. Project management is the discipline of planning, organizing, and managing resources to successfully meet this project's objectives and goals. It is the Project Manager's responsibility to notify the Owner of any issues, problems, or concerns regarding the project; the delegation of all activities to the project team; and handling all subconsultant coordination. In addition, if any items arise during the duration of the project that are outside this scope of work, the Project Manager shall address them with the Owner.

The Engineer shall manage and coordinate the work effort required to complete this project including:

- a) **Process Contract.** This task involves preparation and negotiation of the Detailed Scope of Services and cost estimate for the services, internal review and execution of the contract, and the execution of subconsultant agreements to support the agreed Detailed Scope of Services.
- b) **Set up and Maintain Files.** After the approved contract is received from the Owner, budget accounts are established for the authorized work and both electronic and paper filing systems are established. During the course of the project, monthly invoices are processed and reviewed and files are maintained to allow timely and accurate access to project documents. Any requests for project information, documentation or additional copies of documents are satisfied.
- c) **Project Coordination.** This task involves internal meetings with the Engineer and subconsultants as well as progress review meetings with the Owner's staff, including documentation of those meetings.
- d) **Project Control.** The Project Manager will develop a work plan to complete the Detailed Scope of Services within the project budget. The Project Manager will routinely review the project budget and schedule and change resource allocations to meet the project's schedule.

- e) Progress Reporting. The Project Manager will formally report the schedule on the project to the Owner and funding Agencies on a monthly basis. The Project Manager will complete the FAA Quarterly Reporting on behalf of the Owner.
- f) Develop Quality Control Plan. The Engineer shall develop a Quality Control Plan for the project. The Plan shall include project instructions, a field checklist, and peer review procedures for the project.
- g) The Engineer will advise and guide the Owner on procurement strategies that might be available to fund the project. The Engineer will also support the Owner in securing selected funding and reimbursement for the project.

ENVIRONMENTAL SERVICES

Description.

Complete, for the Owner, annual wetland mitigation monitoring for a period of five years, or until the US Army Corps of Engineers (USACE) has deemed the mitigation area a success. The mitigation site was previously developed with AIP funding to offset 59.91 acres of wetland impacts associated with construction of wildlife hazard removal projects located on the Bismarck Airport in Bismarck, North Dakota (ND). Wetland mitigation monitoring will be completed in accordance with USACE permit number NWO-2008-2643-BIS, issued on October 7, 2014. As part of the permit conditions, the City of Bismarck is required to implement the mitigation and monitoring proposal that was submitted with the City's 404 permit application to the USACE North Dakota Regulatory Office entitled *Bismarck Airport Wetland Mitigation Plan* and in accordance with the Finding of No Significant Impact for the above reference wildlife hazard removal project, approved by the FAA on February 2, 2012. The mitigation site was anticipated to provide approximately 62.4 acres of wetland mitigation credit. Please refer to the attached Mitigation Ledger, Section 404 Permit, and FONSI.

Objectives.

KLJ shall complete yearly monitoring of the identified wetland mitigation site and submit a yearly monitoring report to the USACE, Owner, and FAA Bismarck Airports District Office.

Services To Be Performed.

A monitoring plan was previously established in accordance with the USACE October 10, 2008 Regulatory Guidance (Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment and/or Enhancement of Aquatic Resources). KLJ shall conduct yearly site monitoring and provide reporting on a yearly basis to the USACE North Dakota Regulatory Office. Monitoring will occur yearly for a period of five years, or until the USACE has deemed the mitigation area a success. KLJ shall complete a monitoring report and submit to the USACE North Dakota Regulatory Office and FAA Dakota Minnesota Office of Airports annually.

The mitigation site shall be monitored during the growing season, in accordance with the 1987 Wetland Delineation Manual, Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region for success as follows: A site map showing the delineated wetland boundary, datasheets, a series of photos, and a photo reference map of the mitigation site. The photos submitted shall be taken in such a manner as to show establishment of wetland characteristics within the mitigation site and at the same locations. Monitoring will also include inspection of the buffer for continuity, width, and species composition. Success of the site would be determined by the establishment of hydrophytic vegetation, hydric soils, and presence of hydrology within the site. KLJ shall submit the Report to the USACE North Dakota Regulatory Office no later than September 15 of each year.

ENGINEER REQUIREMENTS

Deliverables

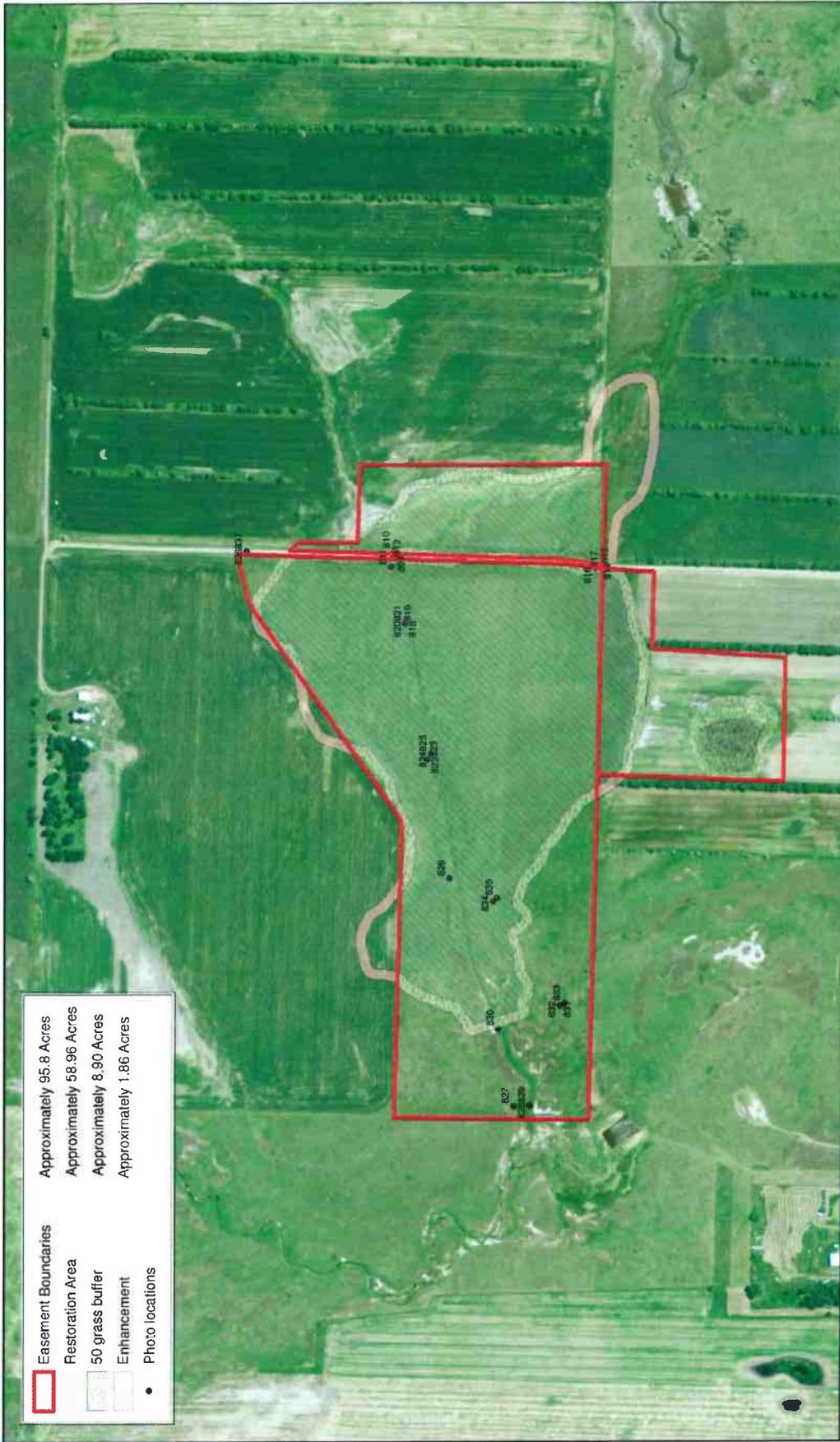
The Engineer will provide information in the following forms:

- Electronic version (PDF format) of yearly monitoring reports and updated Mitigation Ledger submitted to the USACE.
- Electronic and one hardcopy version of yearly monitoring reports and updated Mitigation Ledger submitted to the FAA.

Services Not Included in the Detailed Scope of Services

The following services are not included in this Detailed Scope of Services:

- Legal testimony arising out of litigation regarding project decisions
- Permitting
- Threatened and endangered species field surveys
- NEPA documentation
- Meetings with agencies
- Public meetings



	Easement Boundaries	Approximately 95.8 Acres
	Restoration Area	Approximately 58.96 Acres
	50 grass buffer	Approximately 8.90 Acres
	Enhancement	Approximately 1.86 Acres
	Photo locations	



KLJ [®]intended for Planning Purposes Only
PRELIMINARY

Mitigation Ledger

Project and USACE Permit No. NWO-2008-2643-BIS	Wetland Acres – Added/Used	Wetland Credits Remaining
Current Projects		
Bismarck Airport Wildlife Hazard Offsite Mitigation project USACE# - NWO-2008-2643-BIS	62.4 acres	62.4 acres
Bismarck Airport Wildlife Hazard - Wetland Removal Phase 1 USACE# - Not Applicable	Non-jurisdictional (RW 13 end) 5.47 acres	56.93 acres
Bismarck Airport Wildlife Hazard - Wetland Removal Phase 1 USACE# - NWO-2008-2643-BIS	Jurisdictional (RW 21 end west of Yegen Rd) 14.67 acres	42.26 acres
Bismarck Airport Wildlife Hazard - Wetland Removal Phase 2 USACE# - NWO-2008-2643-BIS	Jurisdictional (RW 21 end east of Yegen Rd) 17.91 acres	24.35 acres
Anticipated Future Projects		
Bismarck Airport Wildlife Hazard - Wetland Removal Phase TBD USACE# - Not Applicable	Non-jurisdictional (RW 3 end) 5.48 acres	18.87 acres
Bismarck Airport Wildlife Hazard - Wetland Removal Phase TBD USACE# - NWO-2008-2643-BIS	Jurisdictional (RW 31 end south of RW 3/21) 16.38 acres	2.49 acres



PHASE: Environmental Monitoring Services
Heib Wetland Mitigation Site Monitoring

KLJ Title	Engineer V	Environmental Planner III	Environmental Planner II	Environmental Planner I	GIS Analyst II	Project Assistant II	Project Assistant	Task	Direct Labor Cost
1. Field surveys and data collection (five years)				90					4,940.00
2. Develop Annual Monitoring Report Document (five years)				24	56	12			2,480.00
Monitoring									
1. Project Mgmt./Scheduling	1	1							107.00
2. Team Meetings	1	1							107.00
3. Project Administration									
Process Billing Reports	6	1							543.00
Process FAA Quarterly Reports	1	1							107.00
Track Project Budget	1	1							107.00
Process FAA B NDAC Grant Application	4								271.00
Process FAA B NDAC Reimbursement Requests	2								232.00
4. Project Progress/Status Reporting	1								68.00
5. Owner Contact/Coordination/Communication									
Update Meetings (2 meetings)	1	1							107.00
Meeting Preparation									
Conduct Meeting (including travel-time)									
File Meeting Records									
6. FAA and NDAC Meetings B. Coordination									
Project Telecom Meetings (4 meetings)		6							234.00
Meeting Preparation									
Conduct Meeting									
File Meeting Records									
7. FAA-Closeout Request									
Subtotal									16,724.00
Total Hours	18	12	114	142		8	0	0	0
Hourly Rate	\$48.00	\$39.00	\$31.00	\$25.00	\$28.00	\$24.00	\$19.00	\$0.00	\$0.00

Travel	Scenario 1	Scenario 3
# of Trips		
# of Nights / Trip		
# Attending		
Per Diem / Day	\$250	\$250
Air Charter	\$	\$
Charter	\$	\$
Rental Car / Day	\$	\$
Travel Total	\$	\$

Specialty Expenses	Total
Tribal Fees	\$0
Asbestos Inspection	\$0
Total	\$0

Direct Labor Total	\$ 16,724.00
Indirect Labor Total (1.8772 Overhead Rate)	\$ 31,394.29
Direct and Indirect Labor Total	\$ 48,118.29
Fixed Fee (15%)	\$ 7,217.74
Cost of Facilities (0.95%)	\$ 136.88
Subtotal	\$ 55,494.91

Travel Total	\$
Specialty Expenses	\$
Materials and Supplies	\$
Environmental Monitoring Services Total Cost	\$ 55,494.91

Attachment C

Federal Contract Provisions

Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors

Note: Consultant or Contractor refers to ENGINEER. Sponsor refers to OWNER.

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A2	Affirmative Action Requirement.....	2
A3	Breach Of Contract Terms	3
A4	Buy American Preference.....	4
A5	Civil Rights - General	4
A6	Civil Rights - Title Vi Assurance.....	4
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A8	Contract Workhours And Safety Standards Act Requirements.....	7
A9	Copeland “Anti-Kickback” Act	7
A10	Davis-Bacon Requirements	8
A11	Debarment And Suspension.....	13
A12	Disadvantaged Business Enterprise	13
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A14	Energy Conservation Requirements	14
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A1 ACCESS TO RECORDS AND REPORTS

Source: 2 CFR § 200.333; 2 CFR §200.336; FAA Order 5100.38

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

A2 AFFIRMATIVE ACTION REQUIREMENT

Source: 41 CFR part 60-4; Executive Order 11246

Applicability

Contracts Exceeding \$10,000

Minority Participation. *Sponsors are required to set goals for minority participation in AIP funded projects. The goals for minority participation depend on Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.*

To find the goals for minority participation, a sponsor must either refer to the Federal Register Notice or to the Department of Labor document, "Technical Assistance Guide for Federal Construction Contractors". EA's and SMSA's cross state boundaries so a sponsor may have to refer to entries for adjacent states to find their project location.

A sponsor must insert the applicable percentage minority goal. Sponsor must not simply insert a reference to the Federal Register Notice.

Female Participation. *Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction contractors. This value does not change per county or state.*

Contract Types -

Construction: *The sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000. Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.*

Equipment: *The sponsor must incorporate this notice in any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. firefighting and snow removal vehicles)*

Professional Services: *The sponsor must incorporate this notice in any professional service agreement if the professional service agreement includes construction work (as defined above) that exceed \$10,000. Examples include installation of noise monitoring systems.*

Property/Land: *The sponsor must incorporate this notice in any agreement associated with land acquisition if the agreement includes construction work (defined above) that exceeds \$10,000. Examples include demolition of structures or installation of boundary fencing.*

CONTRACT CLAUSE

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade: 0.4%

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is State of North Dakota, Burleigh County and City of Bismarck.

A3 BREACH OF CONTRACT TERMS

Source: 2 CFR § Appendix II(A)

Applicable to Contracts Exceeding \$150,000

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the contract. Owner reserves the right to

withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Consultant must correct the breach. Owner may proceed with termination of the contract if the Consultant fails to correct the breach by deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

A4 BUY AMERICAN PREFERENCE

Source: Title 49 USC § 50101

Applicability

Not applicable to Professional Service Agreements unless there is a deliverable that meets the definition of a manufactured product.

BUY AMERICAN PREFERENCE

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

A5 CIVIL RIGHTS - GENERAL

Source: 49 USC § 47123

GENERAL CIVIL RIGHTS PROVISIONS

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

A6 CIVIL RIGHTS - TITLE VI ASSURANCE

Source: 49 USC § 47123; FAA Order 1400.11

Title VI Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation– Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

A7 CLEAN AIR AND WATER POLLUTION CONTROL

Source: 2 CFR § 200, Appendix II(G)

Applicable to Contracts Exceeding \$150,000

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

Source: 2 CFR § 200, Appendix II(E)

Applicability

Contracts Exceeding \$100,000

Professional Services - This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen and guards. This includes members of survey crews and exploratory drilling operations.

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this clause.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

A9 COPELAND "ANTI-KICKBACK" ACT

Source: 2 CFR § 200, Appendix II(D)

Applicability

Contracts Exceeding \$2,000

The Copeland (Anti-Kickback) Act (18 U.S.C. 874 and 40 U.S.C. 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The

Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

Professional Services - The emergence of different project delivery methods has created situations where Professional Service Agreements (PSA) includes tasks that meet the definition of construction, alteration or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration or repair and it exceeds \$2,000, the Copeland Anti-kickback provision applies.

CONTRACT CLAUSE

Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

A10 DAVIS-BACON REQUIREMENTS

Source: 2 CFR § 200, Appendix II(D); 29 CFR Part 5

Applicability

Contracts Exceeding \$2,000

The Davis-Bacon Act ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

Professional Services - The emergence of different project delivery methods has created situations where Professional Service Agreements (PSA) includes tasks that meet the definition of construction, alteration or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration or repair and it exceeds \$2,000, the contract clause provided below applies.

CONTRACT CLAUSE

1. Minimum Wages

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and

its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2 Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including

any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or

indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered

in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance With Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

A11 DEBARMENT AND SUSPENSION

Source: 2 CFR part 180 (Subpart C); 2 CFR part 1200; DOT Order 4200.5

Applicable to Contracts Exceeding \$25,000

CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

A12 DISADVANTAGED BUSINESS ENTERPRISE

Source: 2 CFR part 26

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§ 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Owner. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.

RACE/GENDER NEUTRAL LANGUAGE

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

A13 DISTRACTED DRIVING

Source: Executive Order 13513; DOT Order 3902.10

Applicable to Contracts Exceeding \$3,500

TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

A14 ENERGY CONSERVATION REQUIREMENTS

Source: 2 CFR § 200, Appendix II(H)

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201*et seq.*).

A15 EQUAL EMPLOYMENT OPPORTUNITY (E.E.O.)

Source: 2 CFR 200, Appendix II(C); 41 CFR § 60-1.4; 41 CFR § 60-4.3; Executive Order 11246

Applicability ***Contracts Exceeding \$10,000***

The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally assisted construction contract. There are two provisions - a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

Contract Types -

Construction - The sponsor must incorporate contract and specification language in all construction contracts and subcontracts as required above.

Equipment - The sponsor must incorporate contract and specification language into all equipment contracts as required above that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. ARFF and SRE vehicles)

Professional Services - The sponsor must include contract and specification language into all professional service agreements as required above. Property - The sponsor must include contract and specification language into all land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

CONTRACT CLAUSE

EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the

event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
 - (1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such

a superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular

group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

A16 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

Source: U.S.C. § 201, et seq

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The consultant has full responsibility to monitor compliance to the referenced statute or regulation. The consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor - Wage and Hour Division

A17 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

Source: U.S.C. § 1352 - Byrd Anti-Lobbying Amendment; 2 CFR part 200, Appendix II(J);
49 CFR part 20, Appendix A

Applicable to Contracts Exceeding \$100,000

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A18 PROHIBITION of SEGREGATED FACILITIES

Source: CFR § 60

Applicable to Contracts Exceeding \$10,000

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

A19 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Source: CFR part 1910

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor - Occupational Safety and Health Administration.

A20 PROCUREMENT OF RECOVERED MATERIALS

Source: 2 CFR § 200.322; 40 CFR part 247

Applicability

Contracts Exceeding \$10,000

Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the EPA guidelines.

The requirements of § 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

***Contract Types** - This provision applies to any contracts that include procurement of products where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.*

Construction and Equipment - Include this provision in all construction and equipment projects

Professional Services and Property - Include this provision if the agreement includes procurement of a product that exceeds \$10,000

CONTRACT CLAUSE

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- a) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
- b) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/epawaste/consERVE/tools/cpg/products/.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;

- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

A21 RIGHT TO INVENTIONS

Source: CFR § 200, Appendix II(F); 37 CFR § 401

Applicability

This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that includes performance of experimental, developmental, or research work. This clause is not applicable to construction, equipment or professional service contracts unless the contract includes experimental, developmental or research work.

CONTRACT CLAUSE

This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that includes performance of *experimental, developmental, or research work*. This clause is not applicable to construction, equipment or professional service contracts unless the contract includes *experimental, developmental or research work*.

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

A22 SEISMIC SAFETY

Source: 49 CFR part 41

Applicability

This provision applies to construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program.

Professional Services and Construction - Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

CONTRACT CLAUSE

Seismic Safety (Design)

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

A23 TERMINATION OF CONTRACT

Source: 2 CFR § 200 Appendix II(B); FAA Advisory Circular 150/5370-10, Section 80-09

Applicable to Contracts Exceeding \$10,000

Termination for Convenience

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

Termination for Default

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:

1. Perform the services within the time specified in this contract or by Owner approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project;
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;

2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

A24 TRADE RESTRICTION CERTIFICATION

Source: 49 USC § 50104; 49 CFR part 30

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror -

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

A25 VETERAN'S PREFERENCE

Source: 49 USC § 47112(c)

Applicability

This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative and supervisory positions, applies to covered veterans (as defined under §47112(c)) only when they are readily available and qualified to accomplish the work required by the project.

CONTRACT CLAUSE

This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative and supervisory positions, applies to covered veterans (as defined under §47112(c)) only when they are readily available and qualified to accomplish the work required by the project.

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

Attachment D
Insurance Coverage levels

1. Throughout the duration of this Agreement, ENGINEER agrees to provide evidence of insurance coverages not less than the types and amounts specified below.
 - a. Workers' Compensation: Statutory
 - b. Employer's Liability
 - 1) Each Accident: \$1,000,000
 - 2) Disease, Policy Limit: \$1,000,000
 - 3) Disease, Each Employee: \$1,000,000
 - c. General Liability
 - 1) General Aggregate: \$2,000,000
 - 2) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - d. Excess Umbrella Liability
 - 1) Each Occurrence: \$5,000,000
 - 2) General Aggregate: \$5,000,000
 - e. Automobile Liability
 - 1) Combined Single Limit (Bodily Injury and Property Damage):
 - a) Each Accident \$1,000,000
 - f. Professional Liability
 - 1) Each claim made \$2,000,000
 - 2) Annual Aggregate \$4,000,000
 - g. Other conditions (specify):
 - 1) Commercial General Liability policy will be endorsed to add the City of Bismarck, its employees, officers, agents and contractors as additional insureds.
 - 2) Certificates evidencing required insurance shall be provided to the City of Bismarck upon execution of the agreement and prior to commencement of services or work.
 - 3) Certificates shall provide not less than 30 days notification to the City of Bismarck prior to cancellation or material change in coverage.



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: August 16, 2016

FROM: Carl D. Hokenstad, AICP, Director of Community Development

ITEM: Heritage Park Addition – Annexation (Corrective Ordinance)

REQUEST

On June 23, 2015, the Board of City Commissioners approved Ordinance 6139, which annexed Heritage Park Addition as well as the right-of-way needed to connect this subdivision to the existing corporate limits. As an owner of property within the annexed area did not consent to annexation, a corrective ordinance is required to remove that property.

The property is located in north Bismarck, west of North Washington Street along the south side of 57th Avenue NW.

Please place this item on the August 23, 2016 and the September 13, 2016 City Commission meetings.

BACKGROUND INFORMATION

The property annexed included the North 100 feet of Auditor's Lot H of the NE¼ of Section 17, T139N-R80 W. At the time, staff had assumed that the easement obtained by Burleigh County for the construction of 57th Avenue NW was similar to other easements obtained as could be treated as the dedication of right-of-way; however, the easement obtained was only for roadway purposes. As the owner of Auditor's Lot H did not consent to the annexation of his property, a corrective ordinance to remove that parcel is required.

RECOMMENDED CITY COMMISSION ACTION

August 23rd Meeting of the Board of City Commissioners – consider Corrective Ordinance 6139 and call for a public hearing on this item for the September 13th meeting of the Board of City Commissioners.

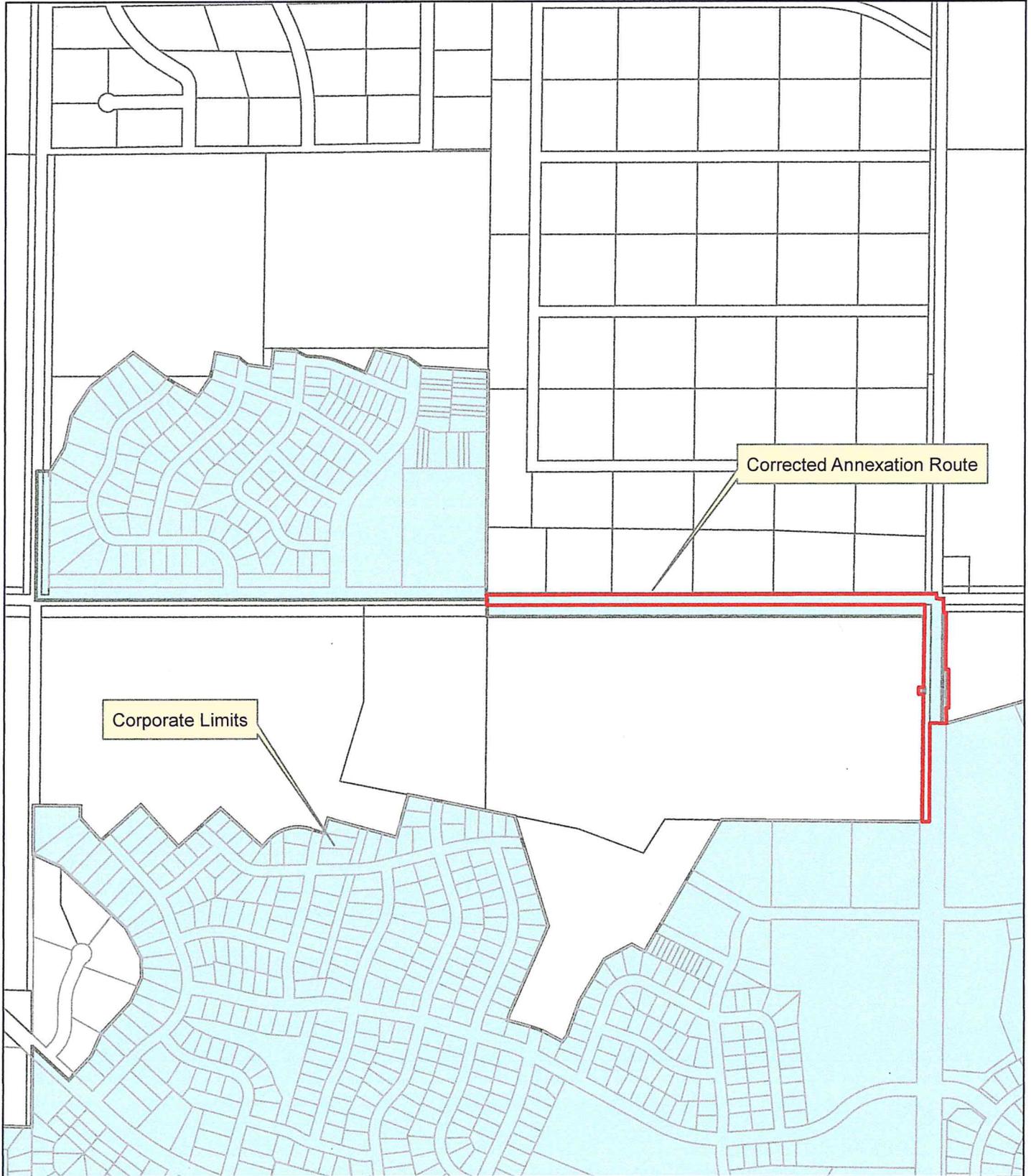
September 13th Meeting of the Board of City Commissioners – hold a public hearing on Corrective Ordinance 6139 and take final action on the ordinance.

STAFF CONTACT INFORMATION

Please contact Kim L Lee, AICP, the planner in our office assigned to this action, at 355-1846 or klee@bismarcknd.gov.

Planning Manager Kim Lee will present this item at the meetings.

Heritage Park Addition - Corrective Annexation



August 2016

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



ORDINANCE NO. 6139

<i>First Reading</i>	<u>June 9, 2015</u>
<i>Second Reading</i>	<u>June 23, 2015</u>
<i>Final Passage and Adoption</i>	<u>June 23, 2015</u>
<i>Publication Date</i>	<u>June 12 & 19, 2015</u>

AN ORDINANCE ANNEXING PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF BISMARCK, NORTH DAKOTA, DECLARING THE TERRITORY ANNEXED; DECLARING THE SAME TO BE A PART OF THE CORPORATE LIMITS OF SAID CITY.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA.

Section 1. Territory Annexed. The territory and land hereinafter described is hereby declared and found to be a part of the corporate limits of the City of Bismarck, North Dakota, as follows:

All of Heritage Park Addition, including Lot 1, Block 1, Lots 1-3, Block 2, Lots 1-4, Block 3, Lots 1-20, Block 4, Lots 1-11, Block 5, Lots 1-13, Block 6, Lots 1-17, Block 7 and Lots 1-26, Block 8; all of the 57th Avenue NW right-of-way adjacent to the southern edge of Block 6, Green Acres Estates; the North 100 feet and the East 75 feet of Auditor's Lot H of the NE¼ of Section 17, T139N-R80W; and the West 40 feet of the North 735 feet of the NW¼ of Section 16, T139N-R80W.

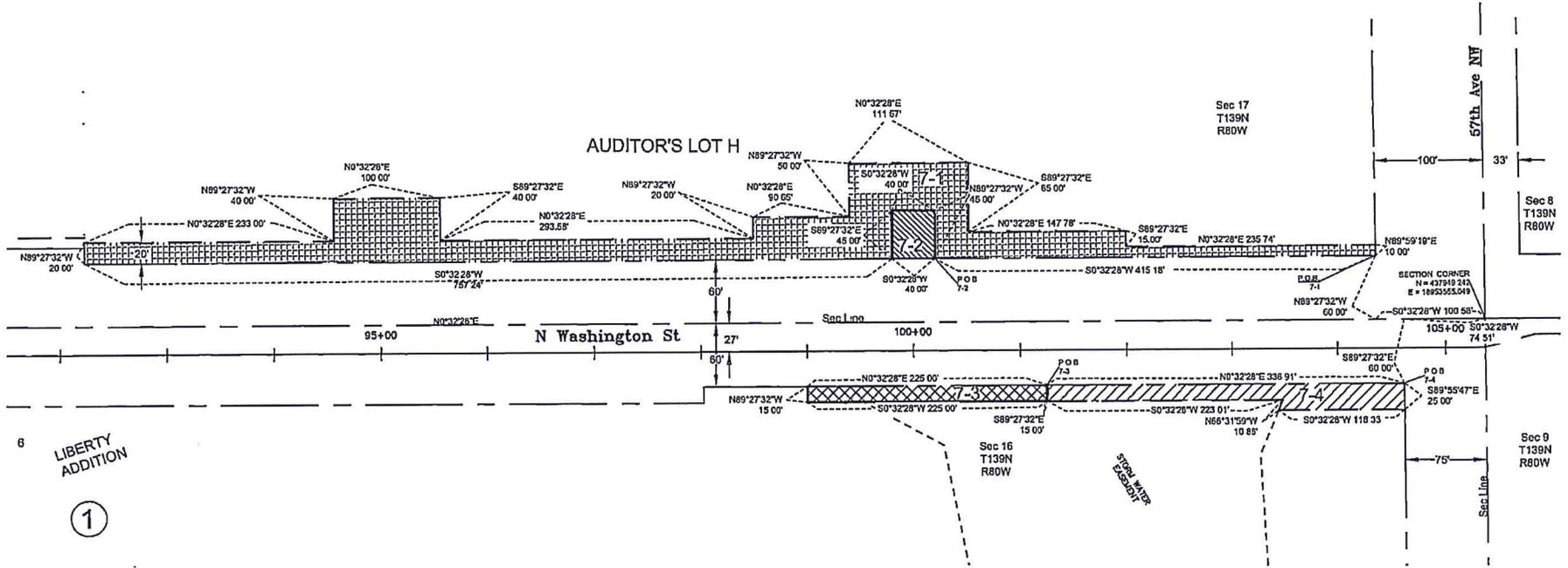
The above described tract of land contains 61.93 acres, more or less.

Section 2. Provisions Applicable. From and after the final passage and adoption of this Ordinance and upon recording of this ordinance with the Burleigh County Recorder, the territory herein described shall be a part of the corporate limits of the City of Bismarck, North Dakota.

NEK/NEK 17-139-80
Auditor's Lot H Block 1
PARCEL NO 7-1
TEMP CONST ESMT 34452 S F
William E. Clairmont Revocable Living Trust
1720 Burnt Boat Dr. Ste #203
Bismarck ND, 58503

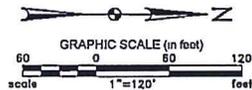
NEK/NEK 17-139-80
Auditor's Lot H Block 1
PARCEL NO. 7-2 1800 S F
William E. Clairmont Revocable Living Trust
1720 Burnt Boat Dr. Ste #203
Bismarck ND, 58503

PROJECT	PARCEL	PLAT NO	SUPPLEMENTS
NHU-1-981(101)111	7-1, 7-2, 7-3, 7-4	7 of 9	2



NW/4NW/4 16-139-80
PARCEL NO 7-3 3375 S F
Five Guys Investment, LLP
1291 Eaglecrest Loop
Bismarck, ND 58503

NW/4NW/4 16-139-80
PARCEL NO 7-4 6217 S F
TEMP CONST ESMT
Five Guys Investment, LLP
1291 Eaglecrest Loop
Bismarck, ND 58503



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Burlington County





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Burleigh County

PROJECT NO. NHU-1-981(101)111
1st SUPPLEMENT TO PLAT NO. 7 OF 9

PARCEL NO. 7-1

A tract of land lying in the NE ¼ of the NE ¼ of Section 17, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, described more particularly as follows:

Commencing at the Northeast Corner of Section 17, Thence S0°32'28"W along the east line of Section 17 a distance of 100.58 feet; Thence N89°27'32"W a distance of 60.00 feet to the Point of Beginning; Thence from said Point of Beginning S0°32'28"W along a line 60 feet westerly of and parallel with the east line of Section 17 a distance of 415.18 feet; Thence N89°27'32"W a distance of 45.00 feet; Thence S0°32'28"W a distance of 40.00 feet; Thence S89°27'32"E a distance of 45.00 feet; Thence S0°32'28"W a distance of 757.24 feet; Thence N89°27'32"W along the south line of Auditor's Lot H a distance of 20.00 feet; Thence N0°32'28"E a distance of 233.00 feet; Thence N89°27'32"W a distance of 40.00 feet; Thence N0°32'28"E a distance of 100.00 feet; Thence S89°27'32"E a distance of 40.00 feet; Thence N0°32'28"E a distance of 293.58 feet; Thence N89°27'32"W a distance of 20.00 feet; Thence N0°32'28"E a distance of 90.65 feet; Thence N89°27'32"W a distance of 50.00 feet; Thence N0°32'28"E a distance of 111.57 feet; Thence S89°27'32"E a distance of 65.00 feet; Thence N0°32'28"E a distance of 147.78 feet; Thence S89°27'32"E a distance of 15.00 feet; Thence N0°32'28"E a distance of 235.74 feet; Thence N89°59'19"E a distance of 10.00 feet to the said Point of Beginning.

Said tract is shown on the plat as Parcel No 7-1 and contains 34452 S.F.

The legal description was prepared by Kent A. Orvik, KLJ, 4585 Coleman Street, Bismarck, ND 58503, or obtained from a previously recorded instrument.

PARCEL NO. 7-2

A tract of land lying in the NE ¼ of the NE ¼ of Section 17, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, described more particularly as follows:

Commencing at the Northeast Corner of Section 17, Thence S0°32'28"W along the east line of Section 17 a distance of 100.58 feet; Thence N89°27'32"W a distance of 60.00 feet; Thence S0°32'28"W along a line 60 feet westerly of and parallel with the east line of Section 17 a distance of 415.18 feet to the Point of Beginning; Thence from said Point of Beginning S0°32'28"W a distance of 40.00 feet; Thence N89°27'32"W a distance of 45.00 feet; Thence N0°32'28"E a distance of 40.00 feet; Thence S89°27'32"E a distance of 45.00 feet to the said Point of Beginning.

Said tract is shown on the plat as Parcel No 7-2 and contains 1800 S.F.

The legal description was prepared by Kent A. Orvik, KLJ, 4585 Coleman Street, Bismarck, ND 58503, or obtained from a previously recorded instrument.

PARCEL NO. 7-3

A tract of land lying in the NW ¼ of the NW ¼ of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, described more particularly as follows:

Commencing at the Northwest Corner of Section 16, Thence S0°32'28"W along the west line of Section 16 a distance of 74.51 feet; Thence S89°27'32"E a distance of 60.00 feet; S0°32'28"W along a line 60' easterly of and parallel with the west line of Section 16 a distance of 336.91 feet to the Point of Beginning; Thence from said Point of Beginning S89°27'32"E a distance of 15.00 feet; Thence S0°32'28"W a distance of 225.00 feet; Thence N89°27'32"W a distance of 15.00 feet; Thence N0°32'28"E along a line 60' easterly of and parallel with the west line of Section 16 a distance of 225.00 feet to the said Point of Beginning.

Said tract is shown on the plat as Parcel No 7-3 and contains 3375 S.F.

The legal description was prepared by Kent A. Orvik, KLJ, 4585 Coleman Street, Bismarck, ND 58503, or obtained from a previously recorded instrument.



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Burleigh County

PROJECT NO. NHU-1-981(101)111
2nd SUPPLEMENT TO PLAT NO. 7 OF 9

PARCEL NO. 7-4

A tract of land lying in the NW ¼ of the NW ¼ of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, described more particularly as follows:

Commencing at the Northwest Corner of Section 16, Thence S0°32'28"W along the west line of Section 16 a distance of 74.51 feet; Thence S89°27'32"E a distance of 60.00 feet to the Point of Beginning; Thence from said Point of Beginning S89°55'47"E along a line 75' southerly of and parallel with the north line of Section 16 a distance of 25.00 feet; Thence S0°32'28"W a distance of 118.33 feet; Thence N66°31'59"W along the existing storm water easement a distance of 10.86 feet; Thence S0°32'28"W along the said existing storm water easement a distance of 223.01 feet; Thence N89°27'32"W a distance of 15.00 feet; Thence N0°32'28"E along a line 60' easterly of and parallel with the west line of Section 16 a distance of 336.91 feet to the said Point of Beginning.

Said tract is shown on the plat as Parcel No 7-4 and contains 6217 S.F.

The legal description was prepared by Kent A. Orvik, KLJ, 4585 Coleman Street, Bismarck, ND 58503, or obtained from a previously recorded instrument.



ENGINEERING DEPARTMENT

DATE: August 16, 2016
FROM: Gabe Schell, PE | City Engineer 
ITEM: NDDOT Discharge Permit and Agreement with Cherry Tree, LLP

REQUEST

Request approval of the NDDOT Discharge Permit and the Companion Agreement with Cherry Tree, LLP.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

Drazen and Ranka Samardzic, Cherry Tree, LLP, owners of the property at 5003 Ottawa Street have requested a NDDOT storm water discharge permit for discharge into the US Highway 83 right-of-way as part of the site plan for the Sky Zone Park.

The North Dakota Department of Transportation has prepared a storm water discharge permit for the City of Bismarck. We, in turn, have prepared an agreement transferring the responsibilities of the NDDOT storm water discharge permit to Cherry Tree, LLP.

RECOMMENDED CITY COMMISSION ACTION

Consider request approving NDDOT Discharge Permit and the companion Agreement with Cherry Tree, LLP.

STAFF CONTACT INFORMATION

Gabe J. Schell, gschell@bismarcknd.gov, 701-355-1505

GJS/ds

A G R E E M E N T

The City of Bismarck, P. O. Box 5503, Bismarck, North Dakota 58506-5503, hereinafter "*City*", and Cherry Tree, LLP, 124 Cherry Lane, Bismarck ND 58503-0223, hereinafter "*Owner*", agree as follows:

WHEREAS, *City* has agreed to apply to the North Dakota Department of Transportation for a permit to enter US-83 right of way for the purpose of diverting the existing runoff through the Skyzone Wutzke Subdivision into the west ditch of US-83. The grading of the wet ditch shall conform to the plan sheets submitted by Swenson, Hagen & Company P.C., dated August 2, 2016. The permit application will allow *Owner* to complete storm water improvements necessary for the development of its property; and

WHEREAS, upon the approval of the Permit by the North Dakota Department of Transportation and the Bismarck City Commission, *City* will sign the Permit, it is agreed as follows:

City will secure a permit from the Department of Transportation to allow for the Improvements. *City* and *Owner* agree that *Owner* shall contract for the design, inspection and construction of the Improvements and will maintain the Improvements subject to the following terms and conditions:

1. Hold Harmless. *Owner* agrees to protect, defend, indemnify and hold *City*, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, suits, causes of action, and judgments of every kind and character in connection with or arising directly or indirectly out of this Agreement, or the construction, use or maintenance of the Improvements.
2. Compliance with NDDOT Permit Requirements. *Owner* agrees to comply with all provisions and requirements of the Permit, specifically including the Risk Management Appendix, between *City* and the NDDOT and fulfill and assume all of the obligations and responsibilities of *City* under the Permit. A copy of the Permit is attached and made a part of this Agreement.
3. Funding. The design, construction, maintenance, operation and repair of the Improvements and the fulfillment of any other conditions as contained in

the Permit shall be at the sole cost and expense of
Owner.

Effective Date. This agreement becomes effective immediately
upon full execution by the parties.

Dated this _____ day of August, 2016.

Attest:

CITY OF BISMARCK

By: _____
Keith J. Hunke
City Administrator

By: _____
Michael C. Seminary, President
Board of City Commissioners

Dated this 15 day of August, 2016.

Attest:

Cherry Tree, LLP

By: Ranka Samardzic
Ranka Samardzic
Owner

By: Drazen Samardzic
Drazen Samardzic
Owner

P E R M I T

The City of Bismarck, hereinafter called the Permittee, is hereby granted permission from the North Dakota Department of Transportation, hereinafter called the NDDOT, to enter US 83 right of way in the NE 1/4 of Section 16, Township 139 N., Range 80 W., for the purpose of diverting the existing runoff through Skyzone Wutzke Subdivision into the west ditch of US 83. The grading of the west ditch shall conform to the plan sheets submitted by Swenson, Hagen & Company P.C., dated August 2, 2016, incorporated by reference herein, and the following provisions:

1. The Permittee shall sponsor the project and guarantee that all environmental issues are addressed. The Permittee shall comply with federal, state, and local laws together with ordinances and regulations applicable to the work.
2. The Permittee shall be responsible for all costs incurred for all items of work, complete in place, and shall include the furnishing of all labor, equipment, and relocation of utilities, if necessary.
3. In no case shall any construction activities be closer than 42 feet from the edge of the driving lane of southbound US 83 without prior written consent of the NDDOT Bismarck District Engineer.
4. Excess dirt shall be wasted outside of US 83 right of way and all graded and disturbed areas shall be reseeded according to the NDDOT seed mixture specifications. Erosion control devices shall be installed prior to construction and maintained until 70% of the vegetation is reestablished, the Permittee shall then remove devices.
5. The Permittee shall be responsible for erosion and sedimentation on NDDOT right of way. The Permittee shall make immediate repairs for erosion and remove silt, when needed.
6. The Permittee shall notify the NDDOT Bismarck District Engineer, forty-eight (48) hours prior to the beginning of the work. Immediately following the final cleanup of the area, the Permittee shall again notify the district engineer.
7. All work on US 83 right of way shall be done in a neat and professional manner, subject to inspection and approval by the NDDOT Bismarck District Engineer.
8. Traffic Control must be provided and maintained by the Permittee and must be in accordance with the "Manual on Uniform Traffic Control Devices," 2009 edition.
9. The Permit does not convey any property interest in US 83 right of way and is solely a license interest.
10. NDDOT specifically reserves the right to revoke or change the terms and conditions of this Permit with or without cause and upon notice to the Permittee.

11. Any violations of any of the conditions in this permit will void the permit and no further activities of this permit may continue. NDDOT has the sole discretion to interpret all of these terms and conditions and to determine whether the terms of this permit have been violated.
12. The Permittee, for him or herself, his or her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Permittee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities set forth in this Assurance.

That in the event of breach of any of the above Nondiscrimination covenants, NDDOT will have the right to terminate this Permit and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Permit had never been made or issued.

13. The Risk Management Appendix (RMA), attached, is hereby incorporated into this Permit by reference.
14. By entering upon US 83 right of way to perform the work authorized by this permit and thereby accepting the benefits of this permit, the Permittee agrees to be bound by all the terms and conditions of this permit.

Executed the date last below signed.

APPROVED AS TO SUBSTANCE

Terrence R. Udland, P.E. - Bridge Engineer

Date

WITNESS

CITY OF BISMARCK

Name (Print or Type)

Mayor (Type or Print)

Signature

Signature

Date

WITNESS

APPROVED

Name (Print or Type)

Deputy Director for Engineering (Type or Print)

Signature

Signature

Date

Risk Management Appendix

Routine* Service Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: State – State of North Dakota, its agencies, officers and employees
Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees
Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability and automobile liability insurance – minimum limits of liability required of the Governmental Entity are \$250,000 per person and \$500,000 per occurrence. The minimum limits of liability required of the State are \$250,000 per person and \$1,000,000 per occurrence.
- 2) Workers compensation insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without thirty (30) days prior written notice to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

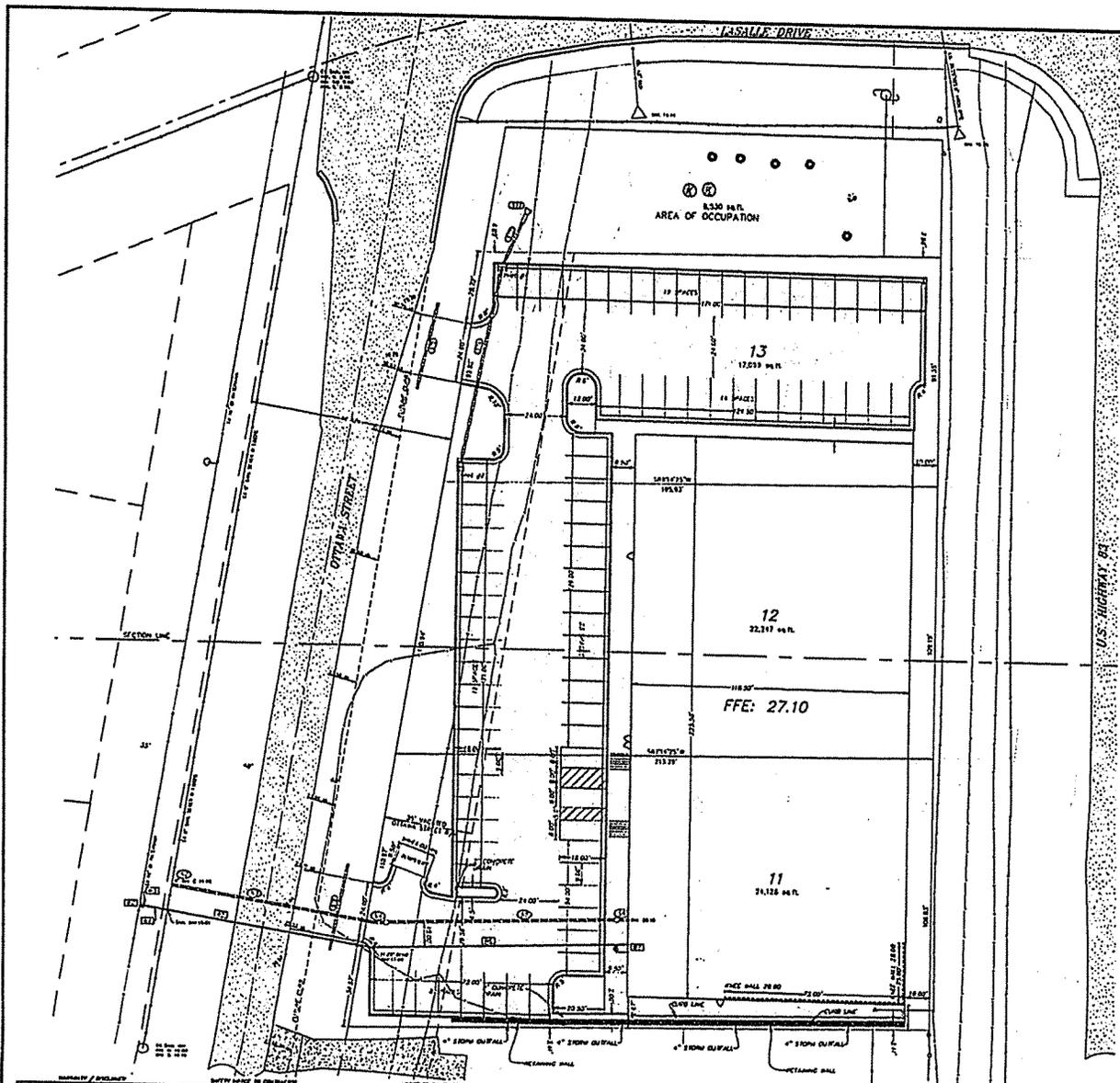
Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 5-09





STORM SEWER

- 1. MATERIALS AND CONSTRUCTION METHODS SHALL COMPLY WITH CITY OF BISMARCK CONSTRUCTION SPECIFICATIONS. ALL MATERIAL SHALL BE SET OF STANDARD PRACTICE AT RECOMMENDED WORKMAN CONSOLE.
- 2. INSTALL 12" FLARED END SECTION PER 1200.
- 3. INSTALL 75' OF 18" STORM SEWER (INCLUDING FLARED END SECTION) AT 4" SLOPE AND INSTALL 12" 90° ELBOW PER 1200, PER 1200, PER 1200.
- 4. INSTALL 45' OF 18" STORM SEWER AT 2" SLOPE AND INSTALL 12" 90° ELBOW PER 1200, PER 1200, PER 1200.
- 5. INSTALL 25' OF 18" STORM SEWER CLEANOUT AT 1" SLOPE PER 1200, PER 1200, PER 1200.
- 6. INSTALL 25' OF 18" STORM SEWER CLEANOUT AT 1" SLOPE PER 1200, PER 1200, PER 1200.

SANITARY SEWER

- 1. MATERIALS AND CONSTRUCTION METHODS SHALL COMPLY WITH CITY OF BISMARCK CONSTRUCTION SPECIFICATIONS. ALL MATERIAL SHALL BE SET OF STANDARD PRACTICE AT RECOMMENDED WORKMAN CONSOLE. IT SHALL BE SCHEDULED TO BE SET AND A HALF FOOT OF STANDARD SHALL BE MAINTAINED BETWEEN WATER AND SANITARY SERVICES.
- 2. CHANGES TO EXISTING 8" SANITARY SEWER MAIN WITH 8" 4" HEIGHTS AND APPROXIMATE 1% OF 4" CONDUIT PER 1200.
- 3. INSTALL 15' OF 4" SANITARY SEWER AT 2" SLOPE AND 11.25' HEAD PER 1200.
- 4. INSTALL 100' OF 4" SANITARY SEWER AT 2" SLOPE AND 4" CLEANOUT PER 1200.
- 5. INSTALL 10' OF 4" SANITARY SEWER AT 2" SLOPE AND 4" CLEANOUT PER 1200.
- 6. INSTALL 100' OF 4" SANITARY SEWER AT 2" SLOPE AND 4" CLEANOUT PER 1200.

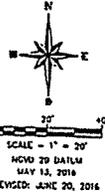
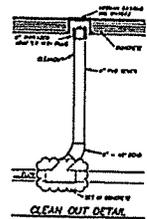
WATERMAIN

- 1. MATERIALS AND CONSTRUCTION METHODS SHALL COMPLY WITH CITY OF BISMARCK CONSTRUCTION SPECIFICATIONS. ALL MATERIAL SHALL BE SET OF STANDARD PRACTICE AT RECOMMENDED WORKMAN CONSOLE. IT SHALL BE SCHEDULED TO BE SET AND A HALF FOOT OF STANDARD SHALL BE MAINTAINED BETWEEN WATER AND SANITARY SERVICES.
- 2. INSTALL 100' OF 12" WATERMAIN AND INTERMEDIATE 12" HEAD PER 1200.
- 3. INSTALL 100' OF 12" WATERMAIN AND INTERMEDIATE 12" HEAD PER 1200.
- 4. INSTALL 100' OF 12" WATERMAIN AND INTERMEDIATE 12" HEAD PER 1200.
- 5. INSTALL 100' OF 12" WATERMAIN AND INTERMEDIATE 12" HEAD PER 1200.
- 6. INSTALL 100' OF 12" WATERMAIN AND INTERMEDIATE 12" HEAD PER 1200.

STORM SEWER WILET SCHEDULE

Wilet Size	Depth	Material	Notes
12"	4"	Cast Iron	Standard
18"	4"	Cast Iron	Standard
24"	4"	Cast Iron	Standard
30"	4"	Cast Iron	Standard
36"	4"	Cast Iron	Standard
42"	4"	Cast Iron	Standard
48"	4"	Cast Iron	Standard
54"	4"	Cast Iron	Standard
60"	4"	Cast Iron	Standard

- LEGEND**
- EXISTING SANITARY SEWER
 - EXISTING WATERMAIN
 - EXISTING STORM SEWER
 - EXISTING UNDERGROUND TELEPHONE
 - EXISTING UNDERGROUND GAS
 - EXISTING UNDERGROUND CABLE TV
 - EXISTING UNDERGROUND FIBER OPTIC
 - EXISTING OVERHEAD POWER
 - EXISTING GATE VALVE
 - EXISTING HYDRANT
 - EXISTING FENCE
 - EXISTING ASPHALT
 - EXISTING CONCRETE
 - EXISTING CONTOUR
 - EXISTING DRIVE
 - FUTURE DRIVE
 - PROPOSED SANITARY SEWER
 - PROPOSED WATERMAIN
 - PROPOSED STORM SEWER
 - PROPOSED FENCE
 - PROPOSED GATE VALVE
 - PROPOSED CONCRETE



THIS DOCUMENT IS ORIGINAL COPY AND SHALL BE KEPT IN A SAFE PLACE AT ALL TIMES. ANY REVISIONS TO THIS DOCUMENT SHALL BE MADE BY THE ORIGINAL DESIGNER OR HIS AUTHORIZED REPRESENTATIVE. ANY OTHER CHANGES SHALL BE MADE BY THE ORIGINAL DESIGNER OR HIS AUTHORIZED REPRESENTATIVE.

DATE	BY	REVISIONS

DIMENSION & UTILITY PLAN
 LOTS 11, 12, AND 13, BLOCK 1, WUTZKE'S SUBDIVISION
 BISMARCK, NORTH DAKOTA

SWENSON, HAGEN & COMPANY P.C.
 1000 14th Street, Suite 200
 Bismarck, North Dakota 58501
 Phone: (701) 223-7274
 Fax: (701) 223-7275
 www.swhc.com

DRAWN BY: JCE
 CHECK BY: JCE
 DATE: 5/14/18
 FILE NO: 18-000

COMPUTER FILE:
 P:\SWENSON\WUTZKE\11, 12 & 13, PLAN.DWG

SHEET C2.0

CALL BEFORE YOU DIG
 NORTH DAKOTA
 UTILITY LOCATIONS SERVICE
 1-800-785-0588



ENGINEERING DEPARTMENT

DATE: August 16, 2016
FROM: Gabe Schell, PE, City Engineer 
ITEM: Temporary Encroachment Agreement

REQUEST

Approval of Temporary Encroachment Agreement with Community Contractors, Inc.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

Community Contractors, Inc. has requested permission to place a security fence in the public right of way until November 1, 2016. The construction site is located at 100 West Main Avenue (MetroPlains). Along Main Avenue, the fence will be at the back of curb from the west property line to the corner. On 1st Street, the fence will be placed along the east side of the parking lane from the alley to the corner. At the corner of Main Avenue and 1st Street the fence will run diagonal across the corner to improve sight distance. No impacts to traffic movements. Signage is in place to accommodate pedestrian traffic around this site.

RECOMMENDED CITY COMMISSION ACTION

Approval for Mayor's signature.

STAFF CONTACT INFORMATION

Mark A. Berg, PE
Traffic Engineer
mberg@bismarcknd.gov
701-355-1505

Attachment

TEMPORARY AGREEMENT AND WAIVER

The City of Bismarck hereby grants Community Contractors Inc. (Grantee) the right to install and maintain a security fence in the public right-of-way at 100 West Main Avenue as shown on the attached Exhibit A subject to the following conditions:

1. Grantee shall comply with all rules regarding facilities in or on the public right-of-way as set by the City Engineer.

2. The term of this grant shall be for a period of 90 days or until no longer needed by the Grantee. The City may extend this Agreement upon the reasonable request of the grantee or may cancel this Agreement at any time after the initial 90-day term upon 30 day written notice to the Grantee. The Grantee shall notify the City Traffic Engineer when this Agreement is no longer needed.

3. Upon the end of the term or prior abandonment by Grantee, Grantee shall, at it's own expense, restore the public right-of-way to its original condition, if so required by the City.

4. In exchange for the City's permission to operate and maintain a security fence on the City right-of-way, Grantee agrees to release the City, its assigns, or other franchised utilities from and waive any and all claims relating to said electrical outlet including, but not limited to, damages arising from damage to the electrical outlet, loss of business, or other personal injury or property by the City, its assigns, or other franchised utilities.

5. Grantee agrees that it is using the public right-of-way at its own risk. Grantee shall not look to the City, its assigns, or other franchised utilities to pay for any expense or

damage to the street right-of-way by the City, its assigns, or other franchised utilities. Grantee agrees that it will hold harmless and indemnify the City, its assigns, or other franchised utilities from any and all claims in any way resulting from the placement of the electrical outlet on the public right-of- way. Grantee agrees that after installation of the electrical outlet, Grantee will restore the City right-of-way to its original condition.

6. In the event the City is required to perform street maintenance or construction on the right-of-way at the location of the security fence, Grantee shall cooperate with the City in temporarily protecting the security fence and accommodating the City's project, at Grantee's sole expense.

DATED this _____ day of _____, 2016.

Print Name

Signature

Address

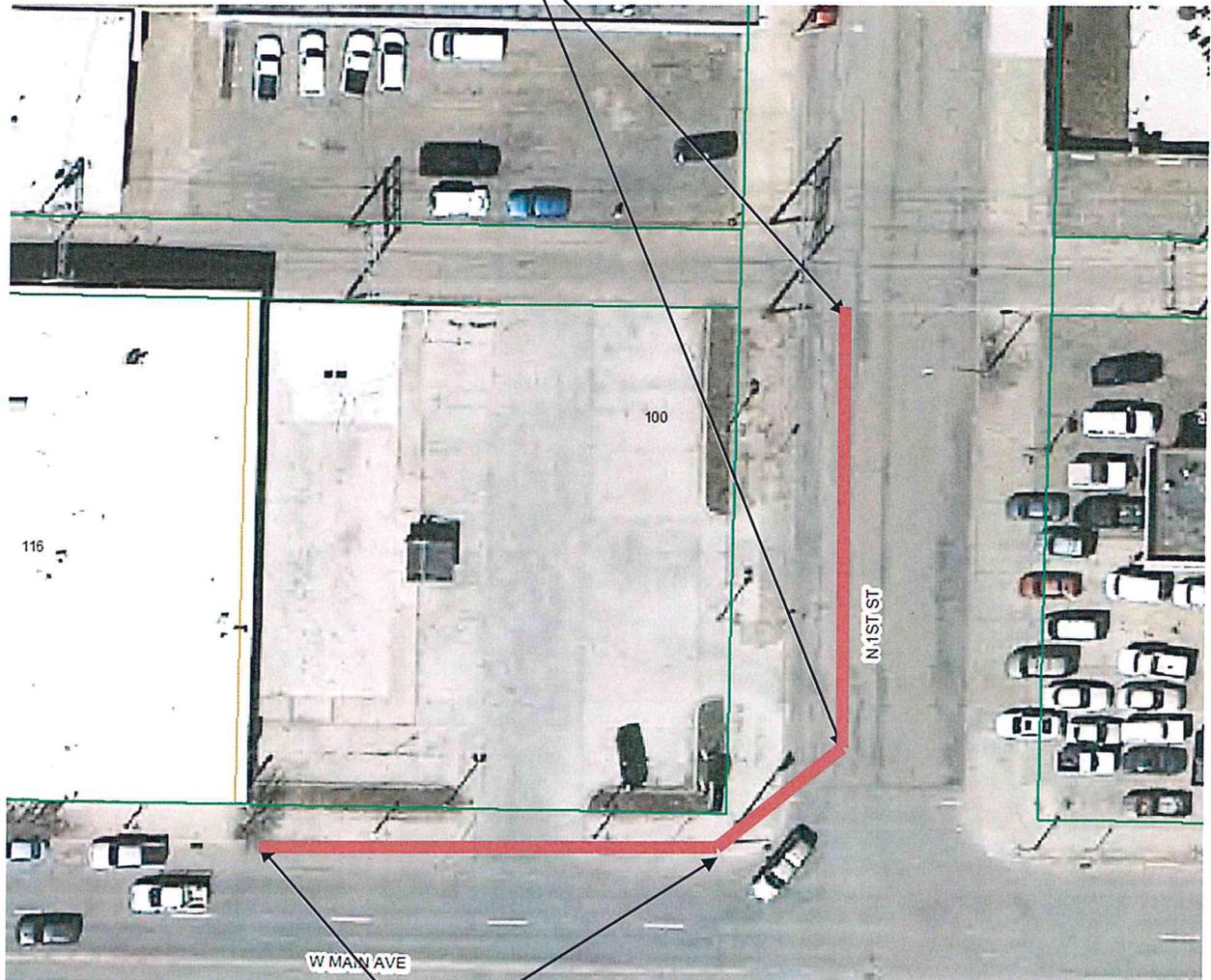
City Engineer

Date

Keith Hunke
City Administrator
Bismarck

Michael C. Seminary, President
Bismarck City Commission

Security fence at the edge of driving lane eight feet (8') from face of curb to the crosswalk



Security Fence along the back of Curb



ENGINEERING DEPARTMENT

DATE: August 15, 2016
FROM: Gabe Schell, PE | City Engineer 
ITEM: Street Improvement District No. SI 16-506 – Unit #3

REQUEST

Request approval of Contract Change Order No. 1, Installation of edge drain pipe.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

During removal and replacement of concrete items such as driveway aprons and curb and gutter on both the east and west sides of Montreal Street between Calgary Avenue and Renee Drive, it was found that the subgrade just below the surface of the roadway extending at least 2 feet down was extremely wet and needed to be removed and replaced with dry aggregate material before concrete could be replaced. Conversations were had with the public works personnel who had recently worked in the area who confirmed that they too encountered extremely wet conditions in the subgrade. Excessive groundwater is also known to exist periodically in the general area and edge drain pipe currently exists in various areas such as along Montreal Street from Calgary Avenue all the way south to N. 4th Street. On Monday, August 8th, 2016, a test hole was dug on Montreal Street just north of the Northeast corner of the intersection of Montreal/Calgary. The hole was dug to a depth of 4-feet below the surface of the roadway. As the contractor was digging, groundwater was observed coming into the hole. On Tuesday, August 9, 2016, the hole was checked and water was standing at a level of 3.5-feet below the surface of the roadway.

RECOMMENDED CITY COMMISSION ACTION

Consider request approving Contract Change Order No. 1, installation of edge drain pipe to alleviate the existing condition and provide a means to convey subsurface water to the storm sewer system.

STAFF CONTACT INFORMATION

Gabe Schell, PE
gschell@bismarcknd.gov
701-355-1505

GSJ/tk

CONTRACT CHANGE ORDER FORM

DEPARTMENT

Contract between the City of Bismarck and Northern Improvement

Contract Number: 16-17 Change Order Number: 1

Project/Subproject: SI16-506 Original Contract Amt: \$2,998,856.60

Project Description: 2016 Street Resurfacing Project

Previous Contract Amount: \$2,998,856.60

Change Order Amount: \$40,000.00

Original Contract Date: 05/10/16 Change in Contract Timeline: N/A

Within Project Scope: Y

Within Project Funding: Y

**If not within project scope, attach description of change in scope for Board approval.*

***If not within project funding, attach revised Project Budget for Board approval.*

Type of Change Order

Non Design-related Change Order: These change orders include unforeseen conditions, code-related issues, and building inspector changes.

Design-related Change Order: These change orders include unforeseen conditions that affect the appearance, layout, functionality, dimensions, and/or quality of the project.

Emergency Field Condition Change Orders: These change orders include any condition that causes an emergency situation where safety or other immediate losses may occur.

Other: _____

Project Manager Signature: (<\$15,000) _____
Date

Department Head Signature: (<\$25,000) _____
Date

ADMINISTRATION

City Administrator Signature: (<\$50,000) _____
Date

Add to Commission Consent Agenda

COMMISSION APPROVAL

Commission Approval Date: _____

Attach minutes for Commission Approval

FISCAL

Comments: _____
Signature Date Completed

TO ALL DEPARTMENTS: Please attach a copy of the change order

Proposal

NORTHERN IMPROVEMENT COMPANY

P.O. Box 1254
3320 East Century Avenue
BISMARCK, NORTH DAKOTA 58502
(701) 223-6695 FAX: (701) 224-0937

Customer Copy
 Customer Return
 Office Copy

Attn: Chad Seidel

PROPOSAL SUBMITTED TO City of Bismarck		PHONE	DATE 8/4/2016
STREET		JOB NAME SID #506	
CITY, STATE AND ZIP CODE Bismarck, ND		JOB LOCATION Calgary Ave/Montreal Street	
ARCHITECT	DATE OF PLANS		JOB PHONE

As per your request, we submit the following:

Furnish labor and materials to perform the following

Description	Approximate Quantity	Units	Unit \$	
Underdrain Fabric	1155	SY	\$ 2.42	\$2,795.10
Drainage Aggregate	346	Tons	\$ 30.25	\$10,466.50
6" Perforated Pipe	1300	LF	\$ 18.98	\$24,667.50
Clean Out	6	EA	\$ 319.00	\$1,914.00

*Final billing will be done from field measurements/scale tickets upon completion.

Price is based on 2016 completion.

All work to conform to City of Bismarck and NDDOT Specifications.
Quote may be withdrawn if not accepted within 30 days without prior agreement.
If you have any questions please give me a call, Thank You.

TOTAL **\$39,843.10**

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of: _____ dollars

Payment to be made as follows:

Upon Completion

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature _____

Jason Irej
Jason Irej/Project Manager

Note: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date of Acceptance: _____ Signature _____

WEISZ & SONS INC CONTRACTORS

Bismarck, ND • 701-258-9770

Proposal Submitted to: Northern Improvement Company— Jason Irey	Phone	Date: August 4, 2016
Job Name: Calgary/Montreal Edge Drain	Job Location: Bismarck, ND	

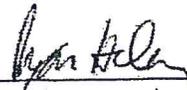
We are pleased to present this proposal for the work as described below:

- 1,155 SY Underdrain Fabric @ \$2.20 =
\$2,541.00
- 346 TON Drainage Aggregate @ \$27.50 =
9,515.00
- 1,300 LF 6" Perforated Pipe @ \$17.25 =
22,425.00
- 6 EACH 6" End of Run Clean Outs @ \$290.00 =
1,740.00

TOTAL: \$36,221.00

*****We do not include a bond. Please add 1 percent to our total if required.** We propose hereby to furnish material and labor – complete in accordance with above specifications and clarifications, for the sum of: See Above. Payment to be made as follows: Upon Completion.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry all necessary insurance. Our workers are fully covered by Workman's Compensation Insurance. Weisz and Sons is an ECCS qualified contractor.

By  Date 8-4-16
 (Note: This proposal may be withdrawn by us if not accepted within 30 days.)

Acceptance of Proposal, the above price, specification and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Authorized Signature _____ Date _____

SI 506 Unit 3
Change Order #1
8/10/2016

Scope: Install 6" edge drain pipe below the road surface on both sides of the road in the area including the intersection of Calgary Avenue and Montreal Street and extending approximately 330' North, 166' West, and 100' East of the intersection.

Purpose: Allow shallow ground water to move from subgrade of roadway to storm sewer inlets.

Justification: During removal and replacement of concrete items such as driveway aprons and curb and gutter on both the east and west sides of Montreal Street between Calgary Avenue and Renee Drive, it was found that the subgrade just below the surface of the roadway extending at least 2 feet down was extremely wet and needed to be removed and replaced with dry aggregate material before concrete could be replaced. Conversations were had with public works personnel who had recently worked in the area who confirmed that they too encountered extremely wet conditions in the subgrade. Excessive groundwater is also known to exist periodically in the general area and edge drain pipe currently exists in various areas such as along Montreal Street from Calgary Avenue all the way south to N. 4th Street. On Monday, August 8th 2016, a test hole was dug on Montreal Street just north of the Northeast corner of the intersection of Montreal/Calgary. The hole was dug to a depth of 4' below the surface of the asphalt on the roadway. As the contractor was digging, groundwater was observed coming into the hole. On Tuesday, August 9th 2016, the hole was checked and water was standing at a level 3 ½' below the surface of the roadway.



Chad Seidel

RCL
8/10/16



FINANCE DEPARTMENT

DATE: August 15, 2016
FROM: Sheila Hillman *SH*
ITEM: Approval of Contract with AssetWorks for Work Order Management System

REQUEST

Consider approval of contract with AssetWorks for Work Order Management System (WMS)

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

In 2015 the Commission approved a contract with Plante & Moran for a city-wide assessment of a work order management system (WMS). The study recommendations included purchase and implementation of a WMS and Customer Relationship Management System (CRM). The Commission approved an extension of the contract with Plante & Moran to assist in the preparation of the RFP and selection of the systems in the fall of 2015. Following an extensive and thorough evaluation of the top three vendors, AssetWorks is the recommended vendor selected by the Project Team.

The contract cost with AssetWorks for the purchase and implementation of the system is \$311,138. This includes an estimated \$30,000 for travel costs and \$23,330 for annual maintenance. There is also an additional \$325,135 that has been included in project budget for the costs of interfaces, modifications, the FuelFocus module, associated implementation and maintenance costs. The need for these services will be analyzed during the implementation and determined if they are required. Any changes would follow the established change order policy for professional services. The project also includes an estimated \$100,000 for server hardware and associated software for the new system and for mobile devices to be used in the field plus a 10% contingency. The 2016 one-time budget includes \$890,400 which will fund the cost of the project. The 2016 budget also includes the base funding for the annual maintenance costs.

This system is a new citywide system that will help manage the work order/services in an estimated 20 areas covering a wide range of departments. GIS will be the core of the system since a majority of the work is location and equipment based. The project will be implemented in three phases. Phase one will include validation of the initial requirements and the assessment of the business processes for all of the work areas with implementation starting with five work areas in Public Works. Once the system is established in the initial phase, the time and effort is anticipated to be much less in the following phases. The Project Team will identify the works areas for phase 2 and 3 implementation.

Attached is the contract for the purchase and implementation of the system and the software maintenance for Commission consideration and approval. Please note due to the 629 plus pages in the entire document, exhibits E, F, G, H, I, J and L are in not included in the attachment but will be made available by contacting our office. These are supporting exhibits that document Assetworks' initial and follow-up responses to the Project Team.

Please let me know if you have any questions or need any additional information. Other Members of the Project Team, including Keith Hunke and Jeff Heintz, will also be available at the Commission meeting.

RECOMMENDED CITY COMMISSION ACTION

Approve the contract with AssetWorks for the software purchase and associated implementation services, annual maintenance and the project budget.

STAFF CONTACT INFORMATION

Sheila Hillman: shillman@bismarknd.gov or 355-1600

Attachment

AssetWORKS

MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT BETWEEN ASSETWORKS LLC AND CITY OF BISMARCK

This Master Software License and Services Agreement ("Agreement") is entered into as of this 23rd day of August, 2016 ("Effective Date") by and between AssetWorks LLC, with offices at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 ("AssetWorks"), and the City of Bismarck, with offices at 221 N 5th Street, Bismarck, ND 58501, ("CUSTOMER" or "City"), and describes the terms and conditions pursuant to which AssetWorks shall provide Software, Software Maintenance and Professional Services to Customer, as more specifically defined in the attachments hereto.

The following Exhibits are hereby attached and incorporated to form the Agreement:

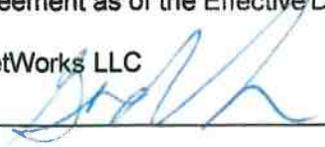
1. Exhibit K – AssetWorks Contract Terms and Conditions Compliance Checklist
2. Exhibit E and Addendum 1 - AssetWorks Response to Customer's Request for Proposal (RFP) and Revised Section 9 Response
3. Exhibit A - the Software License Agreement, which will govern the license grant to Customer by AssetWorks.
4. Exhibit B - the Software Maintenance Agreement, which will govern the software maintenance services to be performed by AssetWorks for Customer.
5. Exhibit C - the Professional Services Agreement, which will govern the professional services to be performed by AssetWorks for Customer. It includes Attachment 1 the Statement of Work.
6. Exhibit D - Pricing for the Software, Maintenance and Professional Services.
7. Exhibit F - Customer's Request for Proposal
8. Exhibit G - Customer Addendum #1 to RFP
9. Exhibit H - Customer Addendum #2 to RFP
10. Exhibit I - AssetWorks Response to Customer Questions Dated April 19, 2016
11. Exhibit J - AssetWorks Response to Customer Questions Post-Demonstration
12. Exhibit L – Post Implementation Support

The Exhibits hereto are intended to be read in harmony and relate to the specific software or services described within such Exhibit. Each specific Exhibit, Software License Agreement, Software Maintenance Agreement and Professional Services Agreement, shall have precedence over all other Exhibits as it relates to the specific software or services described within such Exhibit. Otherwise, the order of precedence shall be the order as listed. Execution of this Agreement is deemed to be an acceptance of each Exhibit attached hereto.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have entered into this Agreement as of the Effective Date.

AssetWorks LLC

By: 

Name: Gordon Smith

Title: Vice President

Date: August 11, 2016

CUSTOMER

By: _____

Name: Honorable Mike Seminary

Title: Mayor

Date: _____

EXHIBIT A: SOFTWARE LICENSE AGREEMENT

ARTICLE I - LICENSE

- A. AssetWorks grants to CUSTOMER a non-exclusive, perpetual (subject to Article V) non-transferable site license for the number of units specified in Exhibit D ("Units") to make use of the software specified in Exhibit D (herein "Software") on the CUSTOMER's database servers and application servers designated in Article VII (the database servers and application servers shall be referred to as the "Environment"); provided, however, that if any part of the Environment becomes temporarily inoperative the license may be extended to backup servers until such time as the Environment becomes operative again at which time all Software will be returned to the Environment. CUSTOMER may replace any component of the Environment by giving AssetWorks prior written notice of the new servers. CUSTOMER'S license is to use the Software in its own business; CUSTOMER has no right to use the Software in processing work for third parties.
- B. CUSTOMER shall have the right to use only one copy or image of the Software for production purposes and shall not copy or use the Software for any other purpose except (i) for archival purposes, (ii) in connection with a disaster recovery program, and (iii) for the purpose of testing the operation of the Software, provided such testing copy shall not be used in a live production environment.
- C. If any third party software is provided to CUSTOMER pursuant to this Agreement, such license shall be in accordance with terms set forth in Exhibit D.

ARTICLE II - FEES AND PAYMENTS

- A. CUSTOMER shall pay AssetWorks the fees specified in Exhibit D. All fees are payable by CUSTOMER within thirty (30) days of receipt of invoice. AssetWorks shall provide CUSTOMER a detailed invoice, itemized as appropriate, issue date, and related expense details (e.g. travel). If any portion of an invoice is disputed, the CUSTOMER shall pay any undisputed amounts when due. CUSTOMER may withhold the disputed amount without incurring any interest charges or penalties if CUSTOMER provides prompt notification to AssetWorks. CUSTOMER and AssetWorks shall attempt to resolve the dispute according to the provisions of Article XI – Section E.
- B. AssetWorks recognizes that CUSTOMER claims tax exempts status, and CUSTOMER agrees to provide AssetWorks with evidence of such tax exemption upon the request of AssetWorks. To the extent that such tax exemption cannot be properly claimed or does not extend to certain taxes or transactions, CUSTOMER shall be responsible for any and all sales taxes that arise from this Agreement and related transactions.
- C. CUSTOMER shall be entitled to the support described in the Maintenance Agreement, which shall commence on the date set forth in the Maintenance Agreement
- D. AssetWorks reserves the right to apply a late payment charge of 1.5% per month to amounts outstanding more than thirty (30) days after the date of the invoice.
- E. Bill to Address. The invoice will be mailed to:

City of Bismarck
IT-GIS Manager
PO Box 5503
Bismarck, ND 58506-5503

ARTICLE III - NON-DISCLOSURE

- A. Subject to the other paragraphs in this Article III, CUSTOMER agrees that the Software shall be held in confidence by CUSTOMER and shall not be disclosed to others without the prior written consent of AssetWorks, which may be withheld by AssetWorks in its sole discretion. This obligation to hold confidential does not apply to any portion of the Software (1) developed by CUSTOMER and in CUSTOMER's possession prior to the receipt of same from AssetWorks; (2) which at the time of disclosure is part of the public domain through no act or failure to act by CUSTOMER; or (3) which is lawfully disclosed to CUSTOMER without restriction on further disclosure by another party who did not acquire same from AssetWorks.
- B. The CUSTOMER may copy, in whole or in part, any printed material relative to the Software that may be provided by AssetWorks under this Agreement. Additional copies provided by AssetWorks will be billed to CUSTOMER at AssetWorks' standard rates.
- C. Any Software provided by AssetWorks in machine-readable form may be copied by CUSTOMER for use with the designated servers to the extent necessary for archive or emergency restart purposes, to replace a worn copy, or to understand the contents of such machine-readable material.
- D. The CUSTOMER agrees to keep the original and any copies of that Software at the same location as the CUSTOMER's designated servers, except that a machine-readable copy of the Software may be kept for archive or emergency restart purposes only at another facility.
- E. All of CUSTOMER's records with regard to the Software shall be made available to AssetWorks at all reasonable times at AssetWorks' request, and CUSTOMER shall certify to the truth and accuracy of thereof.

ARTICLE IV – WARRANTIES AND LIMITATION OF LIABILITY

- A. AssetWorks represents that it has the right to license the Software to CUSTOMER as provided in ARTICLE I. AssetWorks further represents that the Software will conform to the description contained in the documentation published or provided by AssetWorks ("Documentation") for as long as software maintenance fees are paid and a minimum of five years from the acquisition date for all functional requirements AssetWorks complied with as detailed in its proposal response (Exhibit E) but, except as provided in Article IV B, AssetWorks makes no other representations, warranty, or guarantees, express or implied, with respect to the accuracy, completeness, or usefulness of the Software, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. In the event the Software fails to conform to the description contained in the Documentation and to AssetWorks response to the CUSTOMER'S technical/functional specifications Section 9 located in Exhibit E, Addendum 1, , AssetWorks' sole obligation shall be to correct the errors in accordance with the provisions of Article IV E. This limited warranty is in lieu of all liabilities or obligations of AssetWorks for damages arising out of or in connection with the delivery, use or performance of the Software.
- B. AssetWorks will defend, at its own expense, any action brought against CUSTOMER to the extent that it is based on a claim that the Software supplied by AssetWorks infringes a United States patent or copyright, and AssetWorks will pay those costs and damages finally awarded against CUSTOMER in any such action that are attributable to any such claim; provided, such defense and payments are conditioned on the following: (1) that AssetWorks shall be promptly notified in writing by CUSTOMER following its receipt of any such claim; (2) that AssetWorks shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; (3) should the Software become, or in AssetWorks' opinion is likely to become, the subject of a claim of infringement of a United States patent or copyright, then CUSTOMER shall permit AssetWorks, at its option and expense, either to (A) procure for CUSTOMER a non-infringing license to use the Software; (B) modify the Software so that it becomes non-infringing; (C) procure for CUSTOMER a depreciated credit for the Software and accept its return. Depreciation shall be an equal amount

per year over the lifetime of the Software, which the parties agree shall be five (5) years. AssetWorks shall have no liability to CUSTOMER under any provision of this clause with respect to any claim of patent or copyright infringement that is based on CUSTOMER's unauthorized use or combination of the Software with software or data not supplied by AssetWorks as part of the Software.

- C. CUSTOMER agrees to defend and hold AssetWorks harmless against any claims made by any third party against AssetWorks arising out of CUSTOMER's use of the Software unless such claims are due to the negligence or willful misconduct of AssetWorks.
- D. CUSTOMER agrees that AssetWorks total liability to Customer for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed 1.75 times the total fees paid to AssetWorks.

In no event shall AssetWorks be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought even if AssetWorks has been advised of the likelihood of such damages, and notwithstanding any failure of essential purpose of any limited remedy.

Any claim by CUSTOMER against AssetWorks relating to this Agreement must be made in writing and presented to AssetWorks within one (1) year after the Effective Date of the Agreement.

- E. The warranty period for the Software shall extend for a period of 90 days from the date of delivery of the Software but in no event later than one hundred eighty (180) days from the date of execution of this Agreement. During the warranty period, in the event that the CUSTOMER encounters an error and/or malfunction whereby the Software does not conform to the description in the Documentation, AssetWorks will respond as follows:
 - 1. In the event that, in the mutual and reasonable opinion of AssetWorks and the CUSTOMER, there exists an error or nonconformance to the Documentation, AssetWorks will take such steps as are reasonably required to correct the error with due dispatch.
 - 2. In the event that, in the mutual and reasonable opinion of AssetWorks and the CUSTOMER, the error or nonconformance to the Documentation does not constitute a serious impediment to the normal intended use of the Software, AssetWorks will correct the error and distribute the correction to the CUSTOMER in accordance with AssetWorks' normal Software revision schedule.

ARTICLE V - TERMINATION

- A. The license conveyed pursuant to Article I-A may be terminated by AssetWorks in the event of breach or default by CUSTOMER under this Agreement if AssetWorks notifies CUSTOMER in writing of the breach or default and CUSTOMER does not correct same within thirty (30) days of AssetWorks' written notice.
- B. In addition, CUSTOMER shall have the right to terminate this Agreement at any time after one (1) year from the effective date of this Agreement; provided such termination shall not relieve CUSTOMER of its obligations (1) to pay any remaining unpaid balance for the total software license fee (as per Schedule 1), and (2) to honor the terms of the Professional Services Agreement or the Software Maintenance Agreement.
- C. All Software and documentation supplied hereunder by AssetWorks shall be and remain the property of AssetWorks. Upon termination of this Agreement, whatever the reason, such Software and documentation and any copies thereof made by CUSTOMER pursuant to Article III-B and C shall be promptly returned to AssetWorks

ARTICLE VI - ASSIGNMENT

This Agreement shall not be assigned by either party without the prior written consent of the other party, and any attempted assignment without such consent shall be void. No assignment of this Agreement shall be valid until and unless consented to in writing by the consenting party and assumed by the assignee in writing. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee.

Vendor Merger or Acquisition: In the event AssetWorks is merged or acquired, the acquiring entity shall honor all terms of the existing contract until the end of the present term. CUSTOMER shall be notified in writing of such merger as soon as possible or within 90 days of merger to ensure continuity of service.

ARTICLE VII – SUCCESSOR SOFTWARE

As long as CUSTOMER maintains a continuous Maintenance Agreement with AssetWorks for each of the AssetWorks software products and (i) in the event an AssetWorks software product is no longer supported, and (ii) AssetWorks makes available successor software products (e.g., software products based on a new technical architecture)

(“Successor Products”) with substantially similar price, features, and functionality to the AssetWorks software product within seven (7) years from the Effective Date of the Agreement, then Client, at its sole discretion, may transfer the AssetWorks software product to the Successor Products, for no additional license fees.

In the event CUSTOMER elects to transfer the AssetWorks software products to the Successor Products, CUSTOMER shall return to AssetWorks the AssetWorks software products and pay the then-current maintenance fees for the Successor Products, fees for services, and fees for third party hardware and software associated with the transfer to the Successor Products AssetWorks’ then current rate(s).

ARTICLE VIII – CUSTOMER’S ENTERPRISE

CUSTOMER's application server(s) and database server(s) are as follows:

<u>Server(s)</u>	<u>Location(s)</u>
Application Server(s): Unlimited	No restrictions
Database Server(s): Unlimited	No restrictions

ARTICLE IX - ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior proposals, oral or written, unless explicitly incorporated by reference into this agreement, all previous negotiations and all other communications or understandings between AssetWorks and CUSTOMER with respect to the subject matter hereof. It is expressly agreed that if CUSTOMER issues a purchase order or other document for the services provided under this Agreement, such instrument will be deemed for CUSTOMER'S internal use only, and any provisions contained therein shall have no effect whatsoever upon this Agreement. This Agreement sets forth the sole and entire understanding between AssetWorks and CUSTOMER with respect to the subject matter. No amendments to this Agreement, either at the execution or subsequently, shall be binding on AssetWorks or CUSTOMER unless agreed to in writing by both parties.

ARTICLE X - GOVERNING LAW; DISPUTES

This Agreement, including its interpretation and enforcement, shall be governed by the law(s) of the State of North Dakota, excluding its conflict of laws rules. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.

ARTICLE XI – GENERAL TERMS

- A. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.
- B. No delay or failure by either party to exercise any right hereunder, or to enforce any provision of this Agreement will be considered a waiver thereof. No single waiver will constitute a continuing or subsequent waiver. To be valid, a waiver must be in writing, but need not be supported by consideration.
- C. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected.
- D. Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally with proof of receipt; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Each party's address for notices is stated below. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.

AssetWorks
 998 Old Eagle School Rd. - Suite 1215

 Wayne, PA 19087
 Attn.: John Hines

City of Bismarck:
 IT-GIS Manager
 P.O. Box 5503
 Bismarck, ND 58501

Copy to:
 Director of Contracts
 AssetWorks LLC
 998 Old Eagle School Rd. - Suite 1215
 Wayne, PA 19087
 Contracts Manager

Copy to:
 Director of Finance
 P.O. Box 5503
 Bismarck, ND 58501
 Attn:

- E. In the event of any dispute arising in the performance of this Agreement or any attachment, AssetWorks and the CUSTOMER will seek to resolve such dispute through good faith, amicable discussions and negotiations. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.
- F. Neither party will be liable for any failure to perform or any delay in performing any of its obligations hereunder when such failure or delay is due to circumstances beyond its reasonable control and without its fault (Force Majeure), including without limitation, any natural catastrophe,

fire, war, riot, strike, or any general shortage or unavailability of materials, components or transportation facilities, or any governmental action or inaction. Upon the occurrence of such event of Force Majeure, the affected party will immediately give notice to the other party with relevant details, and will keep the other party informed of related developments.

EXHIBIT B: SOFTWARE MAINTENANCE AGREEMENT

ARTICLE I – BACKGROUND

AssetWorks and CUSTOMER are parties to a Software License Agreement, Exhibit A of this Agreement, pursuant to which CUSTOMER has licensed certain software products (“Software” or “Product”) from AssetWorks.

The Software paid-up license fee includes a warranty without charge as set forth in the Software License Agreement.

The purpose of this Agreement is to set forth the terms and conditions upon which CUSTOMER has agreed to subscribe to support and maintenance for the Software (“Maintenance”) from AssetWorks.

ARTICLE II - TERMS AND CONDITIONS

Term

Maintenance shall commence immediately upon the Effective Date and shall have a term of twelve (12) months. The term shall automatically renew each year thereafter for an additional twelve (12) month period unless terminated as set forth below.

1) Correction of Deviations

In the event that the CUSTOMER encounters an error and/or malfunction (“Deviation”) in the Software, it shall communicate the circumstances and any supporting information to AssetWorks. Upon receipt, AssetWorks will respond as follows:

- a. In the event that, in the mutual and reasonable opinion of AssetWorks and the CUSTOMER, there exists a Deviation that does not constitute a serious impediment to the normal intended use of the Software, AssetWorks will correct the Deviation and distribute the correction to the CUSTOMER in accordance with AssetWorks’ normal Software revision schedule.
- b. In the event that, in the mutual and reasonable opinion of AssetWorks and the CUSTOMER, there exists a Deviation that does constitute a serious impediment to the normal intended use of the Software, AssetWorks will take such steps as are reasonably required to correct the Deviation.

2) Software Revisions and New Versions

- a. The Software may be revised by AssetWorks as a result of the correction of Deviations and/or the release of upgrades or improvements or modifications designed to improve the performance of the Software and/or to increase the capabilities of the Software (hereafter “Revisions”). Revisions shall be of two kinds:
 - i. Revisions that the CUSTOMER is obliged to implement (“Mandatory Revisions”);
 - ii. Revisions that may be implemented by the CUSTOMER at its option (“Optional Revisions”).
 - iii. No charge shall be made to the CUSTOMER for either Mandatory Revisions or Optional Revisions.
- b. New products (“New Products”) may be added to the Software by AssetWorks from time to time. Compared to a Revision, New Products substantially improves the performance of the Software and/or substantially increases its functionality and capability. AssetWorks, in its sole discretion, shall

decide which upgrades and improvements will be issued as Revisions without charge and which shall be issued as New Products for which there may be a charge.

3) Telephone Hotline Assistance

AssetWorks, at its expense, shall make available technically qualified personnel to respond to all reasonable telephone requests, Monday through Friday, excluding State holidays, during normal business hours, that may be made by the CUSTOMER relating to the application and operation of the Software. At other times such personnel are available by pager for emergencies. The terms of Post Implementation Support represented in Exhibit L represents the availability of technical support services for the Customer.

4) Technical Literature

AssetWorks shall make available to the CUSTOMER all technical literature in electronic format that is considered by AssetWorks to be relevant to the Software and its use within the scope of CUSTOMER'S operations.

5) Transmission

All Revisions and New Products will be made available for download by the CUSTOMER via access to the AssetWorks website or other suitable media, at the option of AssetWorks. The CUSTOMER shall be solely responsible for executing the appropriate instructions in order to transfer the Revisions or New Products onto its system.

6) Remote Diagnostic Access

The CUSTOMER shall provide appropriate remote access capabilities with which AssetWorks may, with the permission of the CUSTOMER, remotely access the Software for the purpose of remote diagnostics and support.

7) Proper Use

- a. Except as expressly authorized under this Agreement, CUSTOMER shall not modify the Source Code as defined in the Software License Agreement.
- b. The CUSTOMER agrees that all reasonable effort shall be taken to ensure that neither the Software nor data files are misused or modified without the express written permission of AssetWorks.
- c. In the event that the CUSTOMER or its agents misuses or modifies the Software or data files, including, but not limited to, inserting, updating, deleting or otherwise modifying data through a means other than the Software, although AssetWorks is not obligated to correct such misuse, AssetWorks shall be entitled to attempt to correct the situation, if possible, at CUSTOMER'S expense.
- d. In the event that diagnostic assistance is provided by AssetWorks, which, in the reasonable opinion of AssetWorks and the CUSTOMER, relates to problems not caused by a Deviation in the Software, such assistance shall be at the CUSTOMER's expense.

8) Software Maintenance Fee – Paid Up License

In consideration of the Maintenance services to be provided by AssetWorks for the initial twelve month period hereunder, CUSTOMER shall pay to AssetWorks an amount set forth on Exhibit D. For each twelve month period thereafter, CUSTOMER will pay to AssetWorks fees in accordance with this Agreement.

9) Additional Software Maintenance Fee – Paid Up License

In the event the CUSTOMER acquires Software in addition to that indicated in Exhibit D of this Agreement (the "Additional Software"), the Maintenance shall automatically be extended to cover the Additional Software,

and the CUSTOMER shall pay an additional annual Maintenance fee in an amount equal to twenty percent (20%) of the then current license fee for the Additional Software at the time of acquisition.

10) Reserved

11) Payment Terms

- e. Annual payments for Maintenance will be due in advance of the commencement of the initial one-year term of the Maintenance and each anniversary thereafter.
- a. AssetWorks reserves the right to change the annual Maintenance fee by providing CUSTOMER written notice of the increase at least thirty (30) days prior to any scheduled renewal date. Fees shall be charged in accordance with Exhibit D.
- b. AssetWorks reserves the right to apply a late payment charge of 1.5% per month to amounts outstanding more than thirty (30) days after the date of the invoice.

12) Default and Termination

- a. The CUSTOMER shall have the right to terminate Maintenance upon delivery of written notice at least ninety (90) days prior to any scheduled renewal date.
- b. AssetWorks may cancel Maintenance in the event that the CUSTOMER does not implement a Mandatory Revision within sixty (60) days of receipt thereof or such longer period as AssetWorks may consent to in writing. In the event that CUSTOMER does not implement a Mandatory Revision within thirty (30) days following receipt of written notice from AssetWorks of CUSTOMER's failure to implement a Mandatory Revision, AssetWorks may then cancel Maintenance, effective immediately, by notice in writing to the CUSTOMER.
- c. In the event of any breach of the terms and conditions of this Agreement by the CUSTOMER, AssetWorks will, by written notice to the CUSTOMER, give the CUSTOMER a period of thirty (30) days within which to institute remedies to correct such breach. In the event that such breach has not been corrected to AssetWorks' satisfaction within said thirty (30) day period, AssetWorks may then cancel Maintenance, effective immediately, by notice in writing to the CUSTOMER.
- d. In the event that Maintenance is terminated by AssetWorks, AssetWorks shall have no continuing obligations to the CUSTOMER of any nature whatsoever with respect to Maintenance. Furthermore, termination by AssetWorks pursuant to the provisions hereof shall be without prejudice to any right or recourse available to AssetWorks, and without prejudice to AssetWorks' right to collect any amounts, which remain due to it hereunder.

13) Limitation of Liability

- a. In the event of any claim brought by one party against another hereunder, a party will be liable only for actual, direct losses or damages incurred (including cost of cover), limited to the amount of fees paid to AssetWorks for maintenance services; provided, the claiming party shall be obliged to take reasonable steps to mitigate its losses or damages.
- b. Irrespective of the basis or theory of the claim, neither party will be liable for any special, punitive, exemplary, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data, even if it has been advised of the possibility of such damages.

14) General Terms

- a. Neither AssetWorks nor CUSTOMER will assign or transfer its interest in this Agreement or any Attachment without the prior written consent of the other party.

- b. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.
- c. No delay or failure by either party to exercise any right hereunder, or to enforce any provision of this Agreement will be considered a waiver thereof. No single waiver will constitute a continuing or subsequent waiver. To be valid, a waiver must be in writing, but need not be supported by consideration.
- d. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected.
- e. This Agreement, including its interpretation and enforcement, will be governed by the substantive laws of the State of North Dakota excluding its conflict of laws rules.
- f. Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally with proof of receipt; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Each party's address for notices is stated below. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.

AssetWorks LLC 998 Old Eagle School Rd. - Suite 1215 Wayne, PA 19087 Attn: John Hines	City of Bismarck: IT-GIS Manager PO Box 5503 Bismarck, ND 58506
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Copy to: Director of Contracts AssetWorks, Inc. 998 Old Eagle School Rd. - Suite 1215 Wayne, PA 19087	Copy to: City of Bismarck Director of Finance PO Box 5503 Bismarck, ND 58506
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- g. In the event of any dispute arising in the performance of this Agreement, AssetWorks and the CUSTOMER will seek to resolve such dispute through good faith, amicable discussions and negotiations. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.
- h. Neither party will be liable for any failure to perform or any delay in performing any of its obligations hereunder when such failure or delay is due to circumstances beyond its reasonable control and without its fault (Force Majeure), including, without limitation, any natural catastrophe, fire, war, riot, strike, or any general shortage or unavailability of materials, components or transportation facilities, or any governmental action or inaction. Upon the occurrence of such event of Force Majeure, the affected party will immediately give notice to the other party with relevant details, and will keep the other party informed of related developments.
- i. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral, and all prior written, negotiations, commitments and understandings of the

parties relating to the subject matter hereof. This Agreement may not be modified except by a writing executed by both parties.

EXHIBIT C: PROFESSIONAL SERVICES AGREEMENT

ARTICLE I- BACKGROUND

1. AssetWorks contracts to provide its clients professional services ("Services") including, without limitation, custom software development, consulting, education, installation, data conversion, training, and software modifications.
2. The Services to be delivered by AssetWorks are set forth in the Statement of Work attached hereto as Attachment 1.
3. The purpose of this Agreement is to set forth the terms and conditions upon which AssetWorks will provide the Services for CUSTOMER in accordance with Attachment 1 and such other Attachments that may be added by the parties in the future.

ARTICLE II - RESPONSIBILITIES OF THE PARTIES FOR ENGAGEMENTS

1. No Attachment shall be of any force and effect unless and until executed by both AssetWorks and CUSTOMER.
2. Each Attachment will either be on a Time and Material basis or a Fixed Price basis, specified in the Attachment. The Attachment may or may not include a definitive list of "Deliverables" that must be completed by AssetWorks. In some instances, the Attachment will include a date by which "Deliverables" must be completed.
3. In the event that Services result in greater AssetWorks duties than contemplated by the Attachment, CUSTOMER will work closely and in good faith with AssetWorks to modify the Attachment to ensure that the CUSTOMER's requirements are addressed and AssetWorks' fees shall be adjusted to reflect increased CUSTOMER requirements.
4. Unless specifically addressed in the Attachment, all travel and expenses incurred will be extra and billed at the time of incurrence according to prevailing IRS per diem schedules. Transportation services would be reimbursed for coach class or equivalent.

ARTICLE III – REPRESENTATIONS AND WARRANTIES

1. AssetWorks covenants and warrants that it will perform all Services with due diligence, in a professional and careful manner, and in compliance with all applicable laws and governmental regulations.
2. AssetWorks represents and warrants that the Services provided will not infringe any patent, trademark, trade secret, copyright or other intellectual property right of anyone.

3. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH HEREIN, AssetWorks DISCLAIMS ALL WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, and the stated express warranties are in lieu of all obligations or liabilities on the part of AssetWorks arising out of or in connection with the performance of the Services to be provided herein.

ARTICLE IV – RELATIONSHIP OF THE PARTIES

The parties are independent contractors and under no circumstances will either be deemed to be an agent, partner, legal representative, employee or joint venture partner of the other party.

ARTICLE V - SUBCONTRACTORS

With the consent of the CUSTOMER, AssetWorks may engage subcontractors to assist in performing Services to CUSTOMER; provided, AssetWorks shall supervise such sub-contractors and the Services performed by them to the same extent as if AssetWorks performed the work.

ARTICLE VI – INTELLECTUAL PROPERTY RIGHTS

1. SOFTWARE FIRST DEVELOPED
Unless otherwise provided in an Attachment, AssetWorks grants to the CUSTOMER the same rights, and CUSTOMER undertakes the same obligations with respect thereto, any new software and/or documentation first developed by AssetWorks under this Agreement that the CUSTOMER received pursuant to the Software License Agreement in effect between the parties.
2. AssetWorks EXISTING SOFTWARE
AssetWorks retains title to and ownership of all software and enhancements or modifications thereto, and/or documentation furnished to the CUSTOMER under this Agreement to which it had title to or ownership of prior to the commencement of this Agreement.

ARTICLE VII – CONFIDENTIAL INFORMATION

1. Because either party may have access to information of the other party that the other party considers to be confidential or proprietary (“Confidential Information”), each party will maintain all Confidential Information in confidence and will use it solely in the discharge of its obligations under this Agreement and any applicable Attachment. Nothing herein will be deemed to restrict a party from disclosing Confidential Information to its employees and subcontractors in the discharge of such obligations.
2. Confidential Information will not include information that (i) is, or becomes, generally known or available through no fault of the, recipient; (ii) is known to the recipient at the time of its receipt from the disclosing party; (iii) the disclosing party provides to a third party without restrictions on disclosure; (iv) is subsequently and rightfully provided to the recipient by a third party without restriction on disclosure; (v) is independently developed by the recipient, without reference to the disclosing party's Confidential Information; or (vi) is required to be disclosed pursuant to a governmental agency or court subpoena, provided the recipient promptly notifies the disclosing party of such subpoena to allow it reasonable time to seek a protective order or other appropriate relief.

3. Because of the unique nature of the Confidential Information, each party agrees that the disclosing party may suffer irreparable harm in the event the recipient fails to comply with its obligations under this Section G, and that monetary damages may be inadequate to compensate the disclosing party for such breach. Accordingly, the recipient agrees that the disclosing party may, in addition to any other remedies available to it, be entitled to injunctive relief.

ARTICLE VIII – NON-SOLICITATION

During the term of this Agreement, and for one year thereafter, neither party will solicit the employment of, or contract for the services of, any person who is/was an employee, agent, or subcontractor of the other party during the term of this Agreement.

ARTICLE IX - PAYMENT

1. AssetWorks will be paid for the Services at the rate stated in Attachment 1 and or Exhibit D or any future Attachment.
2. AssetWorks will issue monthly invoices to CUSTOMER for Services fees and expenses due unless otherwise provided for in a particular Attachment. CUSTOMER will pay AssetWorks' invoices pursuant to the terms of the Attachment or within thirty (30) days of receipt if not specified in the Attachment. AssetWorks shall provide CUSTOMER a detailed invoice, itemized as appropriate, representing the issue date, and related expense details (e.g. travel). If any portion of an invoice is disputed, the CUSTOMER shall pay any undisputed amounts when due. CUSTOMER may withhold the disputed amount without incurring any interest charges or penalties if CUSTOMER provides prompt notification to AssetWorks. CUSTOMER and AssetWorks shall attempt to resolve the dispute according to the provisions of Article XV – Section 7.
3. AssetWorks reserves the right to apply a late payment charge of 1.5% per month to amounts outstanding more than thirty (30) days after the date of the invoice.

ARTICLE X – TERM OF AGREEMENT

1. This Agreement will commence as of the Effective Date and shall continue in full force and effect until terminated pursuant to the terms hereof.
2. CUSTOMER may terminate this Attachment or any Attachment if AssetWorks defaults in any of its obligations under such Attachment and AssetWorks is provided with thirty (30) calendar days written notice of such default; provided, there shall be no default and not termination if the breach is cured within the notice period or, if the breach cannot reasonably be so cured, diligent efforts to effect such cure are commenced during that period and are continued until the cure is completed, which shall be within a reasonable time. In the event the default is not cured or diligent efforts to effect a cure are not underway, the Attachment at issue shall terminate, but the Agreement and any remaining Attachments shall remain in full force and effect.
3. Either party shall have the right to terminate this Agreement if the other party is in default of any obligation hereunder and the defaulting party is provided with thirty (30) calendar days written notice of such default; provided, there shall be no default and no termination if the breach is cured within the notice period or, if the breach cannot reasonably be so cured, diligent efforts to effect such cure are commenced during that period and are continued until the cure is completed, which shall be within a reasonable time.

ARTICLE XI – EFFECT OF TERMINATION

1. In the event of the termination of any Attachment or this Agreement, CUSTOMER shall be liable to AssetWorks for an amount equal to the value of the Services completed up to the effective date of termination. In the event CUSTOMER terminates this Agreement for any reason other than pursuant to the terms of Article X, CUSTOMER shall be liable for the full fees due under this Agreement.
2. If one or more Attachment(s) and/or this Agreement is/are terminated, AssetWorks will, within thirty (30) days after such termination, submit final invoices for Services provided through the effective date of such termination, and CUSTOMER will promptly pay AssetWorks' invoices.

ARTICLE XII - INDEMNITIES

1. Each party will defend, indemnify and hold the other party harmless from and against any and all claims, liabilities, damages and expenses, including reasonable attorney fees, incurred by the indemnified party, to the extent caused by the willful misconduct or negligent acts or omissions of the indemnifying party or its agents and employees in the performance of the party's duties under this Agreement or an Attachment.; provided such defense and payments are conditioned on the following: (1) that indemnitor shall be promptly notified in writing by the indemnitee following its receipt of any such claim; and (2) that indemnitor shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.
2. AssetWorks will defend, indemnify and hold harmless CUSTOMER from and against all claims, liabilities, damages and costs, including attorney fees and other legal expenses ("Claims"), relating to any actual or alleged infringement by any Services of any patent, copyright, trade secret or other intellectual property right or proprietary right of anyone; provided such defense and payments are conditioned on the following: (1) that AssetWorks shall be promptly notified in writing by CUSTOMER following its receipt of any such claim; and (2) that AssetWorks shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

ARTICLE XIII - INSURANCE

1. At CUSTOMER'S request, AssetWorks will provide CUSTOMER with current certificates of insurance evidencing that AssetWorks has coverage with the limits listed below.

<u>COVERAGE</u>	<u>MINIMUM LIMITS</u>
Commercial General Liability	\$1,000,000/occurrence; \$2,000,000 aggregate
Commercial Auto Liability (Incl "non-owned" vehicle coverage)	\$1,000,000 combined single limit
WORKERS' COMP	STATUTORY
LIMITS Employer's Liability	\$500,000
Commercial Crime	\$1,000,000

ARTICLE XIV – LIMITATION OF LIABILITY

1. In the event of any claim brought by one party against another hereunder, a party will be liable only for actual, direct losses or damages incurred, limited to the amount of fees for which AssetWorks contracted under the Attachment that is the subject of the claim provided, the claiming party shall be obliged to take reasonable steps to mitigate its losses or damages.
2. Irrespective of the basis of the claim, neither party will be liable for any special, punitive, exemplary, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data, even if it has been advised of the possibility of such damages.

ARTICLE XV – GENERAL TERMS

1. Neither AssetWorks nor CUSTOMER will assign or transfer its interest in this Agreement or any Attachment without the prior written consent of the other party.
2. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.
3. No delay or failure by either party to exercise any right hereunder, or to enforce any provision of this Agreement will be considered a waiver thereof. No single waiver will constitute a continuing or subsequent waiver. To be valid, a waiver must be in writing, but need not be supported by consideration.
4. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected.
5. This Agreement, including its interpretation and enforcement, will be governed by the substantive laws of the State of North Dakota excluding its conflict of laws rules.
6. Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally with proof of receipt; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Each party's address for notices is stated below. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.

AssetWorks LLC
998 Old Eagle School Rd., Ste. 1215

Wayne, PA 19087
Attn: John Hines

Copy to:
Director of Contracts
AssetWorks LLC
998 Old Eagle School Rd. - Suite 1215
Wayne, PA 19087
Attn: Contracts Manager

City of Bismarck
IT-GIS Manager
PO Box 5503
Bismarck, ND 58506-5503
Attn: Wayne Stoppler

Copy to:
City of Bismarck
Director of Finance
PO Box 5503
Bismarck, ND 58506

7. In the event of any dispute arising in the performance of this Agreement or any Attachment, AssetWorks and the CUSTOMER will seek to resolve such dispute through good faith, amicable discussions and negotiations. Any specific agreed upon problem escalation procedure will be stated in the related Attachment. In the event of a conflict between the terms of an Attachment and this Agreement, the Attachment shall control unless otherwise provided in the Attachment. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.
8. Neither party will be liable for any failure to perform or any delay in performing any of its obligations hereunder when such failure or delay is due to circumstances beyond its reasonable control and without its fault (Force Majeure), including without limitation, any natural catastrophe, fire, war, riot, strike, or any general shortage or unavailability of materials, components or transportation facilities, or any governmental action or inaction. Upon the occurrence of such event of Force Majeure, the affected party will immediately give notice to the other party with relevant details, and will keep the other party informed of related developments.
9. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral, and all prior written, negotiations, commitments and understandings of the parties relating to the subject matter hereof. This Agreement may not be modified except by a writing executed by both parties.

Attachment 1
STATEMENT OF WORK

EXHIBIT D: SOFTWARE LICENSE FEES

SOFTWARE LICENSE FEES

EAM Software	Quantity	Unit Price	Line Total
Standard License	1	\$ 65,000.00	\$ 65,000.00
<i>Subtotal - Standard License</i>			\$ 65,000.00
Required Modules			
Shop Activity Module	1	10%	\$ 6,500.00
Customer Access Module	1	5%	\$ 3,250.00
Reporting Module	1	5%	\$ 3,250.00
KPI/Dashboards Module	1	5%	\$ 3,250.00
ESRI Integration Module	1	15%	\$ 9,750.00
ACTIONMap!	1	10%	\$ 6,500.00
MAXQueue Integration Module	1	5%	\$ 3,250.00
MobileFocus, Enterprise License	1	20%	\$ 13,000.00
EAM License Subtotal			\$ 113,750.00
Crystal Reports Server Embedded 2008	1	\$ 2,900.00	\$ 2,900.00
Crystal Reports Professional 2008 (First License)	1	Included	\$ -
Crystal Reports Professional 2008 (Additional Licenses)	0	\$ 495.00	\$ -
Subtotal			\$ 116,650.00
EAM Software Discount 25%			\$ 29,162.50
Software Net Price			\$ 87,487.50
Software Maintenance - Year 1			\$ 23,330.00
Net Year One Software & Maintenance			\$ 110,817.50

Payment terms are provided are 75% of software licensing payable at contract execution and the remaining 25% payable at client acceptance of go-live. Software maintenance will be pro-rated to coincide with the City's fiscal year.

SOFTWARE MAINTENANCE FEES

Prorated from August 23 to December 31, 2016 to \$8,373.23

January 1, 2017 – December 31, 2017: \$23,330.

Annual increases limited to an increase of not more than 4% of the preceding year.

PROFESSIONAL SERVICES FEES

Professional Services - Baseline Implementation - Phase 1	Work (Hrs)	Line Total
Project Preparation and Kick-Off Planning	16	\$ 3,280.00
Provide Project Management and Support	85	\$ 17,425.00
Business Process and Requirements Assessment	125	\$ 25,625.00
Software Installation and Preparation	16	\$ 3,040.00
System Setup Consulting - Phase 1	24	\$ 4,920.00
Finalize Data Elements and Coding Structure	40	\$ 8,200.00
Data Conversion	76	\$ 15,580.00
Configure Web Portals	36	\$ 7,380.00
GIS/Mapping Configuration	30	\$ 6,150.00
Notification Configuration	40	\$ 8,200.00
System Testing	104	\$ 21,320.00
Training Preparation and Delivery	140	\$ 28,700.00
Prepare for Cut-Over	20	\$ 4,100.00
Provide for Remote and Onsite Support	80	\$ 16,400.00
Baseline Implementation Subtotal	832	\$ 170,320.00

Project Summary - City Hosted - Year One	Line Total
Software and Maintenance	\$ 110,817.50
Professional Services - Phase	\$ 170,320.00
Project Total	\$ 281,137.50

Estimated Travel - Billed as Incurred \$ 30,000.00

Future software and services beyond what is identified in Phase 1 will be scoped and priced individually. This would include but not be limited to additional software modules, modifications, integrations, custom reports, data conversions, and any other service requested by the City.

Hourly Rates (by labor category) are based on AssetWorks standard hourly rates:

Project Manager/Consultant/Trainer: \$205.00 per hour
 Developer/Technical Staff: \$190.00 per hour

AssetWorks may take the following actions, in its discretion, so long as AssetWorks does not exceed the total Estimated Price: (i) Use fewer hours of one labor category and more hours of another labor category or categories, and (ii) Vary the expenditures between the estimated labor amounts and the other direct cost expenditures (e.g., use more labor and less travel).

DELIVERABLE BASED PAYMENT MILESTONES



1-Aug-16

Milestone Payment Schedule - Implementation Services

Milestone	Planned Delivery*	Net Milestone Lump Sum	Percent of Services Total for PM Services	PM Portion of Milestone	Final Milestone Lump Sum Amount	Invoice Number	Amount Billed	Date Billed	Paid
Project Kick-off and Orientation		\$ 3,280.00	2.29%	\$ 399.52	\$ 3,679.52				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Project Management Plan Project kick-off meeting Project orientation training session Revised/finalized project plan/schedule for the initial implementation with WBS tasks per the SOW 									
Business Process and Requirements Assessment									
Integration and Data Requirements Documentation		\$ 12,300.00	8.60%	\$ 1,498.22	\$ 13,798.22				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Fit/Gap Requirements Report <ul style="list-style-type: none"> Recommendations for data migration and configuration Recommendations for reports and defined queries Recommendations for interfacing to other system Summary and recommendations for notifications and potential software modifications to be included in the initial implementation 									
Final Future State Recommendation		\$ 13,325.00	9.31%	\$ 1,623.07	\$ 14,948.07				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Functional Future State Report Conference Room Pilot 									
Software Installation									
Installed AssetWorks Software		\$ 3,040.00	2.13%	\$ 370.29	\$ 3,410.29				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Installation of two environments of AssetWorks software 									
System Setup Consulting Services									
System Setup Training Workshop		\$ 4,920.00	3.44%	\$ 599.29	\$ 5,519.29				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Coding structure and data definition workshop 									
Final Coding Structure Loaded		\$ 8,200.00	5.73%	\$ 998.81	\$ 9,198.81				
Deliverables included in milestone:									
<ul style="list-style-type: none"> System coding lists loaded to test environment 									
Data Loading Services									
Data Loading Plan		\$ 3,280.00	2.29%	\$ 399.52	\$ 3,679.52				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Data Conversion Plan Data Loading Templates 									
Data Conversion Complete in Test Env		\$ 9,020.00	6.31%	\$ 1,098.69	\$ 10,118.69				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Data Loading and Validation/Testing 									
System Configuration Services									
Configure Web Portals		\$ 7,380.00	5.16%	\$ 898.93	\$ 8,278.93				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Configured modules 									
GIS/Mapping Configuration		\$ 6,150.00	4.30%	\$ 749.11	\$ 6,899.11				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Configured GIS data management 									
Notification Configuration		\$ 8,200.00	5.73%	\$ 998.81	\$ 9,198.81				
Deliverables included in milestone:									
<ul style="list-style-type: none"> 5 Configured notifications 									
System Testing Services									
Test Plan		\$ 6,560.00	4.59%	\$ 799.05	\$ 7,359.05				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Written Test Plan. System Test scripts for AssetWorks EAM system testing. UAT scripts for AssetWorks EAM UAT testing 									
Testing Complete		\$ 14,760.00	10.32%	\$ 1,797.86	\$ 16,557.86				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Test results for AssetWorks EAM system testing. Test results for AssetWorks EAM UAT. 									
Training Preparation									
Training Plan and Materials		\$ 5,740.00	4.01%	\$ 699.17	\$ 6,439.17				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Training Plan Training Plan for administrators, trainers and end users Training materials for trainers and end users 									
Training Delivery Services									
System Admin Training		\$ 4,100.00	2.87%	\$ 499.41	\$ 4,599.41				
Deliverables included in milestone:									
<ul style="list-style-type: none"> System administrator training classes 									
User Training		\$ 12,300.00	8.60%	\$ 1,498.22	\$ 13,798.22				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Train the Trainer training classes 									
Post-Implementation Support Services									
Cut Over and On-Site Support		\$ 20,500.00	14.33%	\$ 2,497.03	\$ 22,997.03				
Deliverables included in milestone:									
<ul style="list-style-type: none"> Live production environment and operations City to have access to the AssetWorks staff members assigned to the implementation team for a period of 60 days following the official cutover to go-live for each project phase. 									
Total Software and Services		\$ 143,055.00		\$ 17,425.00	\$ 160,480.00		\$ -		

* To be determined at time of project kick-off

PM	\$ 17,425.00
Travel	\$ 30,000.00 (To be billed as incurred)
Travel	\$ 30,000.00 (To be billed as incurred)

EXHIBIT E: ASSEWORKS RESPONSE TO CUSTOMER'S RFP

Technical and Cost Proposals

EXHIBIT F: CUSTOMER'S REQUEST FOR PROPOSAL FOR A CRM/WMS

EXHIBIT G: CUSTOMER ADDENDUM #1 to RFP

EXHIBIT H: CUSTOMER ADDENDUM #2 TO RFP

**EXHIBIT I: ASSEWORKS RESPONSE TO CUSTOMER QUESTIONS DATED
APRIL 19, 2016**

**EXHIBIT J: ASSEWORKS RESPONSE TO CUSTOMER QUESTIONS POST-
DEMONSTRATION**

**EXHIBIT K: ASSEWORKS CONTRACT TERMS AND CONDITIONS COMPLIANCE
CHECKLIST**

Exhibit K

Contract Terms & Conditions Compliance Checklist Updated 8.11.16

Proposal responders are to mark the Comply, Exception, or Not Comply column. Comply indicates the proposal responder understands and agrees to comply fully. Exceptions must be fully explained on the bottom portion of this page. The Client reserves the right to reject any proposal for non-compliance with any of the specifications.

#	Title	Comply	Exception	Not Comply
5.1.	Scope of Agreement	X		
5.2.	Documentation		X	
5.3.	Incorporation by Reference	X		
5.4.	Entire Agreement Clause	X		
5.5.	Applicable and Governing Law Clause	X		
5.6.	Wording Conflicts	X		
5.7.	Standard Forms and Contracts	X		
5.8.	Grant of License	X		
5.9.	Use of Licenses by Personnel Who Are Not Employees	X		
5.10.	Replication of Software	X		
5.11.	Disaster Recovery & Disaster Recovery Testing		X	

#	Title	Comply	Exception	Not Comply
5.12.	Term and Termination Clause		X	
5.13.	Warranty	X		
5.14.	Year 2000 Warranty	X		
5.15.	Continuity of Warranty	X		
5.16.	Disclaimers and Limitations of Remedies	X		
5.17.	Intellectual Property		X	
5.18.	Indemnification		X	
5.19.	Patents, Copyrights, and Proprietary Rights Indemnification		X	
5.20.	Insurance	X		
5.21.	Insurance Coverage	X		
5.22.	Limitation of Liability		X	
5.23.	Unlimited Liability for Software Vendor Infringement	X		
5.24.	Freedom of Information Act	X		
5.25.	Confidentiality	X		
5.26.	Title and Confidentiality			
5.27.	Identification of Parties to the Agreement Clause	X		
5.28.	Notices Clause	X		
5.29.	Agreement Extension and Modification Clause	X		

5.30.	Contract Extension		X	
5.31.	Changes in Agreement	X		
5.32.	Survival Clause	X		
5.33.	Risk During Software Installation	X		
5.34.	Subcontractors	X		
5.35.	Control of Sub-Contractor, Project Team and Project Manager Designation	X		
5.36.	Effect of Regulation	X		
5.37.	Assignments	X		
5.38.	Vendor as Independent Contractor	X		
5.39.	Advertisement	X		
5.40.	Password Security	X		
5.41.	Project Schedule and Acceptance.	X		
5.42.	Programming Services	X		
5.43.	Acceptance Testing	X		
5.44.	Professional Services Warranty	X		
5.45.	Ineffective Training	X		
5.46.	Subcontracts	X		
5.47.	Non-Performance Escalation Procedures	X		
5.48.	Force Majeure Clause	X		
5.49.	Force Majeure Requisites	X		
5.50.	120 Day Maximum	X		
5.51.	Right of Cancellation	X		
5.52.	Liquidated Damages		X	
5.53.	Pricing	X		
5.54.	Change Orders	X		
5.55.	Payment Terms		X	

#	Title	Comply	Exception	Not Comply
5.56.	Right to Withhold Payment	X		
5.57.	Travel Expense Reimbursement	X		
5.58.	Funding Out	X		
5.59.	Non-Collusion	X		
5.60.	Conflict of Interest	X		
5.61.	Maintenance and Support Services		X	
5.62.	Annual Maintenance and Support Fees		X	
5.63.	Resolution and Response Time Warranty	X See Note		
5.64.	Termination of Annual Maintenance and Support	X		
5.65.	Source Code Escrow		X	
5.66.	Video and Audio Recording	X		
5.67.	Federally Mandated Changes	X		
5.68.	Future Releases/Upgrades	X		
5.69.	Solution Longevity		X	
5.70.	Successor Software Products	X		
5.71.	Functionality Replacement	X		
5.72.	Right to Outsource	X		
5.73.	Vendor Merger or Acquisition		X	

5.74.	Equal Opportunity Employment/Nondiscrimination Policy	X		
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6.1 Contract Terms and Conditions – Exception Explanations

For all items marked as “Exception” in the Agreement Terms and Conditions Compliance Checklist, a Vendor must fully explain the exception on the Exception Explanations form below.

Exception Explanations		
#	Title	Explanation of Exception
5.2.	Documentation:	As part of the software license we provide non-editable product documentation in electronic form. The City is welcome to copy and distribute as many copies as they like to their users.
5.11.	Disaster Recovery & Disaster Recovery Testing:	This is provided should the City choose a hosted environment at AssetWorks data center. If the software is City hosted the City is responsible for disaster recovery and testing.
5.12.	Term and Termination Clause:	AssetWorks shall be entitled to compensation for product and services provided in accordance with this contract up to and including the date of termination.
5.17.	Intellectual Property:	AssetWorks’ solution is a proprietary solution, and AssetWorks will retain all pre-existing intellectual property and any derivatives thereof.
5.18.	Indemnification:	AssetWorks will be responsible and indemnify customer for third party claims rising directly from the acts or omissions of AssetWorks. Except for third party claims for personal injury, property damage, and infringement, AssetWorks requires a limitation of liability in all contracts capping the amount of damages to the contract value and the type of damages to direct.
5.19.	Patents, Copyrights, and Proprietary Rights Indemnification:	AssetWorks will not agree to contractual remedy of refund. Because solution is proprietary and unique, cover (“expenses related to the installation ... to the new solution”) may not be appropriate.
5.22.	Limitation of Liability:	AssetWorks will be responsible and indemnify customer for third party claims rising directly from the acts or omissions of AssetWorks. Except for third party claims for personal injury, property damage, and infringement, AssetWorks requires a limitation of liability in all contracts capping the amount of damages to the contract value and the type of damages to direct.
5.30.	Contract Extension:	AND 5.52. Liquidated Damages: AssetWorks does not agree to contractual liquidated damages.
5.55.	Payment Terms:	AssetWorks typically invoices license fees and first year maintenance upon contract execution and services and related expenses monthly in arrears as delivered. Invoices are due 30 days after invoice date. Specific payment terms will be detailed in the agreement.
5.61.	Maintenance and Support Services:	AssetWorks will generally comply with all provisions of this section however guarantee of pricing for Extended Services cannot be granted until final contract negotiations. Any guarantees of pricing will be detailed in the agreement.
5.62.	Annual Maintenance and Support Fees:	AssetWorks is open to discussing these terms during final contract negotiations. Fees will be outlined in the agreement.
5.63.	Resolution and Response Time:	Based on metrics reporting of our CRM tool, AssetWorks Support Center history averages an initial contact answered in under 10 seconds. For all reported incidents resolution is usually in under 10 minutes for Priority 1 within 30 minutes for Priority 2, within 24 hours for Priority 3 and Priority 4 resolution typically within 5 days. Response and resolution times can vary and are not guaranteed. Our Service Level Agreement is offered as Exhibit L, the Post Implementation Support document.
5.65.	Source Code Escrow:	AssetWorks notes that its escrow agent will require that its standard forms be executed in order to add Customer as a beneficiary at Customer’s expense. Release events will be limited to AssetWorks no longer operating its business or filing for bankruptcy.
5.69.	Solution Longevity:	When the City purchases the software as a proprietary product the license is owned by the City. AssetWorks fully supports the software provided annual maintenance contracts are in effect without regard to the number of years in the future.
5.73.	Vendor Merger or Acquisition:	AssetWorks cannot bind an unknown third party acquirer. AssetWorks would

anticipate any acquisition of substantially all its assets or of its business would require any acquirer to honor the existing rights and obligations of any current contract, and any final contract between AssetWorks and the Customer could set forth restrictions on assignment of a valid contract in the event of change in control of AssetWorks. AssetWorks, however, would not agree to any provision that extended a term of the contract upon acquisition of AssetWorks, as it is not a common contractual provision and is possibly unenforceable.

7.12 #9. Contractual Inquiry: AssetWorks provides limited warranties typical of the industry. For 90 days, software is warranted to conform to specifications

Standard Agreements (new) – As requested, AssetWorks has attached for Customer’s consideration its standard agreements under which AssetWorks provides products and performs services for its customers.

Intellectual Property (new) - AssetWorks’ solution is a proprietary solution, and AssetWorks will retain all pre-existing intellectual property and any derivatives thereof.

Limitation of Liability (new) - Except for third party claims for personal injury, property damage, and infringement, AssetWorks requires a limitation of liability in all contracts capping the amount of damages to the contract value and the type of damages to direct.

EXHIBIT L: POST IMPLEMENTATION SUPPORT



FINANCE DEPARTMENT

DATE: August 15, 2016
FROM: Sheila Hillman 
ITEM: Approval of Contract Extension with Plante & Moran

REQUEST

Consider approval of the extension of the consulting contract with Plante & Moran

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

In 2015 the Commission approved a contract with Plante & Moran for a city-wide assessment of work order management system needs with a contract extension to assist in the preparation of the RFP and selection of the system in the fall. The Project Team's recommendation to select AssetWorks for the worker order management system is identified in the previous agenda item. The recommendation also includes contracting with Plante & Moran for implementation support in phase 1 of the project. This is a new integrated comprehensive system and since it is a city-wide system, the professional support will help ensure the business processes identified in their needs assessment are validated in the system requirements.

The contract for the extension of the consulting services is attached for Commission consideration and approval. Please refer to Phase 4 for the management support services to be provided. The cost of the contract is \$11,000 which includes all travel costs and expenses. The funding for the contract is provided in the 2016 one time funds for the work order management system.

RECOMMENDED CITY COMMISSION ACTION

Consider approval of the contract with Plante & Moran to extend their consulting services for phase 1 of the implementation of the AssetWorks Work Order Management System

STAFF CONTACT INFORMATION

Sheila Hillman: shillman@bismarcknd.gov or 355-1600

Attachment



Plante & Moran, PLLC
27400 Northwestern Highway
P.O. Box 307
Southfield, MI 48037-0307
Tel: 248.352.2500
Fax: 248.352.0018
plante Moran.com

August 12, 2016

Mrs. Sheila Hillman, Finance Director
City of Bismarck - Finance Department
221 N. 5th Street | P.O. Box 5503
Bismarck, ND 58506-5503

RE: WMS/CRM Implementation Consulting Services

Dear Mrs. Hillman:

Thank you for the opportunity to offer Plante Moran's professional services to support the City of Bismarck, ND ("the City") with implementation of a Work Management System (WMS). In response to your request, we are pleased to present this proposal outlining our Firm's continuing consulting services to assist in the City's WMS/CRM solution.

PROPOSED SCOPE OF SERVICES

The City has been working with Plante Moran's Government Technology Consulting team to perform a comprehensive WMS assessment leading to the evaluation and selection of a new enterprise WMS system. We have mapped out a preliminary scope of services intended to advance the recommendations proposed in that report, identifying project activities, responsibilities, and deliverables in activities grouped into three phases. This Summary is intended to be a starting point for discussion and can be revised to accommodate the City's objectives. As proposed, the first two phases involve WMS process optimization and solution selection support services. The third phase represents a related customer relationship management (CRM) component designed to automate and streamline the management of service requests.

■ **Phase 1: Process Optimization for Participating WMS Departments** (*completed – exception of task 1.5: Develop Asset Management Strategy for Services Areas Asset Types*)

This phase includes the development of a detailed project schedule, a rank-ordering of technical recommendations for the WMS environment, current/future state process mapping for key service areas. Specific asset management strategies supporting the adoption of asset management best practices within these areas. The City and Plante Moran will be responsible for providing lists of work activities by asset type to determine the most significant processes to be mapped. Plante Moran will also provide the City with templates to enable the City to update these process maps with minimal vendor assistance in the future as work activities specific to these assets change.

■ **Phase 2: Selection Services for City-Wide (Enterprise) WMS Solution** *(completed)*

The selection services are structured to guide the City through a competitive solicitation process. Phase 2 begins with a request for information (RFI) process designed to demonstrate the capabilities of an industry leading WMS solution. It will include tools and approaches to managing the selection process including the development of selection criteria and approaches to scoring vendor proposals. Plante Moran will also include the development of functional and technical specifications for all service areas participating in the WMS Assessment. Our team will prepare a draft request for proposal (RFP) incorporating the City's requirements and will ensure its professional design will promote the most competitive market response possible. Following the City's receipt of proposals, our team will perform a comprehensive proposal analysis including a ten-year cost of ownership calculation in addition to a technical/functional specification compliance evaluation for each qualified vendor response. The compliance analysis will enable the City to identify a shortlist of one to three vendors who will be invited to demonstrate their products. Plante Moran will enable the City to structure its demonstrations to differentiate each finalist vendor by preparing demo scenarios (scripts) specific to the City's key requirements. Once a finalist vendor is identified, Plante Moran will provide contract negotiations support and will evaluate the vendor's implementation statement of work to ensure it is complete and provides terms which are fair and protect the City's long-term interests.

■ **Phase 3: Customer Relationship Management (CRM) Selection Services** *(completed)*

CRM solutions provide a means to manage public requests for service throughout the service request lifecycle. WMS solutions often include a CRM module. However, in many cases clients elect to pursue a "best of breed" CRM solution. This is primarily due to the fact that CRM applications can manage a broad spectrum of public contacts and requests. Most EAM vendors the City will likely consider do not feature this core product capability.

We recommend considering the City's broader CRM needs, while conducting the WMS procurement. Given the overlap between these technologies, it will be a relatively easy step to include as part of the WMS selection process, and will enable the City to understand how customer and service provider can and will be used by the system in its entirety. CRM solutions not only serve as a front end application for the WMS, but also harness the benefits of mobile technologies, help manage City relationships, and serve as an important data collection tool for subsequent business intelligence initiatives. Plante Moran proposes this optional phase be timed to take place concurrently with the WMS procurement.

The City can elect to implement the CRM with the WMS or defer the implementation until some later date. In either case, the selection team can evaluate both the CRM and WMS marketplace through one single, coordinated procurement process.

■ **Phase 4: Implementation Management Support Services (Proposed)**

Plante Moran proposes to provide pre-implementation and initial project planning assistance for the initial implementation phase of the WMS/CRM solution. The hours represented will be

Implementation Management Role	Role Description	Time Commitment
Pre-Implementation and Initial Project Planning Assistance	Provide pre-implementation planning assistance and assistance during the first two months of the implementation phase. This assistance will include participation in the City's initial requirements validation, business process assessment, process validation, WMS/CRM system configuration, system interface scoping, and project management related support activities.	Up to Four Consecutive Onsite Days and/or Remote Support as Requested Estimated Up to 50 Hours

On-Going Implementation Assistance Roles After Initial Implementation Phase is Complete

Co-Project Manager Level	Plante Moran's project manager will work with the City's Project Manager to track and confirm that action items and assigned tasks are completed on time. Evaluate and recommend payment for all vendor invoices while reporting the monthly project budget. Ensure the project adheres to timeline and avoid unauthorized scope expansion without proper change control measures.	optional
Contract Compliance	This is important activity that most clients desire that can be provided as an aspect of any of the above services which generally involves review and approval of vendor project invoices based on the terms of the contract.	optional

ESTIMATED TIMELINE

We are proposing the following time estimates for completing the activities described on the attached Roles and Responsibilities Summary. Once these activities are confirmed, Plante Moran will provide a detailed project schedule in addition to a letter amendment to its existing contract with the City. This timeline is a starting point for our discussion and can be further adjusted to accommodate the needs of the City.

- Phase 1 | Process Optimization: October 2015 – December 2015 (complete)
- Phase 2 | WMS Selection: January 2016 – June 2016 (complete)
- Phase 3 | CRM Selection: January 2016 – August 2016 (complete)
- Phase 4 | Implementation: September 2016 – June 2017 (proposed)

PROJECT STAFFING

Mr. Adam Rujan will serve as the project director and will provide oversight of all Plante Moran staff involved in the project. Mr. Christopher Blough will continue to serve as your project manager and will be responsible for overseeing the execution all project activities. In conjunction with Mr. Blough, Mr. Brian Pesis will also serve as a lead consultant and will be working jointly with Mr. Blough to provide project management support as necessary.

PROFESSIONAL SERVICES FEES

Plante Moran proposes amending our previous agreement dated July 27, 2016 as a zero-fee change order by redirecting the unused hours from Task 1-5 (see previous proposal represented as attachment #1) to the implementation support activities represented in Phase 4 of this proposal. Fees will be invoiced according to a time and materials basis for a not to exceed total of \$11,750 inclusive of hours and expenses. Service hours will be invoiced at the \$235 per hour blended rate for all staff. Expenses will be invoiced at the actual cost incurred for travel, lodging, and meals.

Fees associated with any potential changes to our scope of services and/or other optional assistance as deemed necessary by the City can be provided at the City's request at a later date and will not be billed until formally approved.

We appreciate the opportunity to be of continued service as the City's trusted advisor.

Very truly yours,
PLANTE MORAN, PLLC



Adam Rujan, Partner

Agreed and Accepted
City of Bismarck

(Signature)

Date

(Print name and title)

WMS/CRM Implementation Consulting Services
City of Bismarck, ND

**Attachment #1: Continuing WMS Professional Consulting Services Agreement
Dated July 27, 2015**



Plante & Moran, PLLC
27400 Northwestern Highway
P.O. Box 307
Southfield, MI 48037-0307
Tel: 248.352.2500
Fax: 248.352.0018
plantemoran.com

July 27, 2015

Mrs. Sheila Hillman, Finance Director
City of Bismarck - Finance Department
221 N. 5th Street | P.O. Box 5503
Bismarck, ND 58506-5503

RE: Continuing WMS Professional Consulting Services

Dear Mrs. Hillman:

Thank you for the opportunity to offer Plante Moran's professional services to support the City of Bismarck, ND ("the City") with implementation of a Work Management System (WMS). In response to your request, we are pleased to present this proposal outlining our Firm's continuing consulting services to assist in the preparation for, and procurement of, an integrated WMS.

PROPOSED WORK PLAN

The City has been working with Plante Moran's Government Technology Consulting team to perform a comprehensive WMS assessment leading to the evaluation and selection of a new enterprise WMS system. We have mapped out a preliminary scope of services intended to advance the recommendations proposed in that report, identifying project activities, responsibilities, and deliverables in activities grouped into three phases. This Summary is intended to be a starting point for discussion and can be revised to accommodate the City's objectives. As proposed, the first two phases involve WMS process optimization and solution selection support services. The third phase represents a related customer relationship management (CRM) component designed to automate and streamline the management of service requests.

☛ **Phase 1: Process Optimization for Participating WMS Departments** *(proposed)*

This phase includes the development of a detailed project schedule, a rank-ordering of technical recommendations for the WMS environment, current/future state process mapping for key service areas. Specific asset management strategies supporting the adoption of asset management best practices within these areas. The City and Plante Moran will be responsible for providing lists of work activities by asset type to determine the most significant processes to be mapped. Plante Moran will also provide the City with templates to enable the City to update these process maps with minimal vendor assistance in the future as work activities specific to these assets change.

☛ **Phase 2: Selection Services for City-Wide (Enterprise) WMS Solution** *(proposed)*

The selection services are structured to guide the City through a competitive solicitation process. Phase 2 begins with a request for information (RFI) process designed to demonstrate the capabilities of an industry leading WMS solution. It will include tools and approaches to managing the selection process including the development of selection criteria and approaches to scoring vendor proposals. Plante Moran will also include the development of functional and technical specifications for all service areas participating in the WMS Assessment. Our team will prepare a draft request for proposal (RFP) incorporating the City's requirements and will ensure its professional design will promote the most competitive market response possible. Following the City's receipt of proposals, our team will perform a comprehensive proposal analysis including a ten-year cost of ownership calculation in addition to a technical/functional specification compliance evaluation for each qualified vendor response. The compliance analysis will enable the City to identify a shortlist of one to three vendors who will be invited to demonstrate their products. Plante Moran will enable the City to structure its demonstrations to differentiate each finalist vendor by preparing demo scenarios (scripts) specific to the City's key requirements. Once a finalist vendor is identified, Plante Moran will provide contract negotiations support and will evaluate the vendor's implementation statement of work to ensure it is complete and provides terms which are fair and protect the City's long-term interests.

☛ **Phase 3: Customer Relationship Management (CRM) Selection Services** *(optional)*

CRM solutions provide a means to manage public requests for service throughout the service request lifecycle. WMS solutions often include a CRM module. However, in many cases clients elect to pursue a "best of breed" CRM solution. This is primarily due to the fact that CRM applications can manage a broad spectrum of public contacts and requests. Most EAM vendors the City will likely consider do not feature this core product capability.

We recommend considering the City's broader CRM needs, while conducting the WMS procurement. Given the overlap between these technologies, it will be a relatively easy step to include as part of the WMS selection process, and will enable the City to understand how customer and service provider can and will be used by the system in its entirety. CRM solutions not only serve as a front end application for the WMS, but also harness the benefits of mobile technologies, help manage City relationships, and serve as an important data collection tool for subsequent business intelligence initiatives. Plante Moran proposes this optional phase be timed to take place concurrently with the WMS procurement.

The City can elect to implement the CRM with the WMS or defer the implementation until some later date. In either case, the selection team can evaluate both the CRM and WMS marketplace through one single, coordinated procurement process.

☛ **Phase 4: Implementation Management Support Services** *(optional)*

Plante Moran can provide a range of project management support and advisory services. Once the vendor selection is completed, the City can evaluate the integration vendor's approach to determine the degree of additional support services appropriate to successfully complete the solution implementation process.

ESTIMATED TIMELINE

We are proposing the following time estimates for completing the activities described on the attached Roles and Responsibilities Summary. Once these activities are confirmed, Plante Moran will provide a detailed project schedule in addition to a letter amendment to its existing contract with the City. This timeline is a starting point for our discussion and can be further adjusted to accommodate the needs of the City.

- Phase 1 | Process Optimization: October 2015 – December 2015
- Phase 2 | WMS Selection: January 2016 – June 2016
- Phase 3 | CRM Selection: January 2016 – July 2016
- Phase 4 | Implementation: August 2016 + (Optional: Scope to be Defined)

PROJECT STAFFING

Mr. Adam Rujan will serve as the project director and will provide oversight of all Plante Moran staff involved in the project. Mr. Christopher Blough will continue to serve as your project manager and will be responsible for overseeing the execution all project activities. Mrs. Robin Milne will continue to serve the project as a Technical Advisor reviewing all final deliverables and work products. In conjunction with Mr. Blough, Mr. Brian Pesis will also serve as a lead consultant and will be facilitating the process mapping and interview activities with assistance from other consultants as necessary.

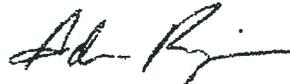
PROFESSIONAL SERVICES FEES

Fees for providing additional assistance to the City for phases 1, 2, and 3 are to be billed for only those services rendered by Plante Moran with a fee not to exceed \$125,490 at a blended rate of \$235 per hour for all support services inclusive of all travel and incidental costs. We propose using the applicable terms and conditions from the existing WMS contract for the needs assessment phase of this project.

Fees associated with any potential changes to our scope of services and/or other optional assistance as deemed necessary by the City can be provided at the City's request at a later date and will not be billed until formally approved.

We appreciate the opportunity to be of continued service as the City's trusted advisor.

Very truly yours,
PLANTE MORAN, PLLC



Adam Rujan, Partner

Agreed and Accepted
City of Bismarck



(Signature)

Michael C. Seminary
President, Board of City Commissioners
(Print name and title)

August 11, 2015
Date

Phase 1: Process Optimization for Departments					
<p>1-1. Identification of Candidate Service Areas for WMS System and Detailed Phase 1-2-3 Work Plan Schedule.</p> <p>This includes the identification of key processes to be mapped out for these service areas.</p>	<ul style="list-style-type: none"> * Project steering committee works to identify team leads from each WMS service area * Team leads commit to being available throughout anticipated pre-selection, selection, and implementation periods and will sign-off on their commitments 	<ul style="list-style-type: none"> * Prepares draft schedule for pre-selection and selection for Project Steering Committee review and adoption * Finalize schedule for pre-selection, selection, and implementation activities 	<ul style="list-style-type: none"> * Draft schedule for pre-selection and selection activities for Steering Committee review * Final schedule for pre-selection and selection activities following Steering Committee adoption. 	8	\$1,880
<p>1-2. Implement Appropriate Technical Recommendations</p>	<ul style="list-style-type: none"> * Information Technology team identifies recommendations best suited for WMS environment and implementation 	<ul style="list-style-type: none"> * Provide technical and business advice regarding the sequencing and timing of technical environment recommendations 	<ul style="list-style-type: none"> * Rank order technical recommendations 	2	\$470
<p>1-3. Solicit Request for Information (RFI) from WMS Vendors</p>	<ul style="list-style-type: none"> * Participate in the review of supporting information pertaining to the RFI * Coordinate with City Purchasing to ensure all guidelines are met with subsequent procurement activities (future RFP) * Provide feedback on draft RFI document prior to publication 	<ul style="list-style-type: none"> * Draft RFI for the WMS solution incorporating the major findings from the WMS Assessment Report * Present draft RFI to Steering Committee * Distribute RFI to WMS vendor community 	<ul style="list-style-type: none"> * Draft RFI document * Final RFI document 	20	\$4,700
<p>1-4. Conduct Process Mapping for Service Areas (Remote/On-Site Activity)</p> <p>Expectation is about 15 core processes both functional and cross-functional.</p>	<ul style="list-style-type: none"> * Identify select process owners to be interviewed * Coordinate scheduling of interviews * Request service areas to compile a listing of work activity types associated with specific assets. * Process owners to prepare for interviews by reviewing interview questionnaire and pulling together appropriate documents requested * Process owners participate in process evaluation contribution sessions * IT/GIS support areas participate in the process for managing asset workflows 	<ul style="list-style-type: none"> * Define criteria as to process owners to be interviewed * Provide available time slots in which to schedule departmental interviews * Provide questionnaire and request for information to collect to process owners in preparation for the interviews * Conduct the departmental process owner interviews 	<ul style="list-style-type: none"> * Draft future state process maps in MS Visio format to allow for revisions or updates * Provide template for mapping future processes in Visio format allowing City to add new processes over time * Identify unique requirements driving processes * Identify requirements for key performance measures 	172	\$40,420
<p>1-5. Develop Asset Management Strategy for all Service Area Asset Types in the WMS for the Following Activities (On-Site / Remote Activity)</p> <p>For each of the processes specific to each service area (as applicable)</p> <ul style="list-style-type: none"> * Asset Inventory Maintenance Plan * Level of Service Requirements * Asset Condition & Utilization Measures * Budget Forecasting & Financing Strategy * Asset Performance Tracking Metrics 	<ul style="list-style-type: none"> * Participation the service areas * Participation of the IT/GIS support team responsible for updating asset inventories * Completion of the asset management plan questionnaires * Compilation of any existing supporting material including performance measures and level of service expectations * Compile supporting information for asset management plan development 	<ul style="list-style-type: none"> * Development of process lifecycle activities to maintain WMS asset inventories * Asset strategies will include specific actions for the City to take with respect to its maintenance program activities and additional research to perform * Develop asset management strategy and populate plan details using available information to document asset management process information. 	<ul style="list-style-type: none"> * Asset management strategy for each major asset type within each service area * Provide template for future asset management definition. 	50	\$11,750
Totals for Phase 1:				252	\$59,220
Phase 2: Selection Services for City-Wide (Enterprise) WMS Solution					
<p>2-1. Develop Solution Selection Criteria and Facilitate Decision Making Process</p>	<ul style="list-style-type: none"> * Participate in determining the overall vendor evaluation and demonstration strategy that will be used * Participate in the development of vendor selection criteria and weights * Participate in defining the decision-making process 	<ul style="list-style-type: none"> * Provide guidance to City in the development of an overall vendor evaluation and demonstration strategy * Advise the selection criteria and weights to use * Advise the decision-making process to be used 	<p>Provide examples of:</p> <ul style="list-style-type: none"> * Vendor Evaluation and Demonstration Strategy * Vendor Selection Criteria * Vendor Decision-Making Process * Identify assumptions and risks 	8	\$1,880

<p>2-2. Develop WMS Solution Functional and Technical Specifications (Remote Activity) Includes all WMS Service Areas.</p>	<ul style="list-style-type: none"> * Participate in identifying expectations around the level of detail for the system specifications * Service area process owners will participate in the drafting of specifications provided by Plante Moran and provide sufficient feedback * Process owners to meet with P&M to finalize base system specifications including appropriate prioritization 	<ul style="list-style-type: none"> * Establish expectations with City as to the level of detail for the system specifications * Develop a base set of specifications using best practice specifications in combination with those gleaned in the interview and cross-functional sessions and distribute to City * Remotely facilitate the process of reviewing and finalizing the base specifications * Represent Citizen Relationship Management System Integration Options 	<ul style="list-style-type: none"> * WMS Business and Technical Requirements * WMS Functional Specifications 	<p>56</p>	<p>\$13,160</p>
<p>2-3. WMS Governance Structure Considerations</p>	<ul style="list-style-type: none"> * Project Steering Committee participates in governance mini-workshop * Project Steering Committee selects preferred model to support the selection, implementation, and on-going deployment of system 	<ul style="list-style-type: none"> * Provide governance considerations supporting enterprise-wide applications 	<ul style="list-style-type: none"> * WMS Considerations Reference 	<p>-</p>	<p>\$0</p>
<p>2-4. Develop WMS Request for Proposal Document</p>	<ul style="list-style-type: none"> * Review and provide feedback on the base set of Minimal Terms & Conditions * Provide other City boilerplate information to be included in the RFP * Review the other sections of the draft RFP provided by PM * Approve the final RFP document * Distribute the RFP document as deemed appropriate (posting to City web site, mailing, etc.) 	<ul style="list-style-type: none"> * Prepare draft RFP document and distribute to City for review * Update RFP document based on City feedback 	<ul style="list-style-type: none"> * WMS Request for Proposal (RFP) Template for City Review/Use 	<p>20</p>	<p>\$4,700</p>
<p>2-5. Distribute RFP to WMS Marketplace and Receive Proposals</p>	<ul style="list-style-type: none"> * City purchasing office will be responsible for the publication and distribution of the RFP for the WMS solution and services. 	<ul style="list-style-type: none"> * Provide listing of vendor contacts at leading WMS solution providers to City for distribution 	<ul style="list-style-type: none"> * Listing of WMS vendor contacts 	<p>-</p>	<p>\$0</p>
<p>2-6. Analyze Proposals and Selection Semi-Finalists</p>	<ul style="list-style-type: none"> * Facilitate bid opening * Determine vendors that did not meet minimum criteria and distribute appropriate communications to them identifying the reason for rejecting their bid * Review the appropriate bid document sections * Identify follow-up questions for each responding vendor and forward to PM * Attend vendor bid analysis meeting * Selection committee members to conclude on remaining vendors 	<ul style="list-style-type: none"> * Review vendor responses * Develop proposal analysis document including a 10-year total cost of ownership analysis along with a functional/technical specification compliance analysis * Facilitate bid analysis meeting * Determine semi-finalist vendors * Confirm available selection committee member dates for conducting demonstrations 	<ul style="list-style-type: none"> Proposal Analysis Vendor Follow-Up Questions Semi-Finalist Vendors 	<p>50</p>	<p>\$11,750</p>
<p>2-7. Provide Three Days (On-Site) Finalist Vendor Demonstrations and Due Diligence Support Activities</p>	<ul style="list-style-type: none"> * Develop vendor demonstration scripts * Work with PM on development of demonstration agendas * Determine location and reserve for vendor demonstrations * Schedule vendor demonstrations with vendors * Distribute vendor demonstration agenda and scripts to vendors * Communicate to staff time of vendor demonstrations * Provide scoring sheets to staff attending vendor demonstrations * Selection Committee members to attend all vendor demonstrations * City to tabulate vendor demonstration results including scoring and comments 	<ul style="list-style-type: none"> * Provide sample demonstration scripts * Provide guidance on development of demonstration scenarios * Work with the City in the development of demonstration scoring matrices * Provide sample demonstration agenda and finalize with City * Review compiled results of the vendor demonstrations * Conduct debriefing session after the vendor demonstrations 	<ul style="list-style-type: none"> * Demonstration Scripts * Due Diligence Guide * Scoring Matrices * Demonstration Agenda * Notes from Vendor Demonstrations 	<p>52</p>	<p>\$12,220</p>

<p>2-8. Select Finalist Vendor - Contract Negotiations and Statement of Work Development</p>	<ul style="list-style-type: none"> * Assist in the development of the Statement of Work * Attend a meeting to discuss the contract negotiation strategy * Determine who from the City needs to be involved in the contract negotiations * Identify the critical needs for inclusion in the contract * Determine particulars about the proposed vendor's solution that need to be considered in the negotiated contract (e.g., phasing) * Finalize the contract dollar amount * Assist in negotiating the final contract * Present the final contract to the appropriate committees and to the Council for approval 	<ul style="list-style-type: none"> * Assist in development of the statement of work * Attend a meeting to discuss the contract negotiation strategy * Review finalist vendor's contract and propose recommended changes * Discuss particulars about the proposed vendor's solution that need to be considered in the negotiated contract (e.g., phasing) * Initiate negotiations with the vendor * Finalize the contract dollar amount * Assist in negotiating the final contract 	<ul style="list-style-type: none"> * Statement of Work * Negotiated Vendor Contracts and Pricing 	<p>40</p>	<p>\$9,400</p>
Phase 2 Totals:				<p>226</p>	<p>\$53,110</p>
Phase 3: Customer Relationship Management (CRM) Solution Selection - Optional					
<p>3-1. Conduct Interviews and Develop CRM Solution Functional and Technical Specifications (All Functional Areas)</p>	<ul style="list-style-type: none"> * Participate in identifying expectations around the level of detail for the system specifications through interviews * Service area process owners will participate in the drafting of specifications provided by Plante Moran and provide sufficient feedback * Process owners to meet with P&M to finalize base system specifications including appropriate prioritization 	<ul style="list-style-type: none"> * Establish expectations with City as to the level of detail for the system specifications through interviews * Develop a base set of specifications using best practice specifications in combination with those gleaned in the interview and cross-functional sessions and distribute to City * Remotely facilitate the process of reviewing and finalizing the base specifications * Represent Citizen Relationship Management System Integration Options 	<ul style="list-style-type: none"> * CRM Business and Technical Requirements * CRM Functional Specifications 	<p>40</p>	<p>\$9,400</p>
<p>3-2. Develop Request for Proposal Document for CRM</p>	<ul style="list-style-type: none"> * Review and provide feedback on the base set of Minimal Terms & Conditions * Provide other City boilerplate information to be included in the RFP * Review the other sections of the draft RFP provided by PM * Approve the final RFP document * Distribute the RFP document as deemed appropriate (posting to City web site, mailing, etc.) 	<ul style="list-style-type: none"> * Prepare draft RFP document and distribute to City for review * Update RFP document based on City feedback 	<ul style="list-style-type: none"> * CRM Request for Proposal (RFP) 	<p>-</p>	<p>\$0</p>
<p>3-3. Distribute RFP to CRM Marketplace and Receive Proposals</p>	<ul style="list-style-type: none"> * City purchasing office will be responsible for the publication and distribution of the RFP for the CRM solution and services. 	<ul style="list-style-type: none"> * Provide listing of vendor contacts at leading CRM solution providers to City for distribution 	<ul style="list-style-type: none"> * Listing of CRM vendor contacts 	<p>-</p>	<p>\$0</p>
<p>3-4. Analyze Proposals and Selection Semi-Finalists</p>	<ul style="list-style-type: none"> * Assist in the development of the Statement of Work * Attend a meeting to discuss the contract negotiation strategy * Determine who from the City needs to be involved in the contract negotiations * Identify the critical needs for inclusion in the contract * Determine particulars about the proposed vendor's solution that need to be considered in the negotiated contract (e.g., phasing) * Finalize the contract dollar amount * Assist in negotiating the final contract * Present the final contract to the appropriate committees and to the Council for approval 	<ul style="list-style-type: none"> * Assist in development of the statement of work * Attend a meeting to discuss the contract negotiation strategy * Review finalist vendor's contract and propose recommended changes * Discuss particulars about the proposed vendor's solution that need to be considered in the negotiated contract (e.g., phasing) * Initiate negotiations with the vendor * Finalize the contract dollar amount * Assist in negotiating the final contract 	<ul style="list-style-type: none"> * Statement of Work * Negotiated Vendor Contracts and Pricing 	<p>-</p>	<p>\$0</p>

<p>3-5. Conduct Finalist Vendor Demonstrations and Due Diligence Activities</p>	<ul style="list-style-type: none"> * Develop vendor demonstration scripts * Work with PM on development of demonstration agendas * Determine location and reserve for vendor demonstrations * Schedule vendor demonstrations with vendors * Distribute vendor demonstration agenda and scripts to vendors * Communicate to staff time of vendor demonstrations * Provide scoring sheets to staff attending vendor demonstrations * Selection Committee members to attend all vendor demonstrations * City to tabulate vendor demonstration results including scoring and comments 	<ul style="list-style-type: none"> * Provide sample demonstration scripts * Provide guidance on development of demonstration scripts * Work with the City in the development of demonstration scoring matrices * Provide sample demonstration agenda and finalize with City * Review compiled results of the vendor demonstrations * Conduct debriefing session after the vendor demonstrations 	<ul style="list-style-type: none"> * Demonstration Scripts * Due Diligence Guide * Scoring Matrices * Demonstration Agenda * Notes from Vendor Demonstrations 	<p>-</p>	<p>\$0</p>
<p>3-6. Select Finalist Vendor - Contract Negotiations and Statement of Work Development</p>	<ul style="list-style-type: none"> * Assist in the development of the Statement of Work * Attend a meeting to discuss the contract negotiation strategy * Determine who from the City needs to be involved in the contract negotiations * Identify the critical needs for inclusion in the contract * Determine particulars about the proposed vendor's solution that need to be considered in the negotiated contract (e.g., phasing) * Finalize the contract dollar amount * Assist in negotiating the final contract * Present the final contract to the appropriate committees and to the Council for approval 	<ul style="list-style-type: none"> * Assist in development of the statement of work * Attend a meeting to discuss the contract negotiation strategy * Review finalist vendor's contract and propose recommended changes * Discuss particulars about the proposed vendor's solution that need to be considered in the negotiated contract (e.g., phasing) * Initiate negotiations with the vendor * Finalize the contract dollar amount * Assist in negotiating the final contract 	<ul style="list-style-type: none"> * Statement of Work * Negotiated Vendor Contracts and Pricing 	<p>16</p>	<p>\$3,760</p>
<p>Phase 3 Rolled into WMS RFP</p>				<p>56</p>	<p>13,160</p>



HUMAN RESOURCES DEPARTMENT

DATE: August 10, 2016
FROM: Robert McConnell, Director of Human Resources
ITEM: Employee Assistance Service Agreement

REQUEST

Please consider approval of the St. Alexius Employee Assistance service agreement for the period of Sept. 1st 2016 through August 31st 2017.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

St. Alexius Employee Assistance program has a long standing relationship of providing assistance to The City of Bismarck and our workforce. Participation and utilization is strong and the service provided has been exceptional.

RECOMMENDED CITY COMMISSION ACTION

The Human Resource department recommends approval.

STAFF CONTACT INFORMATION

Robert McConnell, Director Human Resources, 701-355-1332, rmcconnell@bismarcknd.gov

A handwritten signature in black ink, appearing to read "Robert McConnell". The signature is written in a cursive, flowing style.



CONTRACT REVIEW FORM

DEPARTMENT

Contract between the City of Bismarck and St. Alexius Medical Center

Purpose of Contract: Employee Assistance Program

Contract Amount: \$ 16,770.00

Contract Period: 9/1/2016 thru 8/31/2018

Funding Source: Employee Insurance Reserve Fund

Project Number: (If needed, send copy to Fiscal Services)

Comments: Fee: \$4.875 per employee per quarter (16,770 annually)

July 16 agenda

After Mayor's Signature, route to: Robert McConnell Date: 6/24/2016

Department Head Signature: [Signature] Date:

CITY ATTORNEY

Comments: OK

City Attorney Signature: [Signature] Date: 8-3-16

FINANCE

Comments: OK No fee inc

Director of Finance Signature: [Signature] Date: 8-3-16

ADMINISTRATION

City Administrator Signature: [Signature] Date: 8-3-16

ATTENTION:

Attach a signature flag at each place you want the Mayor to sign.
Please send copy of completed contracts to Administration.

Print Form

**EMPLOYEE ASSISTANCE PROGRAM
SERVICES AGREEMENT**

THIS EMPLOYEE ASSISTANCE PROGRAM SERVICES AGREEMENT (the "Agreement") is made this 1st day of September, 2016, (the "Effective Date") by and between St. Alexius Medical Center, a North Dakota nonprofit corporation ("Contractor") and City of Bismarck, (hereinafter "Business Client").

RECITALS

WHEREAS, Business Client wishes Contractor to provide Employee Assistance Program ("EAP") services to Business Client's employees and their dependents ("Participants"); and

WHEREAS, Contractor is willing to make available its personnel to provide its EAP services to Participants of the Business Client under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions set forth below in this Agreement, the parties agree as follows:

Section 1. Services. Contractor shall make available to Business Client qualified personnel (each a "Provider") to provide such EAP services as may be necessary to meet the needs of Business Client at its locations in North Dakota ("Services"), including Services that are required by state or federal law, or otherwise agreed upon by the parties. In providing Services, Contractor and its personnel shall comply with all applicable rules, regulations, policies, and procedures of Business Client and those of any federal, state, or local regulatory agency/body. For purposes of this Agreement, Services refers to EAP services provided by a Provider who is duly qualified and licensed to provide such services in the state of North Dakota. Services are more particularly described on the attached Exhibit A.

Section 2. Payment. In exchange for the Services provided by Contractor's personnel, Business Client shall pay to Contractor the fees more particularly described in the attached Exhibit B. This Exhibit will be reviewed every year in the remaining contract period 90 days prior to the annual renewal date. An addendum letter labeled Exhibit B will be attached to the contract each year identifying the new rate change, which shall not exceed seven percent (7%) in any one (1) year.

Contractor shall submit a quarterly invoice of all time spent providing Services in the preceding quarter. Payment shall be due within twenty (20) days of receipt of Contractor's invoice. Business Client shall be solely responsible for payments to Contractor for Services rendered hereunder.

Section 3. Term, Renewal, and Termination.

A. Term. The term of this Agreement shall commence on the Effective Date. This Agreement shall have an initial term of two (2) years ("Initial Term") and shall be automatically renewed for additional periods of one (1) year ("Renewal Term") at the end of the Initial Term or any Renewal Term unless either party gives the other party written notice of termination no less than thirty (30) days prior to the end of the applicable term. Notwithstanding the above, Section 2 (Payment) is reviewed annually by both parties 90 days prior to the annual renewal date in each of the remaining years of the contract.

B. Without Cause Termination. Notwithstanding any other provision of this Agreement to the contrary, either party shall have the right to terminate this Agreement without cause or penalty upon not less than forty-five (45) days' prior written notice to the other party.

C. With Cause Termination. Either party shall have the right to terminate this Agreement, for cause, upon thirty (30) days' written notice to the other party. Any such notice shall specify the cause upon which termination is based. The party alleged to be in default shall have thirty (30) days to rectify the cause specified in the notice of termination, and if such cause is not rectified within such thirty (30) day period, this Agreement shall thereupon automatically terminate; provided, however, that if such cause cannot reasonably be rectified within such period, this Agreement shall not automatically terminate as long as such party has commenced to rectify the cause within such thirty (30) day period and thereafter diligently and continuously proceeds to rectify such cause. It is understood and agreed by the parties that "cause" for termination subject to notice and cure under this Section shall include either party's material breach of any of its obligations under this Agreement.

D. Termination. In the event of termination of this Agreement:

- (a) Contractor and Business Client shall promptly review all work in progress. Contractor shall be responsible only for any work commenced prior to the termination date, and any and all charges which may be due and payable to Contractor at the termination date shall be paid within thirty (30) days of the effective termination date.
- (b) Contractor will provide EAP services and assistance as may be necessary to promptly transfer in the manner required by applicable law, rules, and regulations, all records related to EAP services rendered as well as EAP services in process. If care is being transferred or records are to be released to another provider, this information would only be released upon receiving signed and valid authorizations from the eligible individuals who are affected.

Section 4. Contractor's Obligations.

A. Pre-Scheduled Basis. Contractor shall make Providers available to provide Services on a schedule to be mutually agreed between the parties. Contractor's obligation to provide Services hereunder is expressly conditioned upon Contractor having sufficient personnel available and willing to provide such services, in Contractor's sole determination. If for any reason Contractor does not have personnel available to provide Services, it shall provide Business Client with as much advance notice as practicable under the circumstances. Contractor shall not be liable to Business Client for damages otherwise due to Contractor's failure or inability to provide Services based on insufficiency or unavailability of Contractor personnel for any reason. If during the term of this Agreement, additional personnel is required due to a specific new program needs and/or mandated state requirements, Contractor will provide personnel, as staffing permits.

B. Compliance: Licenses. Services shall be provided in accordance with all applicable federal, state, and local laws, regulations, and standards. Contractor and/or its personnel shall maintain all state and/or federal licenses, certifications, registrations, and permits necessary for Contractor and its personnel to provide Services to Business Client.

C. Coordination. All Services will be provided by Contractor in coordination with Business Client.

Section 5. Business Client's Obligations.

A. Space and Equipment. Business Client shall furnish, at its expense, for the use of Contractor and its personnel during the term of this Agreement, sufficient area and equipment needed to provide the Services.

B. Administrative Services. Business Client shall provide such administrative assistance as may be reasonably necessary to support the provision of Services.

Section 6. Ethical and Religious Directives. Business Client agrees that throughout the term of this Agreement, Contractor or any individual employed by Contractor who provide services pursuant to this Agreement, will provide all services in accordance with *the Ethical and Religious Directives for Catholic Health Care Services*, Fifth Edition, as promulgated by the United States Conference of Catholic Bishops as amended from time to time and as interpreted by the local bishop. The *Ethical & Religious Directives* are available at the following website: <http://www.usccb.org/about/doctrine/ethical-and-religious-directives/>

Section 7. Recordkeeping. If and to the extent required by 42 U.S.C. § 1395x(v)(1)(I), until the expiration of four (4) years after the termination of this Agreement, each party agrees to make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of the services provided by Business Client under this Agreement. Each party further agrees that in the event a party carries out any of its duties under this Agreement through a subcontract with a related organization, and the subcontract has a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, the subcontract shall contain a provision requiring the related organization to make available until the expiration of four (4) years after the furnishing of services pursuant to the subcontract, upon written request of the Secretary of the United States Department of Health and Human Services, or upon request of the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of the subcontract and such books, documents, and records of the related organization as are necessary to verify the nature and extent of such costs. The provisions of this Section shall survive the expiration or termination of this Agreement for any reason.

Section 8. Excluded Provider Provisions. Each party hereby represents and warrants to the other that neither it nor its employees, agents, and subcontractors now or hereafter engaged by such party to provide services under this Agreement (collectively, a "Representative") is, and at no time has been, excluded from participation in any federally-funded health care program, including the Medicare and Medicaid programs. Each party hereby agrees to immediately notify the other of any threatened, proposed, or actual exclusion of such party or any of its Representatives from any federally-funded health care program, including the Medicare and Medicaid programs. In the event that a party or any of its Representatives are excluded from participation in any federally funded health care program during the term of this Agreement, or if at any time after the Effective Date it is determined that a party or any of its Representatives are in breach of this Section, this Agreement shall, as of the date of such exclusion or breach, automatically terminate provided, however, that if the breaching party immediately removes any Representative who is so excluded or has otherwise breached the provisions of this Section from the performance of services under this Agreement, this Agreement shall not automatically terminate. Each party shall indemnify, defend, and hold harmless the other against all actions, claims, demands and liabilities, and against all loss, damage, costs and expenses, including reasonable attorneys' fees, arising directly or indirectly out of any violation of this Section by a party or any of its Representatives or due to the exclusion of a party or any of its Representatives from a federally-funded health care program, including the Medicare or Medicaid programs. The provisions of this Section shall survive the expiration or termination of this Agreement for any reason.

Section 9. Ownership of Records. Patient records, charts, reports, and other similar items produced by Contractor personnel in the performance of Services under this Agreement shall be and remain the sole property of Contractor.

Section 10. Insurance. Contractor shall, at its sole cost and expense, procure, keep and maintain throughout the term of this Agreement, insurance coverage in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate, for professional liability, negligence, errors and omissions, and comprehensive public liability. The insurance coverage shall cover all of Contractor's services hereunder. Contractor shall provide Business Client with a certificate(s) evidencing such insurance coverage upon request.

Business Client shall, at Business Client's sole cost and expense, procure, keep and maintain throughout the term of this Agreement, insurance coverage in the minimum amounts of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate for commercial general liability; and applicable state statutory limits for workers compensation. In addition to the coverages specifically listed herein, Business Client shall maintain any other usual and customary policies of insurance applicable to the work being performed pursuant to this Agreement. This Section shall survive the expiration or termination of this Agreement for any reason.

Section 11. Indemnification. Each party (the "Indemnitor") shall indemnify, defend, and hold harmless the other party (the "Indemnitee") and its directors, officers, employees, agents, representatives, successors, assigns, and subcontractors against all actions, claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, to the extent resulting, directly or indirectly, out of an actual or alleged injury to a person or to property as a result of the negligent or intentional act or omission of the Indemnitor in connection with the Indemnitor's obligations under this Agreement, except to the extent any such action, claim, demand, liability, loss, damage, cost, or expense was caused by the negligent or intentional act or omission of the Indemnitee or directors, officers, employees, agents, representatives, assigns, successors, or subcontractors. The obligations of this paragraph shall survive the expiration or termination of this Agreement for any reason.

Section 12. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to have been duly given upon personal delivery; or twenty-four (24) hours following deposit for overnight delivery with a bonded courier holding itself out to the public as providing such service, or following transmission by electronic facsimile, if subsequently mailed as provided herein; or forty-eight (48) hours following deposit in the U.S. Mail, registered or certified mail, postage prepaid, and in any case addressed as follows, or to such other addresses as the parties may designate from time to time:

If to Contractor:
St. Alexius Medical Center
900 East Broadway
Bismarck, ND 58104
Attn: CEO

If to Business Client:
City of Bismarck
221 N 5th Street
Bismarck, ND 58501
Attn: Robert McConnell

or to such other address as either party may from time to time designate for itself by written notice.

Section 13. Confidentiality and Non-Disclosure. Each of the parties shall hold in confidence the information contained in this Agreement and each of them hereby acknowledges and agrees that all information related to this Agreement (including its existence), not otherwise known to the public, is confidential and proprietary and is not to be disclosed to third persons without the prior written consent of the other party except: (i) to the extent necessary to comply with any law, rule, or regulation or the valid order of any governmental agency or any court of competent jurisdiction; (ii) as part of a party's normal reporting or review procedure, to its auditors and its attorneys; (iii) to the extent necessary to obtain appropriate insurance, to a party's insurance agent; or (iv) as necessary to enforce their rights and perform their agreements and obligations under this Agreement. The parties intend that the obligations and rights

contained herein relating to confidentiality of information exchanged by the parties shall be binding and enforceable even in the event of the termination or cancellation of this Agreement.

Section 14. HIPAA. The parties intend that all Services performed hereunder shall fully comply with all applicable federal, state, and local laws, rules, and regulations. Specifically, but not by way of limitation, the parties intend that the provision of Services shall comply with requirements imposed by the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”). Business Client further agrees that, if deemed necessary by Contractor, it will require each individual receiving Services hereunder to execute such forms, releases, waivers, or similar documentation as Contractor deems necessary.

Section 15. Independent Contractor. In the performance of the duties and obligations of Contractor and its personnel under this Agreement, it is mutually understood and agreed that with respect to Business Client, Contractor and its personnel are at all times acting and performing as independent contractors; that Business Client shall neither have nor exercise any control or direction over the methods by which Contractor or its personnel shall perform his/her/its work and functions, except that Contractor/personnel is expected to perform his/her/its work and functions at all times in accordance with then currently approved methods and practices of his/her/its professional specialty; and that the sole interest of Business Client is that the Services are performed and rendered in a competent, efficient, and satisfactory manner in accordance with community medical standards and applicable accreditation standards. The parties expressly agree hereto that no work, act, commission, or omission of Contractor or its personnel shall be construed to make either the agent, employee, or servant of Business Client. Contractor shall be solely responsible for the salary, compensation, benefits, payroll taxes, required insurance, workers’ compensation insurance, and similar items of its personnel.

Section 16. Jeopardy. Notwithstanding anything herein to the contrary, in the event the performance by any party hereto of any term, covenant, condition, or provision of this Agreement shall jeopardize the licensure of any party, the participation of any party in, or the payment or reimbursement from, the Medicare, state-sponsored Medicaid program, Blue Cross, TRICARE, or other reimbursement or payment programs, or a party’s full accreditation by any state or nationally recognized accrediting organization, or the tax-exempt status of a party, any of its property or financings (or the interest income thereon, as applicable), or will prevent or prohibit any person from utilizing Contractor or any of its services, or if for any other reason performance hereunder violates any statute or ordinance or is otherwise deemed illegal, or is deemed unethical by any recognized body, agency, or association in the medical or hospital fields with respect to any party, the parties shall immediately initiate negotiations to resolve the matter through appropriate amendments to this Agreement. If the parties are unable to resolve the matter within thirty (30) days thereafter, either party may, at its option, terminate this Agreement forthwith.

Section 17. Confidentiality and Compliance Reporting. Each party shall treat all non-public information obtained as part of this engagement as confidential and shall not, without written authorization from the other party, release or share such information with any third party, except as may be required by law. Each party agrees that prior to reporting any actual or perceived violation of law to any governmental entity, even if required by law to do so, it will first discuss any potential legal or compliance matter with Contractor’s Corporate Responsibility Officer and Contractor’s Legal Counsel, and unless otherwise required by law, provide such party with an opportunity to investigate and appropriately report any compliance matter brought to its attention by the other party.

Section 18. Miscellaneous.

A. No Referrals. No provision of this Agreement is intended as an inducement to give or receive, or an offer to give or receive, anything of value, either directly or indirectly, for the referral of

residents or for the arranging or furnishing of any item or service for which payment may be made by Medicare, Medicaid, or any other federal health care program.

B. Amendments. This Agreement may be amended at any time by mutual agreement of the parties without additional consideration, provided that before any amendment shall become effective, it shall be reduced to writing and signed by each of the parties.

C. Assignment. Business Client shall not have the right or the power to assign this Agreement nor any of the rights or obligations inuring to or imposed upon it herein, and any attempted or purported assignment shall be null and void and of no effect. Contractor may, upon written notice to Business Client, assign this Agreement to any entity related by ownership or control to Contractor.

D. No Joint Venture. It is expressly understood by the parties hereto that neither party is an agent, partner, or joint venturer with or of the other.

E. Governing Law. The laws of the state of North Dakota shall govern this Agreement, without giving effect to conflicts of law doctrines.

F. Partial Invalidity. If any provision of this Agreement is found to be invalid or unenforceable by any court or other lawful forum, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of this Agreement, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement.

G. Authority. Any individual signing this Agreement on behalf of an entity hereby represents and warrants in his or her individual capacity that he or she has full authority to do so on behalf of such entity. Neither party to this Agreement shall have any power or authority to bind the other party without such other party's express written consent.

H. No Third Party Rights. This Agreement has been made and is made solely for the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.

I. CHI Standards of Conduct. Business Client recognizes that it is essential to the core values of Contractor that all persons and entities employed by or otherwise contracting with Contractor at all times conduct themselves in compliance with the highest standards of business ethics and integrity and applicable legal requirements, as reflected in the *Catholic Health Initiatives (CHI) Standards of Conduct*, as may from time to time be amended by Contractor. As of the date of this Agreement, the *CHI Standards of Conduct* are set forth in *Our Values & Ethics at Work Reference Guide (E@W Guide)* which is available at the following website: <http://www.catholichealthinitiatives.org/corporate-responsibility>. Business Client acknowledges that it has electronically accessed, obtained or otherwise received a copy of the E@W Guide and has read and understands the same, and hereby agrees that, so long as this Agreement remains in effect, Business Client shall act in a manner consistent with, and shall at all times abide by, the *CHI Standards of Conduct*, to the extent the same are applicable to Business Client in the performance of this Agreement. In the event that Contractor determines in good faith that Business Client has breached Business Client's obligations pursuant to this Section, Contractor may, upon notice to Business Client immediately terminate this Agreement.

J. Waiver. All waivers of rights, powers, and remedies by a party to this Agreement must be in writing. No delay, omission, or failure by a party to exercise any right, power, or remedy to which a

party may be entitled shall impair any such right, power, or remedy, nor shall such be construed as a release by a party of such right, power, or remedy or as a waiver of or acquiescence in any such action, unless such action shall have been cured in accordance with the terms of this Agreement. A waiver by a party of any right, power, or remedy in any one instance shall not constitute a waiver of the same or any other right, power, or remedy in any other instance.

K. Attorney's Fees. Should either party institute any action or proceeding arising out of this Agreement, the substantially prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the substantially prevailing party in connection with such action or proceeding. The court or arbitrator, as applicable, shall make the determination of which party is the "substantially prevailing party" at the time of the action or proceeding, as the case may be. Notwithstanding the foregoing, attorneys' fees incurred in enforcing any judgment are recoverable as a separate item and such agreement of the parties is intended to be severable from the other provisions of this Agreement and is intended to survive any judgment and is not to be deemed merged into any judgment.

L. Compliance With All Laws, Regulations and Standards. Both parties shall comply fully with all applicable federal, state, and local laws, rules, and regulations in performing their respective duties and obligations under this Agreement.

M. Force Majeure. Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service or employment deemed resulting, directly or indirectly, from Acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either party's employees, or any other cause beyond the reasonable control of either party.

N. Equal Employment Opportunity. Hospital is an Equal Employment Opportunity and Affirmative Action employer. As such, 41 C.F.R. 60-1.4(a), 41 C.F.R. 60-300.5, 41 C.F.R. 60-741.5 as well as 29 C.F.R. Part 471, Appendix A to Subpart A are herein incorporated by reference. By acceptance of this contract, Contractor represents and warrants that unless exempted under the terms of these applicable laws, it will comply with the forgoing statutes, rules and regulations and all amendments thereto. To the extent applicable, Hospital and Contractor shall abide by the requirements of 41 C.F.R. 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

O. Prohibition on Child Labor and Human Trafficking. Each Party warrants and represents that it shall comply with all federal and state labor and employment laws, and executive orders as applicable and specifically those regarding child labor, procuring commercial sex, using forced labor and human trafficking. This includes but is not limited to the Trafficking Victims Protection Reauthorization Act of 2013, Executive Order – *Strengthening Protections Against Trafficking in Persons in Federal Contracts*, Federal Acquisition Regulations (FAR), the provisions of the International Labor Organization's ("ILO") Minimum Age Convention (No. 138), 1973, and any other laws or regulations that prohibit any form of human trafficking, commercial sex, forced labor, child labor or other exploitation of children in the manufacturing, delivery or provision of products/devices, items or services and as each may be amended from time to time. In addition, in connection with any International Organization for Standardization ("ISO") certification, the Parties represent and warrant that as applicable each complies with the Social Accountability Guidelines pursuant to which a Party disqualifies any site that uses

unacceptable manufacturing practices, such as child labor, forced labor or unsafe or unsanitary working conditions or trafficking of persons as defined by the Trafficking Protocol (United Nations General Assembly, *Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, 15 November 2000, available at <http://www.unhcr.org/refworld/docid/4720706c0.html>). Contractor acknowledges CHI's efforts on human trafficking found at <http://www.catholichealthinit.org/human-trafficking-how-you-can-help> and represents and warrants to CHI that he or she undertakes periodic inspections of his/her practices and staff regarding services hereunder to ensure compliance with the foregoing. Contractor agrees upon request to provide CHI with evidence and/or recordkeeping of compliance with this provision.

EXHIBIT A
Description of Services

Provider Responsibilities

1. Provider will provide specific management consultation, upon request, to Business Client managers and others with supervisory responsibility in dealing with problems relating to deteriorating job performance by individual employees.
2. Provider will provide follow up, as necessary, to monitor referred employees' adherence to the agreed course of treatment. Provider will make progress reports to Business Client managers on employees they refer to the EAP. Such progress reports will be conditioned upon a valid consent to release information and any required HIPAA authorization and limited to reporting whether the employee is cooperating with the treatment program.
3. Provider will assist Business Client in preparing a management guide for the EAP and will furnish ideas, copy suggestions and other assistance on a continuing basis for use in Business Client publications, special mailings or other media to maintain awareness of the EAP services by Business Client managers and employees.
4. From time to time, Provider may provide other services not specifically covered by this Agreement. Any additional services to be provided will be set forth in a subsequent written agreement between Provider and Business Client.
5. Provider will prepare quarterly utilization reports in a manner which will de-identify the Business Client employee's and members of such employee's families' protected health information as permitted by applicable law.
6. Provider shall make available to Business Client qualified professionals or subcontractors to provide such services as may be required pursuant to this Agreement.

Provider's performance of this contract shall be as follows:

EAP Consultation Services

1. Develop EAP Policy and Procedure as requested
2. Provide a Management Briefing at location determined by Business Client
3. Develop and Review Time Line for Orientation/Supervisory Training as requested
4. Draft Letter for distribution to all Employees
5. Formation and Consultation with Business Client's HR Director for EAP Development
6. Development of Quarterly Utilization Reports
7. Provide bi-monthly "Professional Update" publications
8. Provide bi-monthly "Supervisory Update" publications
9. Provide supervisory/employee training sessions three (3) times per year at multiple Provider designated locations through the Enhancing Excellence in the Workplace series of educational and training presentations
10. Provide easy access website
11. Provide Posters for Business Client on an annual basis as necessary
12. Periodically, management may identify and request additional ongoing management/supervisory process training which could involve or be provided by the EAP staff of Provider. Such services

Clinical Services

Provider will provide specific assistance to Business Client employees and members of their immediate families who have been referred to the EAP or who request such service of their own volition. Provider and Business Client will adopt safeguards to ensure the privacy of Business Client employees and their family members by maintaining confidentiality regarding EAP services. Provider will counsel and encourage Business Client employees to proceed with a course of assistance by referring the individual to clinical or supportive organizations and medical professionals.

Long-term clinical therapies, inpatient or outpatient medical, psychological, psychiatric, or substance abuse treatment modalities and medications are beyond the scope of EAP services to be provided under this Contract.

In the event long-term therapy or treatment is indicated, referral will be made by Provider's EAP staff to an appropriate resource(s). Provider will familiarize itself with Business Client's benefit program so that it can advise employees as to available coverage thereunder of services by such organizations or professionals. Provider will exercise good faith efforts in obtaining recognition of Business Client's benefits program requirements as to accreditation of such agencies, so that eligibility for medical expense reimbursement to the employee under Business Client's benefits program is not jeopardized.

Core 3 Plan and Variable 3 Plan – Business Client employees and members of their immediate families will receive an assessment of their presenting problem and up to two (2) additional EAP sessions for further assessment, evaluation, or counseling for that problem. During the term of this contract, Business Client employees and members of their immediate families may present multiple problems for which assessment, evaluation or treatment by the EAP may be appropriate. Under the provisions of this Contract an eligible employee and/or a member of the immediate family would receive additional EAP services from the EAP, providing the new problem is not related to a situation for which EAP services have already been received. The employee and/or family member will receive an assessment of the “new” presenting problem and up to two (2) additional sessions.

Core 8 Plan and Variable 8 Plan – Business Client employees and members of their immediate families will receive an assessment of their presenting problem and up to seven (7) additional EAP sessions for further assessment, evaluation, or counseling for that problem. During the term of this contract, Business Client employees and members of their immediate families may present multiple problems for which assessment, evaluation or treatment by the EAP may be appropriate. Under the provisions of this Contract an eligible employee and/or a member of the immediate family would receive additional EAP services from the EAP, providing the new problem is not related to a situation for which EAP services have already been received. The employee and/or family member will receive an assessment of the “new” presenting problem and up to seven (7) additional sessions.

EXHIBIT B
Payment

Effective Date 09 / 01 / 2016

Charges to the Business Client for EAP services shall be as follows:

Name of Plan	No. of Employees*	No. of Sessions	Annual Rate	Plan Requested
Core 3 Plan	Less than 50	3	\$750	
Core 8 Plan	Less than 50	8	\$1,000	
Variable 3 Plan	Greater than or equal to 50	3	\$14.75/employee	
Variable 8 Plan	Greater than or equal to 50	8	\$19.50/employee	X

The above fees are subject to an annual adjustment, which shall not exceed seven percent (7%).

Fees and charges for services by providers to which a Business Client employee or family member is referred by Contractor/Provider shall be the sole responsibility of the employee and not of Business Client or Contractor/Provider. Provider will so inform any individual receiving such a referral.

*Employee count for the initial term.



HUMAN RESOURCES DEPARTMENT

DATE: August 16, 2016
FROM: Robert McConnell, Director of Human Resources
ITEM: Bismarck State College Learning Partners Agreement

REQUEST

Please consider approval of the Bismarck State College Learning Partners agreement for the period of Aug 1st 2016 through June 30th 2017.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

The Learning Partners program offers through Bismarck State College offers training on MS Office software as well as other educational subjects beneficial to our workforce. Participation in this program has been exceptional and continues to of great benefit to departments across the City of Bismarck.

RECOMMENDED CITY COMMISSION ACTION

The Human Resource department recommends approval.

STAFF CONTACT INFORMATION

Robert McConnell, Director Human Resources, 701-355-1330, rmcconnell@bismarcknd.gov

08/11/2016

Bob McConnell
City of Bismarck
PO Box 5503
Bismarck ND 58506

Letter of Agreement

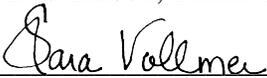
The Division of Continuing Education, Training & Innovation at Bismarck State College is pleased to coordinate training for the 2016-2017 Learning Partners.

- Courses:** Includes any open enrollment class, including online classes, offered by CETI during the program dates.
- Dates:** The program will run from August 1, 2016, to June 30, 2017. Any remaining balance on June 30, 2017 is non-refundable.
- Tracking:** A monthly balance sheet will be emailed to you detailing the remaining dollar amount left in your account.
- Cancellations:** City of Bismarck employees cancelling out of class need to notify CETI at 224-5600 a minimum of five (5) business days prior to the start date through your company contact person. If the notification comes after this time frame, tuition is charged. BSC reserves the right to cancel an event for good cause shown, including, but not limited to insufficient enrollment, loss of or lack of funds, natural disasters, or other circumstances over which BSC has no control. If this training event is cancelled, both BSC and I are released from all obligations set out in this contract.

Training Investment: \$7,500.00 (Total Value \$8,625)

Please review, sign, and either scan and email (deborah.a.larson.1@bismarckstate.edu) or fax to (701-224-5777) this Letter of Agreement to our office by August 31, 2016. You will be invoiced in full in September.

Thank you for your support and involvement in the Learning Partners training consortium. We look forward to assisting City of Bismarck with their professional development during the coming year!

 _____ Deb Larson, TrainND Manager	8/11/16 _____ Date
 _____ Sara Vollmer, Director CETI	8/11/16 _____ Date
_____ City of Bismarck	_____ Date



PARKING AUTHORITY

DATE: August 17, 2016
FROM: Bismarck Parking Authority
ITEM: Request for Sole Source Contract Work

REQUEST

The Bismarck Parking Authority is requesting the ability to conduct a sole source contract with Vector Construction of Fargo, ND to do repair work at the Parkade Ramp.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

The Bismarck Parking Authority has been working with CW Structural Engineers to develop a plan to repair a broken tendon in the Parkade Ramp. The repair work is very specialized work that is able to be completed by Vector Construction. In the past, Vector Construction has completed other specialized work in the Parkade Ramp to the satisfaction of the Bismarck Parking Authority.

RECOMMENDED CITY COMMISSION ACTION

Consider the request and authorize the Bismarck Parking Authority to engage with Vector Construction as a sole source contractor for the work in the Parkade Ramp.

STAFF CONTACT INFORMATION

Rocky Gordon, Manager for the Bismarck Parking Authority, 223.8568

Memo

To: Mayor Seminary and Board of City Commissioners
From: Rocky Gordon, Manager of Bismarck Parking Authority
Re: Request to be relieved of public bid process

The Bismarck Parking Authority is requesting relief from the public bid process for repair of broken structure tendons in the Parkade Ramp.

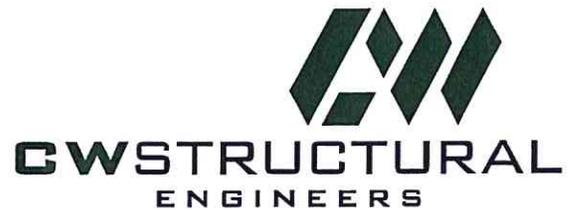
Our consultant, CW Structural, has estimated the cost of repair at \$183,488 for Phase I of the needed repairs. The consultant working with Vector Construction has done a number of concrete excavations, sampling, and corrosion potential tests to arrive at their recommendations and cost estimates. The consultant has recommended and we have removed parking from the area impacted by the broken tendons.

We would like to award the project to Vector Construction of Fargo because they are the only contractor that the consultant is aware of in this region that does this specialized work. Vector is able to do the work in a reasonable time frame and is familiar with the ramp and the scope of work that is needed.

Thank you for your consideration of this request.

Rocky Gordon

1000 EAST CALGARY AVE. SUITE 2
BISMARCK, NORTH DAKOTA 58503
OFFICE | 701.221.3286
CWSTRUCTURAL.NET



August 9, 2016

Bismarck Parking Authority
c/o Rocky Gordon
Rocky Gordon & Co.
P.O. Box 1774
Bismarck, ND 58502

RE: Bismarck Parkade – Blue Level Slab & Tendon Repair

Dear Rocky;

The following report is being issued in conjunction with the recommended action steps listed in our original November 15, 2015 report in regards to the broken PT tendon that was observed at the blue level of the Bismarck Parkade parking ramp located at 114 N. 6th Street. Our report discusses the finding of the testing and investigation and provides recommendations on the next steps in making repairs to the broken tendon and the observed spalling at the blue level slab and observed concrete spalling and delaminations.

As was recommended previously and approved by the owner, Vector Construction performed the initial testing and investigation at the Bismarck Parkade in April 2016 and has provided a report (See Enclosure #1), dated July 17, 2016, which contains photos and explanation of their findings and the various tests performed. The purpose of this testing was to determine if the broken tendon and corrosion that was observed might be a more widespread issue across the slab or if it was just a local issue with a single damaged tendon.

As can be reviewed further in Vector's report, their testing and investigation determined that the observed corrosion was more of a local issue at the visible broken tendon spall location and along the stressing line further up the ramp to the west and was not a widespread corrosion issue across the slab. Their testing did reveal, however, that there appears to be two broken tendons in the slab, rather than just one as originally thought, as a tendon directly adjacent to the exposed broken tendon also appears to be broken.

Testing and Investigation Summarization

As noted in Vector's report, it is their opinion that much of the corrosion that was observed at the blue level slab likely occurred while the original ramp entrance was functional on the north side of the ramp. Vehicles would enter the ramp on the north side of the east end of the blue level, where much of the current corrosion is present, and would likely drag salts and moisture into the ramp at this location. While the past closing of this entrance likely reduced the amount of salts brought onto the blue level, it also created some areas of poor drainage areas that have appeared to allow water to pool. As a result, the areas where corrosion had been occurring while the north entrance was operational still remain, and some other areas where the old north entrance were closed off are suffering additional corrosion and spalling where poor drainage zones were created. Most notably, the old location of the north entrance ticket machine appears to be experiencing significant spalling and corrosion on the underside of the blue level slab at the very east end of the blue level.

It is unknown if the broken PT tendons observed on the blue level are directly related to this north entrance corrosion or if they were damaged during attempted repairs to spalls that may have been present in years past during the north entrance operation. It is also unclear how long the visible PT tendon has been broken, but it is assumed to have been broken for some time (years) as it is not a recent development. There are some fairly large areas visible on the top surface of the slab,

correlating to the damaged PT tendon below, where sawcuts and concrete patching appears to have been done in the past. These patched areas are currently exhibiting many cracks as they do not appear to be holding up well. The age of these concrete patches is also unknown.

Vector's report also mentioned that the stressing line further west up the ramp on the blue level, near grid 5, had readings that indicated that active corrosion was occurring. This stressing line (which refers to the location where the ends of PT tendons are located and anchored) was also part of a slab construction joint during original construction of the ramp. Naturally, the unprotected original construction joint, where two different concrete pours meet, provides an avenue for moisture and salts to migrate into the concrete slab. The presence PT tendon end anchorages within this joint makes the ends of the PT tendons very susceptible to corrosion. Vector makes a note in their report on how a traffic coating is not currently protecting this joint and recommends that one be provided over the joint at a minimum to prevent active corrosion at this stressing line.

In looking at the repairs that would need to be made to the PT tendons, there are different types of PT tendons that have been used over the years, which required different amounts of labor to repair. Per discussion with Vector, the current type of PT systems that is most commonly used in the industry today are monostrand post tensioning tendons, which can basically be described as a cable consisting of outer wires wound around a central wire that is tensioned by grabbing the entire cable wire assembly with a single jack to apply tension. The cables are run inside a circular plastic sheath located within the slab that allows for fairly straightforward removal and reinstallation of a new tendon during repair within the original plastic sheath. This is the type of system that is present at the Galleria ramp in Bismarck.

In contrast, the Parkade ramp, consists of what is called a "button-head" tendon system. Each tendon location on the Parkade consists of (8) -1/4" diameter wires, running parallel to each other, each tensioned individually, and attached to the same button head anchorage at the end of the tendon with all eight of these parallel wires wrapped in paper sheathing. It is our understanding that this button-head post tensioned tendon system is not utilized anymore in new construction and repair design of these systems need to be out-sourced to a specialty engineering firm by Vector. Replacement of button-head tendons is not a simple task as new tendons cannot be simply fished through the old sheathing as the paper sheathing does not hold a consistent shape. A very significant amount of concrete excavation would likely need to be done along the tendon length to insert and stress new button-head tendons and stress each individual wire of the tendon as mentioned previously. Repair and replacement of button-head tendons can cost approximately 1.8 times that of a monostrand tendon per rough estimates provided by Vector. This is for installation cost does not include the specialty engineering costs that are also required to design the replacement button-head tendons.

Budget Pricing for Repairs

Vector has provided a "Budget Pricing & Repair Strategy" report outlining a range of approximate costs for various scopes of work associated with the observed corrosion for use by the parking authority in potentially budgeting for the recommended repair work to the Bismarck Parkade. This budget pricing breakdown provided by Vector can be found at the end of this report as well. To summarize, they have broken the work down into various scopes listed below. Vector provided a high/low range of budget pricing. The maximum estimated repair costs have been listed below. Please refer to Vector's budget pricing report for a more specific break-out of the repair work associated with each associated scope of work.

- 1.) Blue Level -Underside (overhead) slab repairs: \$51,246
 - a. In general, this provides concrete patching and repairs to the underside surface of the slab.
- 2.) Blue Level -Topside slab repairs: \$68,790
 - a. In general, this provides concrete patching and repairs to the top surface of the slab.
 - b. Traffic coating work is also included in this scope of work.
- 3.) Blue Level -Corrosion Mitigation of existing PT tendons: \$83,688
 - a. In general, this provides corrosion protection of two tendons adjacent to the broken tendons that has some minor rust and provides protection along the stressing line to prevent further corrosion.

- 4.) Blue Level – Structural Repair of slab reinforcing (Two options were considered):
- a. ~~Option #1 – Structural Strengthening with adhered FRP.~~
 - i. **NOTE:** We are not recommending that this option be considered due to PT compatibility and durability concerns under vehicular traffic. There would also be unknown additional associated design costs that are not included in this pricing which would likely not make this option very cost efficient.
 - b. Option #2 – PT tendon replacement of two tendons: \$73,800* (*Estimate - Contingent on Design)
 - i. This includes a rough cost for specialty design engineering that will be required for the two broken button-head tendons.
 - ii. It should be noted that a specialty button-head designer has not yet been consulted. The amount of work to install the tendon is being estimated. The button-head tendon designer may have other recommendations or options for repair (such as external PT tendons) that could greatly affect this estimate.
- 5.) Yellow Level - Repair of underside concrete delaminations in White Drug utility room: \$15,600
- a. These repairs involve minor corrosion that was discovered during the 2016 walk through of the ramp and appear to have been caused by corrosion to non-PT tendon reinforced areas around two storm drains located at the yellow level just west of the ticket machine and at the southwest corner of the air handler room.

Additionally, per Vector, mobilization costs can be expected to be as much as \$16,000, traffic control could be \$5,000 and access costs (such as closing off areas with plastic to contain dust) could be up to \$5,000. These costs could be assumed per mobilization should the work be broken up. As a result, a **Total Estimated Repair Cost of \$319,124, could be expected (\$293,124 repairs + \$26,000 mobilization/traffic/access)** including only the PT repair option #2.

Proposed “Next Steps” for Repair

1. After discussion with Vector, this work would not all need to be performed at one time, but could be prioritized over subsequent years if desired. The significant structural items related to the PT tendons, such as repair of the tendons, corrosion protection and mitigation of the tendons and concrete patching at the tendon repair areas could be handled first, **as listed in project scopes #3 & #4, within the first year for approximately \$183,488 (including mobilization costs)** per Vector’s budget pricing. Concrete patching and repairs at other non-PT tendon spall areas and traffic coating at the stressing line could be repaired at a later date, such as the following year, **as listed in project scopes #1, #2, & #5 for approximately \$161,636 (including additional mobilization costs)**. However, there could be savings in mobilization costs should the work all be done at one time rather than subsequent years. The different areas to be repaired and access required to make these repairs would need to be coordinated with the owner to determine what would be the least disruptive option for the operations of the ramp. Loss of parking spots should be anticipated for up to 1 ½ months on both the blue-level and the yellow level along the broken tendons to allow for repair of these two broken tendons. Should any replacement of the adjacent two tendons #1 & #4 be recommended by the designer in lieu of providing anodes per project scope #3, another 2 to 3 weeks may be needed. Other non-PT-areas requiring patching and work along the stressing line would likely be able to be done over weekends to not majorly disrupt the operations of the ramp. Ultimately, it is our recommendation that all repairs be made as soon as possible to prevent further corrosion that would potentially jeopardize any additional tendons.
2. Being that the repair of these button-head tendons is specialty work, it is unknown how the owner would like to proceed with making the repairs and potentially soliciting bids to do the work. Two companies that CWSTRUCTURAL is familiar with that can make these repairs are Vector Construction (Fargo, ND) and Walker Restoration (Chicago, IL). Both companies could be solicited directly for official proposals to do this work if desired. Vector, who was hired to do the initial testing and investigation, is very aware of the required repairs, per their report. Walker Restoration, who recently assisted with work on the Galleria ramp, could be provided with Vector’s investigation report and estimated repair quantities, but it may be unlikely that they would be willing to provide a repair proposal without personally observing the areas to be repaired and the existing condition and access that is available. We would also want to verify if they would have any issues with making repairs to a

button-head tendon system that is present at the Parkade ramp, as this is an old-school type of PT tendon as explained previously in this report.

ACTION STEPS: The anticipated next “Action Steps” to work toward the repairs would be the following:

3. Remove vehicle load from damaged tendon area – The broken tendons, #2 & #3, are located approximately 33” and 60”, respectively, from the central parking garage wall to the south. As a result, it is recommended that the parking stalls at the blue level along the north side of the central parking garage either be changed from diagonal parking to parallel parking with vehicles located 8’-0” from the central garage wall or blocked off entirely, should this not be enough space to provide parallel parking, to keep vehicle load off of the broken tendons until repairs can be made. It is also recommended that the parking authority review the underside and top side surface of the blue-level slab on a monthly basis for any new cracks in the slab that may become present in the slab and notify the structural engineer if any new cracking is observed. While the ramp has been functional for a long time with no additional signs of cracking, this parking arrangement and periodic inspection is being recommended as a precaution.
4. Preparation of Repair Documents - Whether the repairs are advertised for bid or solicited directly to specialty PT & concrete repair consultants, CWSTRUCTURAL Engineers would anticipate assembling “Repair” documents to be provided to the PT & concrete repair consultants to solicit proposals to do the work. These drawings would indicate the areas to be repaired and provide additional structural information about the tendon and reinforcing, as determined from the recent testing and investigation. These to document the work that is expected to be completed and serve as contract documents for the owner.
5. Solicitation of Bids – Proposals and construction schedules to make the repairs as indicated on the repair documents prepared by CWSTRUCTURAL would be solicited at the owner’s direction. Should the owner desire to advertise for bids, CWSTRUCTURAL would need to consult with another firm to assist with assembling the front-end specifications, advertisement for bids, etc. if the owner decided not to handle these items personally.
6. Award Project & Make Corrosion Repairs – Should the owner be satisfied with the solicited proposals and associated repair construction schedules, the potential phasing and extent of work to be performed would need to be coordinated with the owner and the ramp operations. The repair work would be performed by qualified concrete repair contractor per the scope indicated on the repair documents.

It should be noted by the owner that Vector anticipates that all corrosion mitigation and galvanic anode installations, which are installed within the concrete patches to sacrificially corrode in place of the reinforcing, are expected to last 15 to 20 years under constant active corrosion and provide protection for the tendons and reinforcing at these areas for this duration. This lifespan can be extended by preventing moisture infiltration via proper drainage and protection with traffic coatings.

Estimation of Costs

Without knowing how the owner desires to proceed with soliciting bids and if potential phasing of the repair work is desired, we are currently only able to provide cost estimates for engineering services associated with Action Step #2 (Prepare repair construction documents) as listed previously. CWSTRUCTURAL’s engineering service costs associated with soliciting bids per Action Step #3 (Soliciting Bids) would need to be reviewed with the owner to determine how they would like to pursue awarding the work and making the repairs.

Regarding action step #2, CWSTRUCTURAL Engineers proposes a **lump sum fee of \$12,000** to perform the services noted above. The repair documents our office would develop will indicate areas where repairs are to be made and provide anticipated repair quantities for each item, per Vector’s budget pricing. These drawings could also provide information to the contractor performing the work and the owner regarding the repair access and staging requirements that may require coordination and affect the ramp operations.

Regarding Action Step #3, the scope of front end work and specifications associated with the owner’s desired bidding process would need to be reviewed with the owner. The amount of administration required by our office is unknown until

further direction on the award process for the repair process is known. Additional proposals would likely need to be provided by our office, which will depend on the required scope of work on the front end to solicit bids and make the repairs.

Recommended Action

At this time, it is the recommendation of CWSTRUCTURAL Engineers that the Parking Authority adjust the parking arrangement at the broken tendons and authorize the production of repair documents to be used in the future to solicit proposals, either directly or by bidding as directed by the owner. It is our recommendation that Vector Construction and Walker Restoration be solicited directly for official repair proposals if this is acceptable to the owner.

We request that the owner review the budget pricing provided in this report and advise on the procedural requirements for awarding this work. We would also request that the owner advise on the scope of work and whether it would be desired to be completed at one time to minimize ramp disruption or if it would be desired to break up this work, and the associated costs, into subsequent years as described in this report.

Thank you again for allowing CWSTRUCTURAL Engineers to assist with the tendon investigation and repair. Should you have any questions regarding this report, please feel free to contact our office.

Sincerely,



Derek Kost, P.E. – Project Structural Engineer
CWSTRUCTURAL Engineers

- Enc. #1: Post-Tension Tendon Evaluation Report (Vector Construction)
- Enc. #2: Budget Pricing and Repair Strategy Report (Vector Construction)

Authorization: Should the proposed engineering services and arrangement of fees for these services (as noted in Action Steps #1 above) meet with your approval, we ask that you sign below to acknowledge acceptance of these terms. Please return one signed original of this agreement for our records.

Bismarck Parking Authority

Accepted By: _____ Date Signed: _____

Printed Name: _____ Title: _____

August 16, 2016

MEMORANDUM

To: Commissioners Askvig, Guy, Marquardt, Oban, and Mayor Seminary
From: Randy Bina, Executive Director *RB*
Re: **AGENDA ITEM – Park Improvement District 16-002**
Request for Resolution Receiving Bids and Ordering Preparation of Engineer's Statement
Request for Resolution Awarding Contract
Request for Resolution Approving Contract and Contractor's Bond

Please consider the following at the Board of City Commissioners meeting to be held on Tuesday, August 23, 2016, at 5:15 p.m. in the Tom Baker Room.

On June 14, 2016, the City Commission created and authorized the advertisement of bids for Park Improvement District 16-002 which consists of the development of Heritage Park, a neighborhood park located in Heritage Park Subdivision. The advertisement for bids was published July 12, 19, and 26th. Bids were received on August 3rd and are summarized in the enclosed letter and Bid Tabulation provided by Swenson, Hagen & Co. P.C. The original engineer's cost estimate was \$345,634. The Park Board will meet on August 18, 2016, to consider approving and awarding the bid to Capital City Construction for a total bid amount of \$325,629.00, which includes alternates two and three.

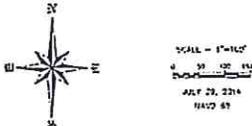
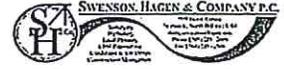
Requested Board action is to approve the award of bid to Capital City Construction and to approve the contract and contractor's bond, contingent upon the Park Board's approval of the same at the Park Board's August 18th meeting.

Attachments: Map of Park Improvement District 16-002
Diagram of the Park Area
Bid Tabulation

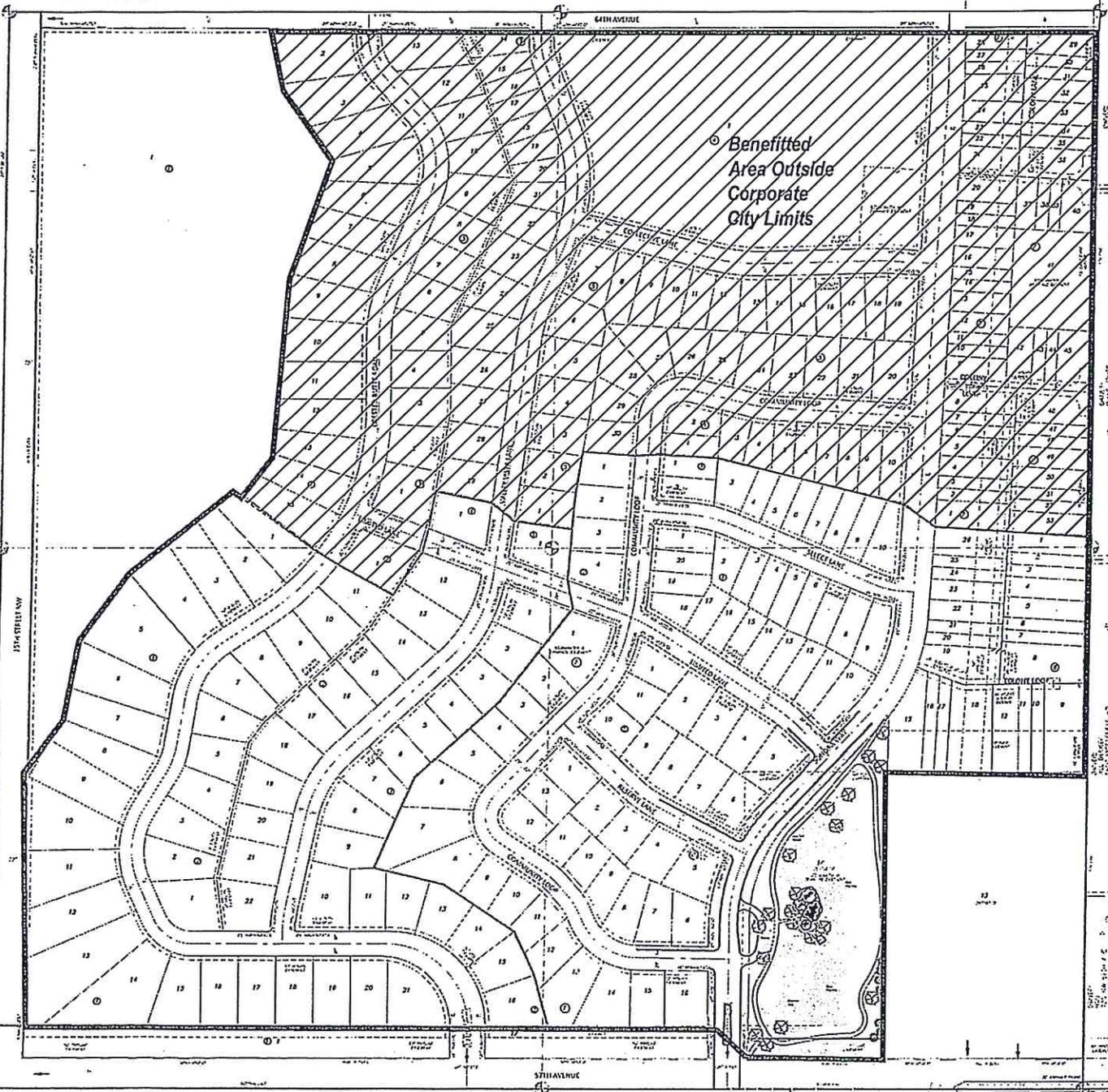
CC: Jason Tomanek, Assistant City Administrator
Sheila Hillman, City of Bismarck Director of Finance
Kathy Feist, Park District Finance Director
Wayne Munson, Board of Park Commissioners President

HERITAGE RIDGE ADDITION

THE SOUTHWEST 1/4
OF SECTION 8, T. 139 N., R. 80 W.
BISMARCK, NORTH DAKOTA

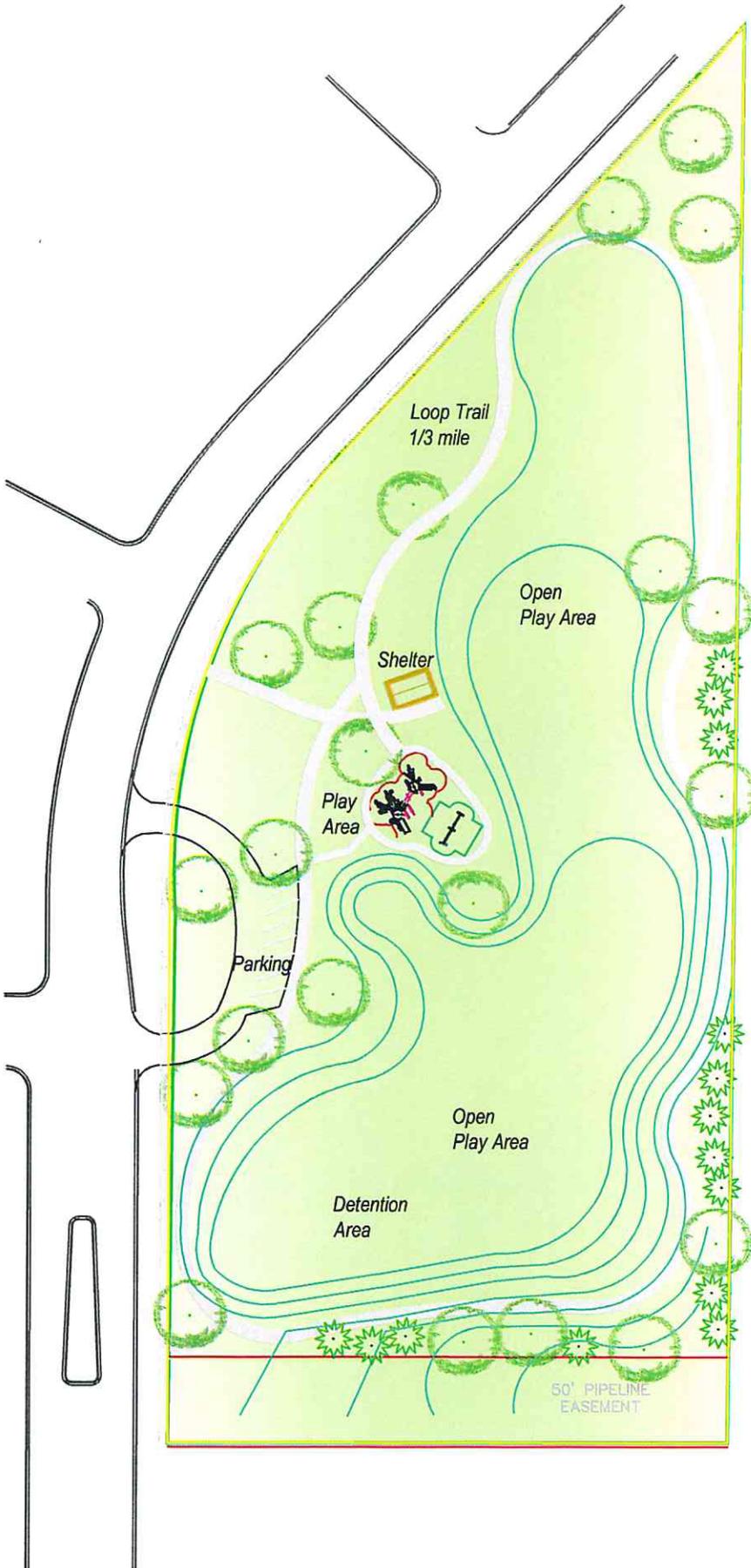


OWNER: SWENSON, HAGEN & COMPANY P.C.
PROJECT: HERITAGE RIDGE ADDITION
DATE: JULY 29, 2016
SCALE: 1"=100'



DATE: JULY 29, 2016
DRAWN BY: SWENSON, HAGEN & COMPANY P.C.
CHECKED BY: SWENSON, HAGEN & COMPANY P.C.

EXHIBIT A-1 Diagram of the Park Area



Heritage Ridge Subdivision Preliminary Neighborhood Park Plan





SWENSON, HAGEN & CO. P.C.

civil engineering . surveying . land planning . hydrology
landscape & site design . construction management

August 10, 2016

Randy Bina, Director
Bismarck Parks and Recreation Department
400 Front Avenue
Bismarck, ND 58504

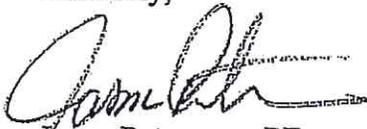
Re: Heritage Ridge Park

Dear Randy:

We have reviewed the proposal opened at the bid opening on August 3, 2016 for the above mentioned project. Enclosed is a tabulation of the proposal. The project encompassed three alternates, of which, alternate one was for asphalt surfacing and alternate two was concrete surfacing. Both alternates are within budget. Due to the type of soils with the project area being expansive in nature, it is recommended that alternate two be selected. Alternate three is irrigation being provided around the playground area. This alternate is within the budget and it is recommended that alternate three be selected as well. With alternate two and alternate three selected, Capital City Construction is the low bidder and all information is in order. We recommend awarding the project to Capital City Construction with a total bid total of \$325,629.00. The engineer's estimate is in the amount of \$345,634.00.

Please let me know if you have any questions or require additional information.

Sincerely,



Jason Petryszyn, PE
Project Engineer

Enclosure

c: Capital City Construction

HERITAGE RIDGE PARK
 BID TABULATION

August 3, 2016

ITEMS	QUANTITY	ENGINEERS ESTIMATE		WEISZ & SONS		CAPITAL CITY CONST.	
		UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
Topsoil Removal	880 CY	\$ 2.00	\$ 1,760.00	\$ 1.50	\$ 1,320.00	\$ 2.65	\$ 2,332.00
Topsoil Replacement	575 CY	\$ 5.00	\$ 2,875.00	\$ 5.00	\$ 2,875.00	\$ 7.76	\$ 4,462.00
Grading	1 LS	\$ 15,000.00	\$ 15,000.00	\$ 17,000.00	\$ 17,000.00	\$ 18,100.00	\$ 18,100.00
Water	30 MGAL	\$ 25.00	\$ 750.00	\$ 25.00	\$ 750.00	\$ 173.70	\$ 5,211.00
Erosion Control	1 LS	\$ 10,000.00	\$ 10,000.00	\$ 8,200.00	\$ 8,200.00	\$ 10,600.00	\$ 10,600.00
4" Sanitary Sewer	63 LF	\$ 40.00	\$ 2,520.00	\$ 44.00	\$ 2,772.00	\$ 76.00	\$ 4,788.00
2" Water Service	63 LF	\$ 60.00	\$ 3,780.00	\$ 50.00	\$ 3,150.00	\$ 90.00	\$ 5,670.00
12" Storm Sewer	35 LF	\$ 50.00	\$ 1,750.00	\$ 41.00	\$ 1,435.00	\$ 86.00	\$ 3,010.00
12" Flared End Section	1 EA	\$ 600.00	\$ 600.00	\$ 175.00	\$ 175.00	\$ 590.00	\$ 590.00
Bedding Material	22 TON	\$ 15.00	\$ 330.00	\$ 19.00	\$ 418.00	\$ 21.00	\$ 462.00
2' x 3' Box Inlet	1 EA	\$ 2,500.00	\$ 2,500.00	\$ 2,400.00	\$ 2,400.00	\$ 2,650.00	\$ 2,650.00
Scourstop	32 SF	\$ 25.00	\$ 800.00	\$ 20.00	\$ 640.00	\$ 23.50	\$ 752.00
Standard Curb & Gutter (parking lot)	385 LF	\$ 17.00	\$ 6,545.00	\$ 50.00	\$ 19,250.00	\$ 20.60	\$ 7,931.00
Sidewalk Ramps & Curbing (play area)	288 LF	\$ 75.00	\$ 21,600.00	\$ 94.00	\$ 27,072.00	\$ 58.35	\$ 16,804.80
Signage	1 LS	\$ 300.00	\$ 300.00	\$ 210.00	\$ 210.00	\$ 225.00	\$ 225.00
Striping	1 LS	\$ 450.00	\$ 450.00	\$ 400.00	\$ 400.00	\$ 430.00	\$ 430.00
Seeding	46,720 SF	\$ 0.15	\$ 7,008.00	\$ 0.05	\$ 2,336.00	\$ 0.05	\$ 2,336.00
Hydromulch	46,720 SF	\$ 0.05	\$ 2,336.00	\$ 0.06	\$ 2,803.20	\$ 0.06	\$ 2,803.20
Playground Equipment	1 EA	\$ 107,500.00	\$ 107,500.00	\$ 83,500.00	\$ 83,500.00	\$ 88,410.00	\$ 88,410.00
Picnic Shelter	1 EA	\$ 32,100.00	\$ 32,100.00	\$ 18,500.00	\$ 18,500.00	\$ 19,000.00	\$ 19,000.00
Honeylocust	30 EA	\$ 350.00	\$ 10,500.00	\$ 395.00	\$ 11,850.00	\$ 423.00	\$ 12,690.00
Discovery Elm	11 EA	\$ 300.00	\$ 3,300.00	\$ 345.00	\$ 3,795.00	\$ 365.00	\$ 4,015.00
Bur Oak	9 EA	\$ 350.00	\$ 3,150.00	\$ 385.00	\$ 3,465.00	\$ 411.00	\$ 3,699.00
Spring Snow Crab	4 EA	\$ 300.00	\$ 1,200.00	\$ 295.00	\$ 1,180.00	\$ 315.00	\$ 1,260.00
Thunderchild Crabapple	4 EA	\$ 300.00	\$ 1,200.00	\$ 295.00	\$ 1,180.00	\$ 315.00	\$ 1,260.00
		TOTAL \$ 239,854.00		TOTAL \$ 216,676.20		TOTAL \$ 219,491.00	

ALTERNATE #1 - ASPHALT	QUANTITY	ENGINEERS ESTIMATE		WEISZ & SONS		CAPITAL CITY CONST.	
		UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
3" Asphalt Sidewalk	185 TON	\$ 115.00	\$ 21,275.00	\$ 121.00	\$ 22,385.00	\$ 130.60	\$ 24,161.00
4 1/2" Asphalt (Parking Lot)	142 TON	\$ 115.00	\$ 16,330.00	\$ 117.00	\$ 16,614.00	\$ 129.50	\$ 18,389.00
Aggregate Base CL 5	310 TON	\$ 40.00	\$ 12,400.00	\$ 29.00	\$ 8,990.00	\$ 32.70	\$ 10,137.00
		TOTAL \$ 50,005.00		TOTAL \$ 47,989.00		TOTAL \$ 52,687.00	

ALTERNATE #2 - CONCRETE	QUANTITY	ENGINEERS ESTIMATE		WEISZ & SONS		CAPITAL CITY CONST.	
		UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
4" Concrete Sidewalk	9,950 SF	\$ 5.00	\$ 49,750.00	\$ 5.80	\$ 57,710.00	\$ 4.74	\$ 47,163.00
5" Concrete (Parking Lot)	5,105 SF	\$ 6.00	\$ 30,630.00	\$ 6.25	\$ 31,906.25	\$ 5.45	\$ 27,822.25
Aggregate Base CL 5	135 TON	\$ 40.00	\$ 5,400.00	\$ 29.00	\$ 3,915.00	\$ 39.65	\$ 5,352.75
		TOTAL \$ 85,780.00		TOTAL \$ 93,531.25		TOTAL \$ 80,338.00	

ALTERNATE #3 - IRRIGATION	QUANTITY	ENGINEERS ESTIMATE		WEISZ & SONS		CAPITAL CITY CONST.	
		UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
Irrigation	1 LS	\$ 20,000.00	\$ 20,000.00	\$ 20,150.00	\$ 20,150.00	\$ 25,800.00	\$ 25,800.00
		TOTAL \$ 20,000.00		TOTAL \$ 20,150.00		TOTAL \$ 25,800.00	

CONTRACT CHANGE ORDER FORM

DEPARTMENT

Contract between the City of Bismarck and Crow River Construction, LLC

Contract Number: 2015-38 Change Order Number: 5

Project/Subproject: SANSWRUTIL.LIFTSTATIONREP.SOUTHPORT

Original Contract Amt: \$1,117,139

Project Description: Southport Lift Station and Forcemain Project

Previous Contract Amount: \$1,126,408.81

Change Order Amount: (\$10,942.80)

Original Contract Date: 10/31/15 Final Change in Contract Timeline: 9/30/16 Final

Within Project Scope: Y / N*

Within Project Funding: Y / N**

**If not within project scope, attach description of change in scope for Board approval.*

***If not within project funding, attach revised Project Budget for Board approval.*

Type of Change Order

Non Design-related Change Order: These change orders include unforeseen conditions, code-related issues, and building inspector changes.

Design-related Change Order: These change orders include unforeseen conditions that affect the appearance, layout, functionality, dimensions, and/or quality of the project.

Emergency Field Condition Change Orders: These change orders include any condition that causes an emergency situation where safety or other immediate losses may occur.

Other: (describe) close out

Project Manager Signature: (<\$15,000) Michelle Kase 8/9/16
Date

Department Head Signature: (<\$25,000) _____
Date

ADMINISTRATION

City Administrator Signature: (<\$50,000) _____
Date

Add to Commission Consent Agenda

COMMISSION APPROVAL

Commission Approval Date: _____

Attach minutes for Commission Approval

FISCAL

Comments: _____
Signature Date Completed

TO ALL DEPARTMENTS: Please attach a copy of the change order

CHANGE ORDER NO. 5-Balancing

Date of Issuance: 7/15/2016

Effective Date: 7/15/2016

PROJECT TITLE <i>Southport Lift Station and Force Main Improvements</i>
OWNER <i>City of Bismarck</i>
CONTRACTOR <i>Crow River Construction, LLC</i>
ORIGINAL CONTRACT DATE <i>4/2/2015</i>

THE CONTRACT DOCUMENTS ARE MODIFIED AS FOLLOWS UPON EXECUTION OF THIS CHANGE ORDER

1. ADDITIONS OR DELETIONS TO THE CONTRACT AND ASSOCIATED COSTS

Spec. No.	Item	Description of Addition or Deletion	Unit	Quantity	Unit Price	Affect On Contract Price
	7	CI 5 Aggregate Base	TON	-67.3	\$24.00	(\$1,615.20)
	8	AC Leveling Course-CI B	TON	16	\$300.00	\$4,650.00
	9	AC Surface Course-CI B	TON	2.95	\$300.00	\$885.00
	11	Bituminous Tack Coat	GAL	-10	\$3.00	(\$30.00)
	13	Asphalt Removal-Full Depth	LF	-10	\$2.00	(\$20.00)
	15	Controlled Density Fill	CY	-7	\$300.00	(\$2,100.00)
	21	10" SDR-26 San Sewer Main	LF	-12	\$125.00	(\$1,500.00)
	23	Pipe Bedding	TON	-70	\$48.00	(\$3,360.00)
	24	Subcut Gravel	TON	97.6	\$24.00	\$2,342.40
	28	6" Force main	LF	-65	\$100.00	(\$6,500.00)
	29	6" Force main - Bored	LF	-20	\$50.00	(\$1,000.00)
	39	2-Inch Water Service	LF	-3	\$65.00	(\$195.00)
	47	Connect To Forcemain	EA	-1	\$2,500.00	(\$2,500.00)
TOTAL COST FOR THESE CONTRACT ADDITIONS						(\$10,942.80)

2. JUSTIFICATION FOR ADDITIONS OR DELETIONS TO CONTRACT
This Change Order balances the estimated quantities with the actual quantities installed during construction.

3. CHANGE TO CONTRACT AMOUNT

	ORIGINAL CONTRACT AMOUNT:	\$1,117,139.00
	NET INCREASE/DECREASE FROM PREVIOUS CHANGE ORDER(S):	\$9,269.81
	CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER:	\$1,126,408.81
	INCREASE FROM THIS CHANGE ORDER:	-\$10,942.80
	NEW CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:	\$1,115,466.01

4. CHANGE TO CONTRACT TIMES

Original Contract Times:

Working Days Calendar Days

Substantial Completion (Days or Date): *9/15/2015*
Ready For Final Payment (Days or Date): *10/31/2015*

Contract Times from previously Approved Change Orders

Substantial Completion (Days or Date): *1/22/2016*
Ready For Final Payment (Days or Date): *6/15/2016*

Contract Times will be Increased/Decreased because of this Change Order

Substantial Completion (Days or Date): *0 Days*
Ready For Final Payment (Days or Date): *0 Days*

Contract Times including this Change Order

Substantial Completion (Days or Date): *1/22/2016*
Ready For Final Payment (Days or Date): *6/15/2016*

5. REQUIRED SIGNATURES - Not valid until signed by Owner. Signature of Contractor indicates agreement herewith, including any adjustments in the Contract Amount or Contract Times

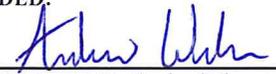
ACCEPTED:

By: _____
OWNER (Authorized Signature)
Name: _____
Title: _____
Date: _____

ACCEPTED:

By:  _____
CONTRACTOR (Authorized Signature)
Name: *Craig Harrison*
Title: *owner*
Date: *7-29-16*

RECOMMENDED:

By:  _____
ENGINEER (Authorized Signature)
Name: *Andrew Werder*
Title: *Project Manager*
Date: *8-4-16*



FINANCE DEPARTMENT

DATE: August 23, 2016
FROM: Sheila Hillman *SH*
ITEM: Rural Road Funding for Lighting District SI492

REQUEST

Consider approval of Rural Road Sales Tax funding for Lighting District SI492

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

Fiscal Services is in the process of finalizing the 2015 special assessments. In the review of the SI 492 lighting district, they found that unit 4 in the Legacy Addition included an unannexed property. The Rural Road Sales Tax fund is used to fund the assessments for unannexed property that is held in abeyance. This was an oversight in unit 4 so no funding from the Rural Road Fund was requested. Since the unannexed property receives a benefit, it would be appropriate to use that funding to hold the assessment in abeyance. The funding amount would be \$10,660. The property would then be assessed for the improvement upon annexation to the City.

RECOMMENDED CITY COMMISSION ACTION

Approve \$10,660 from the Rural Road Sales Tax allocation to fund the assessment for the unannexed property in unit 4 of SI492 lighting district.

STAFF CONTACT INFORMATION

Sheila Hillman: bcollins@bismarcknd.gov or 355-1600



CITY ATTORNEY

DATE: August 22, 2016
FROM: Charlie Whitman, City Attorney
ITEM: Request by Park District for a Warranty Deed for Schaumberg Arena.

REQUEST

The Bismarck Parks and Recreation District has asked that the City execute a warranty deed with the City as Grantor and the Park District as Grantee in order for the City to convey the Schaumberg Arena to the Park District.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

I'm not aware of why the City has title to the Schaumberg Arena but the City obtained title by warranty deed in 1974, according to the title work provided to me by the Park District attorney.

RECOMMENDED CITY COMMISSION ACTION

Approve the execution and delivery of the attached warranty deed.

STAFF CONTACT INFORMATION

Charlie Whitman, 355-1640

A report of the full consideration paid for the property conveyed is not required pursuant to N.D.C.C. § 11-18-02.2(7)(e)

Dated: _____
Grantor or Agent

WARRANTY DEED

THE INDENTURE, made this 23rd day of August, 2016, between **THE CITY OF BISMARCK**, a municipality under the laws of the State of North Dakota, Grantor, whose address is P.O. Box 5503, Bismarck, North Dakota 58506-5503, and **THE PARK DISTRICT OF THE CITY OF BISMARCK**, a park district under the laws of the State of North Dakota, Grantee, whose post office address is 400 East Front Avenue, Bismarck, ND 58504.

WITNESSETH, For and in consideration of mutual grants and promises and covenants by and between Grantor and Grantee, Grantor does hereby GRANT to the Grantee, all of the following real property lying and being in the County of Burleigh and State of North Dakota, and described as follows, to-wit:

Lot One (1) of Block Twenty-seven (27) of Wachter's Third Addition to the City of Bismarck, North Dakota.

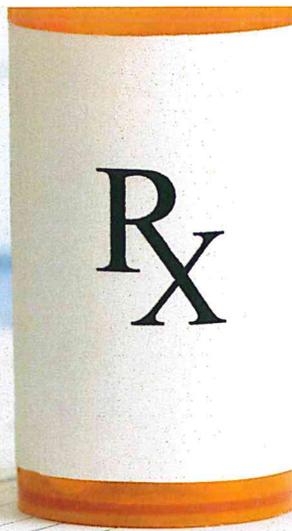
And the Grantor for itself, its successors, assigns, heirs, executors and administrators, does covenant with the Grantee that it is well seized in fee of the land and premises aforesaid and has good right to sell and convey the same in manner and form aforesaid; that the same is free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Auditor for collection, and the above granted lands and premises are in the quiet and peaceable possession of said Grantee, against all persons lawfully claiming or to claim the whole or any part thereof, the said Grantor will warrant and defend.

IN WITNESS WHEREOF, the Grantor hereunto sets its hand the day and year first above written.

Attest: _____
Keith J. Hunke
City Administrator

Michael C. Seminary
President, Board of City
Commissioners

Using Medication to Treat Opioid Addiction



Medication Assisted Treatment is an effective method for achieving recovery.

- ✓ Science has proven medication treatment, when combined with other supportive services, is successful in leading patients to live productive lives in recovery.
- ✓ Medications are already used to assist with opioid withdrawal (detoxification), however, opioid withdrawal by itself is NOT treatment—it is merely the first step within the treatment process.
- ✓ Opioid addiction is associated with a high rate of relapse. Medication can effectively manage cravings, decreasing potential for relapse.

Myth:

Prescribing medication for addiction is substituting one addiction for another.

Fact:

When used properly, taking medication to manage the symptoms of addiction is like taking insulin to regulate diabetes.

6.4% in 2007 **TO** **14%** in 2014

Increase in the number of people (18 years or older) receiving treatment at ND Human Service Centers reporting prescription drug abuse (TEDS).

Medications Used to Treat Opioid Addiction

Buprenorphine (Subutex, Suboxone)

- Decreases withdrawal symptoms for a longer period of time compared to methadone
- Prescribed by specialized physicians

Methadone (Methadose, Dolophine)

- Reduces cravings and prevents withdrawal symptoms
- Monitored in specialized opioid treatment programs

Naltrexone (Depade, ReVia, Vivitrol)

- Prevents feeling the effects of a drug
- Prescribed as an oral medication or by monthly injections

When not treated effectively, opioid abuse can lead to these potential consequences:

- ▲ Increase in heroin use
- ▲ Increased needle use
- ▲ Increased rates of HIV/AIDS
- ▲ Increase in crime
- ▲ Increased risk of overdose



DID YOU KNOW?

Opioid treatment is provided by medical professionals in a medical setting



www.parentslead.org/professionals

SIGNS & SYMPTOMS PRESCRIPTION OPIOIDS

Street Names

Oxys, Hydros, T-3 (Tylenol with codeine), Percs (Percocet/Percodan)

Method of Use

Swallowed, Smoked, Snorted (crushed into powder), Injected

Pain Medications

- Hydrocodone (Vicodin)
- Oxycodone (OxyContin)
- Propoxyphene (Darvon)
- Hydromorphone (Dilaudid)
- Meperidine (Demerol)
- Diphenoxylate (Lomotil)
- Morphine
- Fentanyl
- Codeine



Symptoms/ Effects of Use

- Pain relief
- Euphoria
- Drowsiness/sedation
- Nausea
- Confusion
- Constipation
- Respiratory depression/arrest
- Vivid nightmares
- Hallucinations
- Mood swings
- Unconsciousness
- Coma
- Tolerance
- Death (especially dangerous when mixed with alcohol)



What to look for...

- Dilated pupils
- Doctor shopping
- Missing medication
- Relaxed and oblivious to surroundings
- Fall in and out of sleep ("nodding off")
- Uncoordinated and unbalanced (difficulty standing/sitting straight)



Withdrawal Symptoms

- Restlessness
- Muscle and bone pain
- Insomnia
- Diarrhea
- Vomiting
- Cold flashes with goose bumps (referred to as "cold turkey")
- Involuntary leg movement

Note: Each person may experience different symptoms/effects. This list is not inclusive. For more information, visit www.drugabuse.gov

SIGNS & SYMPTOMS OPIOID: HEROIN

Street Names

Brown sugar, Dope, H, Horse, Junk, Skag, Skunk, Smack,
White horse, Black pearl, China white, Aunt Hazel

Method of Use

Smoked, Snorted, Injected



Symptoms/ Effects of Use

- Dry mouth
- Warm flushing of the skin, heaviness of the arms/legs
- Depressed breathing
- Slurred speech
- Feelings of itchiness
- Decreased motivation
- Hostility towards others
- Tolerance
- Dependence
- Increased risk of HIV infections and Hepatitis B and C (due to IV use)
- Collapsed and scarred veins due to IV use
- Muscle spasms
- Coma
- Death (usually by overdose)



What to look for...

- Constricted pupils
- Scars, sores, cuts, lesions, and/or "track marks" from IV use
- Poor hygiene
- Runny nose, constant sniffing, or nose-bleeds



Withdrawal Symptoms

- Restlessness
- Muscle and bone pain (body aches)
- Insomnia
- Diarrhea and vomiting
- Cold flashes with goose bumps
- Muscle spasms

Note: Each person may experience different symptoms/effects. This list is not inclusive. For more information, visit www.drugabuse.gov

WHAT CAN I DO?



LOCK

Keep medication out of sight and in a safe and secure place.



MONITOR

- ✓ Keep track of your medication and take only as directed.
- ✓ Monitor your remaining doses.
- ✓ Don't share your medication with others.



TAKE BACK

Drop off unused medication at local Take Back locations.
To find the location near you go to www.ag.nd.gov/PDrugs/TakeBackProgram.htm.

If a local Take Back location is not available:

- Take your prescription drugs out of their original containers.
- Crush and mix drugs with undesirable substances, such as cat litter or used coffee grounds.
- Put the mixture in a sealable bag or a disposable container with a lid to prevent the medication from leaking or breaking out of a trash bag.
- Conceal or remove any personal information, including prescription number, on the empty containers by covering it with black permanent marker or by scratching it off.
- Place the sealed container with the mixture, and the empty drug containers, in the trash.

When in doubt about proper disposal, contact your local pharmacist. Don't flush prescription drugs down the toilet or drain.



BE INFORMED

Be aware of common signs and symptoms of abuse, signs of overdose, and ways to respond. Visit www.prevention.nd.gov/rxabuse for more information.



PREVENTING PRESCRIPTION DRUG AND OPIOID ABUSE IN MY COMMUNITY

WHAT CAN **MY COMMUNITY** DO?

Host a community forum that addresses issues related to prescription drug/opioid abuse. Bring together law enforcement, pharmacies, ambulance services, behavioral health programs, schools, hospitals, business owners, community members, and other stakeholders.

Expand, initiate and promote community Take Back locations. To see the Take Back locations near you, visit: www.ag.nd.gov/pdrugs/takebackprogram.htm.

- Encourage local pharmacies to become Yellow Jug Old Jug Take Back locations if they aren't already. For more information and an application for pharmacies to participate, visit: www.nodakpharmacy.com/disposal.asp.
- Hold a Take Back Day to encourage community members to safely dispose of unused/old medications.
- Encourage community members to utilize available Take Back Programs.

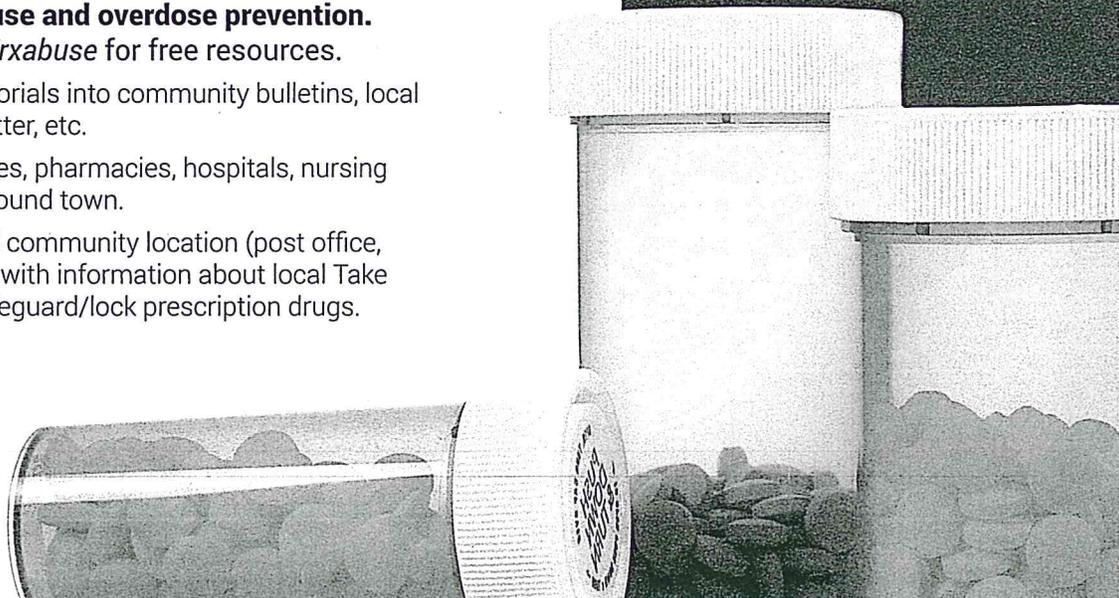
Encourage local pharmacists to consider becoming a trained pharmacist able to prescribe naloxone. For more information, visit: www.nodakpharmacy.com/naloxone.asp.

Share resources and information about issues related to prescription drug/opioid abuse and overdose prevention. Visit www.prevention.nd.gov/rxabuse for free resources.

- Place articles and opinion editorials into community bulletins, local newspapers, chamber newsletter, etc.
- Post flyers and posters in stores, pharmacies, hospitals, nursing homes, and other locations around town.
- Set up a booth at a frequented community location (post office, clinic, community center, etc.) with information about local Take Back locations and how to safeguard/lock prescription drugs.

TIPS FOR EFFECTIVE PREVENTION EFFORTS

- ✓ Review local data to drive efforts.
- ✓ Incorporate a consistent message from multiple groups of people/organizations (e.g. school, parents, youth, law enforcement, etc.).
- ✓ Implement efforts over a period of time and in many ways (e.g. media, education, policy, etc.).
- ✓ Impact the entire community and not just one person. Bring together law enforcement, pharmacies, ambulance services, behavioral health programs, schools, hospitals, business owners, community members, and other stakeholders.
- ✓ Focus on limiting access to prescription drugs (to those who do not legitimately need medication).



OPIOID ADDICTION FACT SHEET

WHAT IS THE PROBLEM?

The abuse of opioids, a group of drugs including heroin and prescription drugs, has a devastating impact on public health and safety in our country. Drug dependence is a universal, public health problem that is growing at an alarming rate. According to the CDC, approximately 100 Americans died from overdose every day in 2010. Prescription drugs were involved in more than half of the 38,000 overdose deaths that year and opioid pain relievers involved in over 16,600 of these deaths. There were about 3,000 drug poisoning deaths related to heroin. Drug overdoses even outnumbered deaths from gunshot wounds or motor vehicle crashes.

** New CDC data released December 10, 2015 shows the overall number and rate of drug overdose deaths increased notably between 2013-2014, driven in large part by continued increases in heroin deaths and an emerging increase in deaths involving illicit synthetic opioids. Data shows 18,893 deaths involving opioid pain relievers in 2014 which is an increase of 16% or 2,658 deaths compared to 2013 data. Prescription opioid-related overdose deaths are increasing in part because deaths involving synthetic opioids, such as fentanyl and tramadol, increased by 79% from 2013-2014, totaling 5,544 deaths in 2014. Heroin-related deaths have more than tripled since 2010; increasing 28% from 2013-2014, totaling 10,574 deaths in 2014. Heroin is often cut with fentanyl – with or without the user’s knowledge- to increase its effect.

Opioid dependence results from street drugs like heroin and morphine but also from legal prescription medications like Vicodin, Percocet, and OxyContin. Rates of prescription opioid abuse have skyrocketed across the country with reports of 5,500 new users per day (SAMHSA, OAS, NSDUH, 2010). According to the CDC, deaths from prescription opioids have reached epidemic levels in the past decade with overdose deaths now greater than deaths from heroin and cocaine combined, approximately 15,000 deaths per year (CDC Vital Signs, 2015). Most of these deaths are attributed to non-medical use of prescriptions.

When comparing the state of ND to national data, the percent of respondents reporting non-medical use of pain relievers in the past year included:

	2007-2008		2008-2009		2009-2010	
Age Category	ND	US	ND	US	ND	US
12+	3.98%	4.89%	3.92%	4.84%	4.11%	4.89%
12-17	6.54%	6.56%	6.21%	6.51%	6.66%	6.43%
18-25	9.24%	12.05%	9.35%	11.94%	9.05%	11.54%
26+	2.45%	3.44%	2.42%	3.40%	2.66%	3.53%

Source: National Survey on Drug Use and Health (NSDUH)

The DHS regional human service centers report an increase in the number of individuals in treatment reporting Schedule 2 drug use as a primary, secondary, or tertiary substance. Substances included codeine, methylphenidate, morphine sulfate, non-prescription methadone, and other opioid pain relievers. For individuals 18+, the percentage in 2007 of 6.4% rose to 14.2% in 2011. For individuals 17 and younger, the percentage in 2007 of 2% rose to 5.9% in 2011; however that was a slight decrease from 7.3% in 2010.

Non-medical use of prescriptions translates into increased utilization of ER's. A study conducted by the Stanford University School of Medicine in 2014 analyzed 2010 data from hospitals nationwide found that prescription painkillers were involved in nearly 68% of opioid –related overdoses treated in ER's; heroin accounted for 16.1% of overdoses. About half of the patients in the study sample who went to the ER for opioid overdoses were admitted to the hospital and costs for both inpatient and ER care totaled nearly \$2.3 billion. The cost to health insurers in direct healthcare costs is \$72.5 billion annually.

Often the supplier of the prescription unknowingly is the family; the family medicine cabinet is the user's supply source. National data indicates 71% of people who abuse prescription pain relievers obtain them from a friend or relative:

- 54.2% - received them from a friend or relative for free
- 12.2% - purchased them from a friend or relative
- 4.4% - took them from a friend or relative without asking

(Source: National Survey on Drug Use and Health, National Findings, 2011)

According to the ND Attorney General, rogue online pharmacies are also a source of prescription drugs.

The ND Board of Pharmacy reported that in ND in 2011 a total of 29,708,442 narcotic, analgesic, and muscle relaxant pills were dispensed to 152,522 recipients and a total of 522,209 prescriptions were written.

35 individuals in ND died from a drug overdose last year as compared to 33 in 2013.

The DOCR has reported more IV drug users in prison.

For the first time since Heartview's inception in 1964, prescription drugs are now the #2 drug of choice, second to alcohol, of those seeking services. Heartview is now treating 100 patients in Medication-Assisted Treatment programming.

WHAT IS AN OPIOID TREATMENT PROGRAM (OTP)?

Opioid dependence is a chronic, relapsing medical condition that requires long-term treatment and patient support. Medications like Buprenorphine, Buprenorphine/Naloxone, and Vivitrol are one component of a comprehensive, holistic treatment program that is currently offered at Heartview. Methadone will be added once the OTP is licensed. Medication-assisted treatment can only help with the physical part of opioid addiction; it takes more than medication to gain long-term recovery from opioid addiction. Patients receive supervised medication administration in the clinic in a holistic program including social and behavioral treatment and support services. Through this integrated evidence-based approach, the individual has a greater chance of abstinence from opioids and restoration of a more productive life. Close monitoring and proper treatment services are critical to a safe, effective program and contribute to the likelihood that an individual will be more successful in the recovery process.

The persistence of stigma and misunderstanding surrounding addiction in general but particularly about methadone continues to exist and sometimes gets in the way of quality care for individuals with addiction. Methadone Maintenance Treatment has more than a 35 year history of success in helping millions of persons in recovery from opiate addiction. When used in the context of a holistic program, methadone has been demonstrated in dozens of clinical trials as both effective and safe. Its use is not substituting one addiction for another; methadone normalizes function of the various body systems deranged by opioid use. The patient's dependence on methadone can be compared to one's reliance on insulin. The proper dose of methadone does not make a person feel "high" or "drugged" like other opioids. The gradual, long-lasting effects take away the hunger or craving for other opioid drugs, and suppresses uncomfortable withdrawal symptoms.

There is no specific length of time in methadone maintenance treatment; this type of treatment requires ongoing and consistent access to medication, therapy, and support. Methadone like many other medications is necessary for more healthy and productive living. Each patient will work closely with the clinic team to determine length of time in the program.

Diversion control is a major component of an effective OTP. In order to effectively manage the dispensing and administration of methadone, clear rules and expectations of staff as well as patients will be developed and implemented. Staff will be trained and supervised. Regular inventory of medications will occur with an account for every drop of methadone that is received, dispensed, and administered. Patients will undergo orientation and a copy of the rules/expectations will be thoroughly reviewed. Patients are required to comply with regular urine tests. They will be expected to sign a treatment agreement and a copy of it will be given to them. The clinic will be open specific hours of the day and very few if any exceptions will be made to the schedule. Patient check-in and medication administering will be done as efficiently as possible thus reducing the need for long-term parking and/or loitering. Patients who want or need to see the physician, case manager, or other staff may be at the clinic for up to one hour. Normally, methadone doses must be taken daily under supervision at the clinic. Patients are observed taking their dose. Federal and state regulations control who may have doses to take home (take-homes) and how many days at a time are allowed. Take-homes are allowed for those patients only who are comfortable on their prescribed dose, avoid all drugs of abuse, follow clinic rules, cooperate with staff, and have a stable home life. The privilege of take-home dosing is determined by the entire treatment team. Heartview will develop comprehensive policies and procedures as well as a diversion control plan.

OTP's have been proven to –

- Reduce risk of overdose and/or mortality
- Reduce criminal activity
- Improve family stability and employability
- Assure treatment for general health conditions, especially those related to drug use
- Identify/treat co-occurring mental health problems
- Increase retention in treatment
- Improve pregnancy outcomes for mothers and babies
- Alleviate homelessness

Science clearly demonstrates that addiction is a progressive disease of the brain that can be prevented and treated, and from which people can recover. Maintenance treatment programs save lives – they help stabilize individuals thus opening the opportunity for treatment of medical, psychological, and other problems so they can function as productive members of a family and community.

KEY ACTIONS

Opiate addiction has received a great deal of attention across the country and in ND. The Obama Administration has deployed a comprehensive and evidence-based strategy to address the issues. Support has been bolstered for medication –assisted opioid treatment and overdose prevention, government-wide response to the prescription drug abuse epidemic is in place, and action has been pursued against criminal organizations that traffic opioid drugs.

As of January 2014, 11 states and Washington, DC had enacted Overdose Good Samaritan Laws AND Naloxone Access Laws(the overdose-reversal drug), 29 have Overdose Good Samaritan laws, and 9 have Naloxone Access Laws. Used together, the Good Samaritan laws which grant immunity from criminal prosecution to those seeking medical help for someone experiencing an overdose, naloxone can save lives.

ND passed HB 1101 relating to opioid treatment programs during the 2013 legislative session and SB 2070, the Good Samaritan law, and SB 2104, the Narcan bill, this past legislative session.

OTP PROGRESS TO DATE and NEXT STEPS

Heartview submitted an OTP Certificate of Need to the Department of Human Services, Behavioral Health Division in April of this year. The Certificate of Need clearly demonstrated the need for an OTP in this area and the Division approved the Certificate of Need. Heartview is currently in Stage 2 of the planning process to become a fully licensed, accredited OTP. This phase includes:

- Review and development of policies and procedures related to Methadone treatment
- Review of state, federal, and Joint Commission laws, regulations and standards related to OTP's
- Planning, development, and follow-up with community partners and neighbors to address concerns and alleviate myths and uncertainty about the program
- Review and revise as needed agency forms and written materials to reflect program expansion
- Submission or required applications and documentation to Department of Human Services, Behavioral Health Division.

Heartview is in the process of completing some modifications to the current outpatient clinic in order to prepare for the OTP; specifically to accommodate a check-in/reception area, the safe to store the medication, a urine collection room, medication- administering windows, nursing and pharmacy office space, and counselor/case manager office space. We are working on the physical plant remodel concurrently with the development of federal and state requirements.

Heartview will need to increase staff in order to operate the program. We have completed the process of analyzing staffing needs for the program.

If all Step 2 requirements are met, DHS will issue a provisional license to operate an OTP. Step 3 involves the submission of required applications and documentation to the Substance Abuse and Mental Health Administration (SAMHSA) and Drug Enforcement Agency (DEA) for approval. SAMHSA will issue a provisional certification for up to one year; the program must achieve accreditation within one year. Once SAMHSA determines a program is qualified to provide opioid treatment under the federal opioid treatment standards, certification will be issued. Heartview will then submit the required registration paperwork to the DEA. The DEA will inspect the program and issue an approval. SAMHSA and DHS approvals are necessary in order to obtain registration from the DEA.

DHS will review all documents submitted to the federal agencies, community relations plan, and transportation plan for patients and conduct an onsite visit of the facility and interview staff to ensure knowledge of policies and procedures. Step 4 involves a site visit from the DHS. If all requirements are met, an unrestricted license will be issued to operate an OTP. The initial license may be issued for one year and up to two years for subsequent licenses.

Heartview is accredited by the Joint Commission. Once the program receives a provisional license from DHS and the OTP begins accepting patients, Joint Commission will be notified and will schedule an onsite visit. Maintaining Joint Commission accreditation will involve rigorous ongoing review of policies and procedures.

The DEA can make announced as well as unannounced inspections after the initial inspection. The DHS will conduct licensure reviews of the program at least once a year, with or without prior notice. SAMHSA requires regular renewal/re-certification.

SAMHSA and the DHS require paperwork to be filed any time there is a need to make an exception to the program or a change in the typical treatment for an individual patient is necessary.

Heartview is committed to operating an effective evidence-based treatment program and ensuring a safe environment for the patients, staff, and surrounding businesses and neighbors.



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: August 16, 2016

FROM: Carl Hokenstad, AICP, Director of Community Development

ITEM: Request for consideration to allow Bis-Man Transit to locate a public transportation point on the south side of Front Avenue between 5th and 7th Street

REQUEST

The Metropolitan Planning Organization (MPO) requests the Bismarck Board of City Commissioners consider allowing Bis-Man Transit to locate a public transportation point on the south side of Front Avenue between 5th Street and 7th Street on the Regular Agenda.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

Bis-Man Transit is no longer able to use the Kirkwood Mall parking lot as a Transfer Center for fixed-route bus riders. They are requesting permission to utilize the south side of Front Avenue between 5th Street and 7th Street for this purpose. Roy Rickert, Bis-Man Transit Director, will be present to request the fixed-route bus transfer and shelter location change and answer questions that the Commissioners may have regarding the proposed change. Transit's submitted request with a diagram is attached.

RECOMMENDED CITY COMMISSION ACTION

Consider approval of the request.

STAFF CONTACT INFORMATION

Steve Saunders, MPO Executive Director
ssaunders@bismarcknd.gov
701-355-1848

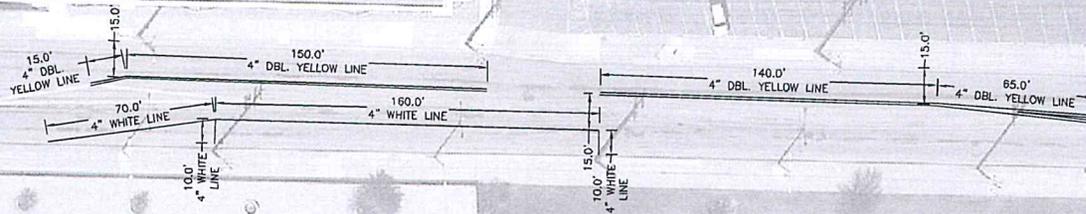
BISMARCK BURLEIGH
PUBLIC HEALTH

FRONT
STREET

BISMARCK EVENT CENTER

S 5TH STREET

S 7TH STREET



CAUTION
STRIPING LOCATIONS ARE APPROXIMATE.
CONTRACTOR IS RESPONSIBLE FOR
VERIFYING STREET WIDTH PRIOR TO
INSTALLATION.

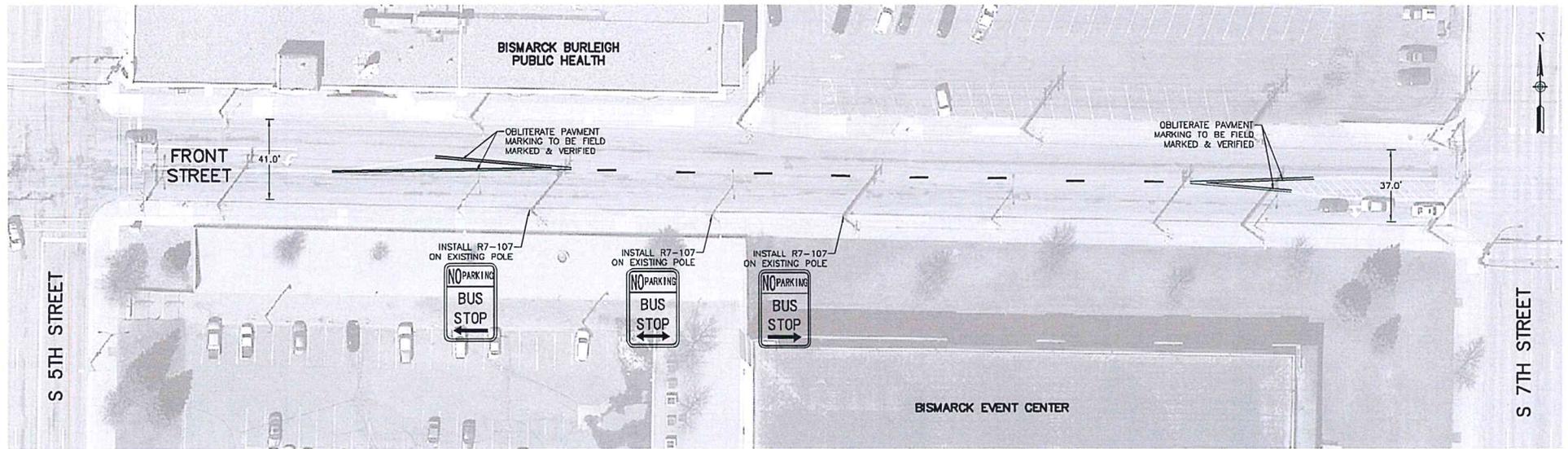
APPROXIMATE QUANTITIES

SPEC NO.	PAY ITEMS	QUANTITY
1210-4.4	PREPAT PVTI MKNG FLN GRVD-4"	1120 LF

Bismarck Engineering Department

STRIPING LAYOUT
FRONT STREET FROM S 5TH STREET TO
S 7TH STREET

SHEET NO. 1 OF 2 SHEETS
BISMARCK, N.D. DATE: 8/9/2016



CAUTION
 STRIPING LOCATIONS ARE APPROXIMATE
 CONTRACTOR IS RESPONSIBLE FOR
 VERIFYING STREET WIDTH PRIOR TO
 INSTALLATION.

APPROXIMATE QUANTITIES

SPEC. NO.	PAY ITEMS	QUANTITY
1210-4.5	OBLITERATION OF PVMT MRKNG	670 LF

Bismarck Engineering Department

SIGNING & REMOVAL LAYOUT

FRONT STREET FROM S 5TH STREET TO
 S 7TH STREET

SHEET NO. 2 OF 2 SHEETS
 BISMARCK, N.D. DATE: 8/9/2016

ENGINEERS ESTIMATE

Front Street Bus Stop Pavement Mrkings

<u>Item No.</u>	<u>Pay Item</u>	<u>Units</u>	<u>Quantity</u>	<u>Price</u>	<u>Total</u>
1210-4.4	Prepat Pmt Mrking Film Grvd-4"	LF	1,120.00	10.00	11,200.00
1210-4.5	Obliteration Of Pavement Mrkng	LF	670.00	3.00	2,010.00
	Traffic signs	EA	3.00	150	450.00
				Estimate Total	13,660.00

CITY OF BISMARCK

TAXC2016-00004
8-2-16 *nkf*

Date Received _____	APPLICATION FOR TAXI CAB LICENSE	PERMIT # _____ Expiration Date _____
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Chapter 5-05-03 of the Code of Ordinances of the city of Bismarck requires that "a person may not operate or permit a taxicab owned or controlled by him to be operated as a vehicle for hire upon the streets of the city without obtaining a license pursuant to this chapter."

- Name of Applicant (Business or Individual): Bismarck Yellow Cab
 Business Address: Same as Home address
 Business Phone Number: 701-204-3993 After Hours Number: [REDACTED]
 Home Address: [REDACTED] Bismarck ND 58503
- Applicant's experience in the transportation of passengers:
new
- Number of vehicles to be operated or controlled by the applicant: 1
- Location of proposed depots and terminals: _____
- Color scheme of insignia to be used to designate the motor vehicle(s) of the applicant:
Yellow

Make	Model	Serial Number	Capacity of Passengers
<u>Tosota</u>	<u>Sinner</u>	[REDACTED]	<u>7</u>

**If more space is needed, attach extra pages

Please enclose an application fee of \$100.00 made payable to City of Bismarck. To complete this application, a copy of a rate schedule showing all proposed rates, fee, and charges must accompany this application.

Applicant's Signature: *[Signature]* Date: 08-2-16

Date reported to Police Department: _____

Public Hearing Scheduled: Yes No Date: _____

Return form to: Bismarck City Administration, P O Box 5503, Bismarck ND 58506-5503
 Phone: 701-355-1300 Fax: 701-222-6470



License Reviews City of Bismarck

License Number: TAXC2016-00004

Licensee Name: BISMARCK YELLOW CAB

Applied: 8/3/2016

Issued:

Site Address: [REDACTED]

Expired:

City, State Zip Code: BISMARCK, ND 58503

Status: PENDING

Applicant: SAQIB, ZAMAN

Parent License:

Owner: J & J PROPERTIES LLP

Contractor: <NONE>

Details:

NEW APPLICATION FOR A PREVIOUSLY LICENSED TAXI COMPANY (SAME TAXI COMPANY NAME BUT NEW OWNER)

AS OF 8/23/16 -- DUE TO DAMAGE THE VEHICLE RECENTLY SUSTAINED, REPAIRS WILL NEED TO BE MADE TO THE VEHICLE PRIOR TO THE APPLICANT PUTTING IT INTO SERVICE. AFTER EXAMINATION OF THE REPAIRS BY THE POLICE DEPARTMENT, THE OWNER WILL BE ISSUED A LICENSE TO OPERATE BY CITY ADMINISTRATION.

LIST OF REVIEWS

SENT DATE	RETURNED DATE	DUE DATE	TYPE	CONTACT	STATUS	REMARKS
Review Group: ADMIN-POLICE						
8/19/2016	8/22/2016	8/20/2016	LT REVIEW	Jeff Solemsaas	APPROVED W/CONDITIONS	
Notes: PLEASE REVIEW AND APPROVE ATTACHMENTS 2 & 3 FOR A FINAL APPROVAL OF THIS APPLICATION AND SEND ON TO DEPUTY CHIEF AND CHIEF, THEN ADMIN. THANKS IN ADVANCE! Vehicle will need repairs to be operational, there are concerns with the damage to the vehicle having a potential of causing injury to passengers using the vehicle.						
Review Group: AUTO						
8/3/2016	8/4/2016	8/4/2016	CHIEF REVIEW	Dan Donlin	APPROVED	
Notes: Condition #1: Must submit a vehicle mechanical inspection prior to operating. All items have been turned in and is now good to go.						
8/3/2016	8/3/2016	8/4/2016	COMPLETENESS CHECK-TAXI	Marla Schroeder	INCOMPLETE	
Notes: NEED CERTIFICATE OF LIABILITY AND VEHICLE INSPECTION REPORT. OWNER STATED HE WOULD BRING PAPERWORK TO THIS OFFICE. did further research and found that Zaman had applied for a taxi permit as a driver for Yellow Cab. I'm assuming that he is purchasing the vehicle/company from Jama Mohammed.						
8/3/2016	8/3/2016	8/4/2016	POLICE TAXI REVIEW	Jeff Solemsaas	APPROVED W/CONDITIONS	
Notes: the rate is a little unclear. Vehicle will need an inspection by a qualified mechanic and the driver (s) will need to apply for a permit before operation.						



License Reviews

City of Bismarck

8/4/2016	8/4/2016	8/5/2016	CITY ADMIN	Jason Tomanek	APPROVED W/CONDITIONS	
<p>Notes:</p> <p>Based on PD's review and comments, Administration would support the request provided the specific conditions outlined by the Police Department are met in satisfactory condition.</p>						
8/4/2016	8/4/2016	8/5/2016	COMPLETENESS CHECK FINAL	Kristi Hass	INCOMPLETE	
<p>Notes:</p> <p>THIS IS COMPLETE ENOUGH TO GO BEFORE THE BOARD FOR A PUBLIC HEARING TO REQUEST A NEW LICENSE.</p> <p>BEFORE THE NEW TAXI LICENSE IS ISSUED TO THE OWNER, THE OUTSTANDING ITEMS, INCLUDING THE CONDITIONS PLACED ON THIS LICENSE BY THE POLICE DEPARTMENT MUST BE RECEIVED/MET:</p> <p>1) NEED CERTIFICATE OF LIABILITY 2) VEHICLE INSPECTION REPORT.</p>						
8/22/2016	8/22/2016	8/23/2016	CITY ADMIN	Jason Tomanek	APPROVED	
<p>Notes:</p> <p>Based on PD's review and approval of the previous conditions, Administration approves as well.</p>						
8/22/2016	8/22/2016	8/23/2016	DC REVIEW	Randy Ziegler	COMPLETE	
<p>Notes:</p> <p>Ok. forward to Chief.</p>						
8/22/2016	8/22/2016	8/23/2016	COMPLETENESS CHECK FINAL	Marla Schroeder	COMPLETE	
<p>Notes:</p>						
8/23/2016		8/24/2016	DC REVIEW	Randy Ziegler		
<p>Notes:</p>						

CERTIFICATE OF TITLE FOR A VEHICLE
 NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
 SFN 2875 (Rev. 06-16)



ND DEPT. OF TRANSPORTATION
 MOTOR VEHICLE DIVISION
 608 E BOULEVARD AVE
 BISMARCK ND 58505-0780
 Telephone: (701) 328-2725

VIN [REDACTED]	YEAR MODEL 2004	YEAR REGISTERED 2004	MAKE TOYOTA	BODY STYLE VAN PASSENGER	MODEL SIENNA
OWNER(S) NAME ZAMAN, SAQIB	TITLE NUMBER ND1309245440	VEHICLE TYPE TRUCK	SHIPPING WEIGHT 4120	DATE ISSUED 7/22/2016	ODOMETER READING ODOMETER STATUS EXEMPT

MAIL TO: SAQIB ZAMAN
 [REDACTED]

PART 1. ASSIGNMENT AND WARRANTY OF TITLE (DELIVER TITLE TO BUYER WITHIN 15 DAYS FROM DATE OF SALE)

Applicant's/Buyer's Legal Name (first, middle, last) or Firm Name (Lessor, Trust):		<input type="checkbox"/> Driver's License	<input type="checkbox"/> FEIN	Telephone Number
Mailing Address	City	State	ZIP Code	County
Co-Applicant's/Buyer's Legal Name (first, middle, last) or Firm Name (Lessee, Trust):		<input type="checkbox"/> Driver's License	<input type="checkbox"/> FEIN	Telephone Number
Mailing Address	City	State	ZIP Code	County
Check one: <input type="checkbox"/> Or <input type="checkbox"/> And <input type="checkbox"/> And/Joint Tenants with Right of Survivorship	Purchase Date (Mo., Day, Year)	Purchase Price		

Odometer Disclosure: Federal and State laws require that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.
 I certify to the best of my knowledge the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked: Mileage stated is in excess of its mechanical limits. Odometer reading is not the actual mileage (warning *odometer discrepancy)

Signature of Seller/Transferor X	Date (Mo., Day, Year)	Signature of Applicant/Buyer/Transferee X	Date (Mo., Day, Year)
Signature of Seller/Transferor X	Date (Mo., Day, Year)	Signature of Applicant/Buyer/Transferee X	Date (Mo., Day, Year)
Hand-Printed Name(s) of Seller(s)/Transferor(s)	Daytime Telephone Number	Hand-Printed Name(s) of Applicant(s)/Buyer(s)/Transferee(s)	

LEGAL TITLE OWNER (LIENHOLDER)
 Any lien recorded in the office of the Department of Transportation is shown below. The lienholder named is and shall remain legal owner of the vehicle until the encumbrance is released or satisfied.



N0716659

I certify that the applicant has complied with the requirements of Title 39 of the North Dakota Century Code relative to the issuance of a certificate of title for a vehicle.

M. A. [Signature]
 Deputy Director for Driver and Vehicle Services

LIEN RELEASE
 ALL INTERESTS IN THE VEHICLE DESCRIBED ABOVE ARE RELEASED.

Lienholder Name
 Signature of Agent
 Date
 X

THE DEPARTMENT OF TRANSPORTATION IS NOT RESPONSIBLE FOR FALSE OR FRAUDULENT STATEMENTS MADE IN THE ASSIGNMENT OF THE CERTIFICATE OF TITLE.

SFN 2875 (Rev. 07-2015)

~~4.75~~ ~~4.80~~ All passengers
~~1.80 per mile.~~

\$ 4.75 ~~cent~~

\$ 1.80 per mile.

NORTH DAKOTA INSURANCE IDENTIFICATION CARD

COMPANY NUMBER COMPANY COMMERCIAL PERSONAL

National Indemnity Company

POLICY NUMBER EFFECTIVE DATE EXPIRATION DATE
70APS066906-01 07/29/2016 07/29/2017

YEAR MAKE/MODEL VEHICLE IDENTIFICATION NUMBER
2004 Toyota Sienna [REDACTED]

AGENCY/COMPANY ISSUING CARD
Lahr Agency LLC
1500 E Capitol Ave
Bismarck, ND 58501

(701) 557-7757
INSURED
 Bismarck Yellow Cab
[REDACTED]

A VALID POLICY OF LIABILITY INSURANCE HAS BEEN ISSUED
THAT MEETS THE REQUIREMENTS OF NORTH DAKOTA LAW
SEE IMPORTANT NOTICE ON REVERSE SIDE

THIS CARD MUST BE KEPT IN THE INSURED
VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible. Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

NORTHLAND PERFORMANCE

FOUR WHEEL DRIVE
 1226 PARK AVENUE
 BISMARCK ND 58504
 (701) 224-1426
 FOUR WHEEL DRIVE

8/18/2016 3:57 PM

page 1

Repair Order #46788

Day Phone : 701-333-8027

ZAMAN, SAZIB

BISMARCK ND 58503

Vehicle : 2006 Toyota Sienna 3.3 L 3311 CC V6

Tag/State : 225BJG /

Color : Yellow

Last Mileage: 0

Odometer In 0

Odometer Out

Created : 8/18/2016 3:53:24 PM

Labor/Notes

Qty	Code/Tech*	Reference	Description	Unit Price	Price
1.5	SKY*	LABOR	VEHICLE SAFETY INSPECTION	\$88.00	\$132.00
--		NOTE	VEHICLE PASSED ALL SAFETY REQUIREMENTS--EXCEPT FOR A WEAK TRANSMISSION WHICH WILL BE REPLACED TODAY		
			Labor		\$132.00
			Parts		\$0.00
			Sublet/Misc.		\$0.00
			SHOP SUPPLIES/EPA		\$2.64
			Charges		\$0.00
			Sales Tax	Tax @ \$0.00 * 6.5000%	\$0.00
				Repair Total	\$134.64

Tech SKY Certification #

Attention - Marla

I hereby authorize the repair work herein set forth to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft or any other cause beyond your control. I hereby grant you and/or your employees permission to operate the vehicle herein described on streets, highways or elsewhere for the purpose of testing and/or inspection. An express garagekeeper's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto. All Vehicles left over 48 hrs. after repairs are completed WILL INCUR A \$5.00 PER DAY STORAGE FEE. 12 Month or 12,000 Mile Warranty On Repairs

Customer Signature

Vehicle inspection

✓ Means Done

8-16-16

all Lights



headlights, turn signals, Brake lights, License plate lights, Reverse lights, Park lights

seat belt

Tires

Torqued all 4 wheels to specification Tire pressure

Brakes

Need Rear Brakes soon

Brake hoses/parts

Doors - open/close

Door Locks

windows

overall Lookover

fluids

coolant - 40°F, tranny fluid, power steering, brake fluid, oil

Differential fluids

Transfer case fluids

Price line

Shocks Need Rear Shocks soon

Battery Needs cleaning soon

Hoses

Belts

oil

Radiator

sway Bar

sway Bar end links

CV shafts

Horn

Needs

- Rear Brakes Replace soon
- Rear Shocks Replace soon
- Battery Needs cleaning soon

State of North Dakota

SECRETARY OF STATE



CERTIFICATE OF TRADE NAME ASSIGNMENT OF

BISMARCK YELLOW CAB

The undersigned, as Secretary of State of North Dakota, hereby certifies that an Application for the Assignment of a Trade Name, duly signed pursuant to the provisions of the North Dakota Trade Name statutes, has been received in this office and is found to conform to law.

Accordingly the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues the Certificate of Trade Name Assignment of

BISMARCK YELLOW CAB

to SAQIB ZAMAN whose business address is [REDACTED]
BISMARCK, ND 58503-0816. The Trade Name Registration shall remain
in force until August 27, 2019.

DATED: July 27, 2016

A handwritten signature in black ink, reading "Alvin A. Jaeger". The signature is written in a cursive style.

Alvin A. Jaeger
Secretary of State

CITY OF BISMARCK

Ordinance No.6219A

First Reading	_____
Second Reading	_____
Final Passage and Adoption	_____
Publication Date	_____

AN ORDINANCE TO CREATE AND ENACT CHAPTER 3-04 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO THE BISMARCK ANIMAL ADVISORY BOARD.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Chapter 3-04 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to the Bismarck Animal Advisory Board is hereby created and enacted to read as follows:

CHAPTER 3-04
BISMARCK ANIMAL ADVISORY BOARD

3-04-01. Bismarck Animal Advisory Board; Purpose. There is hereby created and established a body to be known as the Bismarck Animal Advisory Board. The purpose of the Animal Advisory Board is to advise the Bismarck Police Department on companion animal policies, promote collaboration between the City and private citizens, institutions, and agencies interested in or conducting activities relating to companion animals in the city, to identify proactive, creative approaches to engage and facilitate communication and education within the companion animal community and to foster and assist the development of companion animal programs in the community. The Animal Advisory Board may study, advise, and report on policy recommendations it deems effective to promote outcomes consistent with City goals and objectives as outlined by the Police Department and the City Commission.

3-04-02. Membership - Terms - Filling Vacancies. The Bismarck Animal Advisory Board shall consist of seven members, who will serve without pay. The make-up of the Bismarck Animal

Advisory Board shall consist of one member of the board of city commissioners, or his or her designee, and six citizens who shall reside in or own property in the City of Bismarck. Members shall be nominated by members of the Board of City Commissioners and subject to confirmation by a majority of the Board of City Commissioners. It is the intent of this chapter for the Animal Advisory Board to be made up of a diverse membership from an array of companion animal businesses and organizations. This may include, but is not limited to; Small Animal Veterinarian; Large Animal Veterinarian; Animal Shelter; Animal Rescue; Attorney; Zoo; Large Animal organization; and a member at-large. City employees, whose chief function is to handle animals and enforce City Ordinances on a daily basis may staff the Animal Advisory Board as non-voting, technical advisors at the discretion of their departments. Of the initial appointees, three shall serve for three year terms and four shall serve for two year terms. After expiration of each initial term, all terms shall run for three years. After the initial terms, no Board Member may serve on the Bismarck Animal Advisory Board more than an unexpired term plus two full terms. Appointees to the Board should promote companion animal welfare and represent the citizens and animals of the City of Bismarck.

3-04-03. Board President - Meetings - Records to be kept.

The Bismarck Animal Advisory Board shall elect its President for a term of one year from among its members and shall hold regular meetings. The Bismarck Animal Advisory Board shall keep a record of its findings and determinations and all records shall be public records unless otherwise provided by North Dakota law. The Bismarck Animal Advisory Board may appoint such subcommittees from among the appointed members as may be necessary for its work.

3-04-04. Powers and Duties of Board. The Bismarck Animal Advisory Board shall:

1. Report to the Bismarck Police Department regarding the activities of the Bismarck Animal Advisory Board.

2. Recommend to the Bismarck Police Department action and programs within the authority of the City in furtherance of the purpose of the Bismarck Animal Advisory Board as described in this Chapter.

3. Consult with and advise public officials and agencies and with private individuals and organizations to provide education regarding companion animals.

4. Assist by offering information and referral guidance and services as a forum for discussion.

3-04-05. Bismarck Animal Advisory Board Advisory in Nature. The Bismarck Animal Advisory Board shall be advisory in nature and shall submit all reports and recommendations to the Bismarck Police Department.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

CITY OF BISMARCK

Ordinance No. 6226

First Reading	_____
Second Reading	_____
Final Passage and Adoption	_____
Publication Date	_____

AN ORDINANCE TO CREATE AND ENACT A NEW SECTION 2-01-04 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO CITY RIGHTS-OF-WAY.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 2-01-04 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to City Rights-Of-Way is hereby created and enacted to read as follows:

2-01-04. City Rights-Of-Way. The City retains the full authority provided to cities by the North Dakota Century Code for the regulation and control of the public rights-of-way located within the City.

1. No person may dig up, remove, displace, break, or otherwise injure or destroy any public right-of-way, including any public improvement located thereon, in the City without first securing written permission, an appropriate permit as required by this code, a franchise available under this code or an encroachment agreement from the City.

2. No person shall obstruct, encroach or place any object, thing or improvement on or over any public right-of-way in any manner without first securing written permission, an appropriate permit as required by this code, a franchise available under this code or an encroachment agreement from the City. A person violating this section shall be guilty of an offense.

Source: NDCC Section 40-05-01(8).

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

CITY OF BISMARCK
Ordinance No. 6227

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 6-06-04 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO RULES AND REGULATIONS FOR GRANTING SITE AUTHORIZATION.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 6-06-04 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Rules and Regulations for Granting Site Authorization is hereby amended and re-enacted to read as follows:

6-06-04. Rules and Regulations for Granting Site Authorization. In granting site authorization for locations at which eligible organizations licensed by the attorney general may conduct games of chance, the following rules and regulations apply:

* * * * *

4. (a) Eligible organizations licensed by the city to conduct raffles may not sell tickets or conduct a raffle at a gaming site of another organization unless one of the conditions of NDCC Section 53-06.1-03(3)(a) are met. Organizations with a license issued by the state to conduct games of chance may conduct bingo, including electronic quick shot or bingo with the aid of a Bingo Card Dispensing Device pursuant to rules and regulations as promulgated by the state and only at locations other than licensed liquor premises, and may have pull-tabs at a location, other than a licensed liquor premises, where site authorization has been granted to conduct bingo.

(b) Organizations with a license issued by the state to conduct games of chance may conduct ~~promotional bingo, including electronic quick shot bingo,~~ on licensed liquor establishments. The following restrictions apply to ~~promotional bingo conducted on licensed liquor establishments:~~

~~(i) Promotional Bingo may be conducted during the normal business hours of the licensed liquor premises and under such rules and regulations as promulgated by the state from 1:00 p.m. to 11:45 p.m. on Saturdays and New Years Day and from 5:30 p.m. to 11:45 p.m. every day.~~

~~(ii) Charge per bingo card may not exceed one dollar.~~

~~(iii) Total pay out to the winner may not exceed five thousand dollars.~~

~~(c) Promotional Bingo may also be conducted with the aid of a Bingo Card Dispensing Device. The following additional restrictions will apply to the use of such a device.~~

~~(i) A gaming organization's employee with a valid work permit will be onsite during the operation of a Bingo Card Dispensing Device.~~

~~(ii) Winning bingo cards must be redeemed within 15 minutes of purchase.~~

~~(iii) A gaming employee may not pay a prize to a player who is redeeming a bingo card when the player and/or the bingo card has left the gaming site.~~

~~(iv) Restrictions contained in sections ii and iii must be legibly posted on or at the Bingo Card Dispensing Device.~~

~~(v) Promotional Bingo conducted with the aid of a Bingo Card Dispensing Device may be conducted between the hours of 2:00 p.m. and 12:00 a.m. (midnight).~~

* * * * *

Reference: Chapter 53-06.1, NDCC (1985 Supp.) (Ord. 4121, 12-30-86; Ord. 4131, 3-10-87; Ord. 4163, 6-30-87; Ord. 4164, 7-07-87; Ord. 4245, 2-28-89; Ord. 4268, 6-06-89; Ord. 4313, 1-23-90; Ord. 4357, 2-26-91; Ord. 4356, 1-19-91; Ord. 4409, 12-03-91; Ord. 4532, 07-06-93; Ord. 4549, 09-21-93; Ord. 4585, 02-15-94; Ord. 4636, 09-13-94; Ord. 4698, 06-13-95; Ord. 4722, 08-22-95; Ord. 5461, 10-11-05; Ord. 5757, 12-22-09; Ord. 5903, 07-10-12; Ord. 6183, 01-13-16)

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. Effective Date. This ordinance shall take effect following final passage, adoption and publication.



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: August 3, 2016
FROM: Carl D. Hokenstad, AICP, Director of Community Development
ITEM: Koch Creek Commercial Subdivision – Zoning Change and Final Plat

REQUEST

Michael Koch is requesting approval of a zoning change from the A – Agricultural zoning district to the CG – Commercial zoning district and a final plat for Koch Creek Commercial Subdivision. These actions would allow the construction of an electrical substation on the northern lot and future commercial development on the southern lot.

The property is located north of Bismarck in the extraterritorial area, between US Highway 83 and North Washington Street along the north side of ND Highway 1804.

Please place this item on the August 9, 2016 and the August 23, 2016 City Commission meetings.

BACKGROUND INFORMATION

The Planning & Zoning Commission held a public hearing on the zoning change and final plat requests on July 27, 2016.

Several members of the public spoke at the public hearing. Concerns raised at the hearing included the proximity of the proposed commercial development to an established rural residential area (Northridge Estates), the need for an electrical substation in this location, why the area needed to be rezoned to CG – Commercial, why the Future Land Use Plan identifies this area as Commercial, why they had already started site work for the electrical substation, and why this was a City action when it was not within the corporate limits of the City.

At the conclusion of the public hearing, and based on the findings contained in the staff report, the Planning & Zoning Commission unanimously recommended approval of the zoning change from the A – Agricultural zoning district to the CG – Commercial zoning district, with the condition that Lot 2, Block 1, Koch Creek Commercial Subdivision be annexed into the City of Bismarck and municipal services in place prior to development, and approval of the final plat, including a waiver to delay the

paving of the roadways within the plat until the electrical substation located on Lot 1, Block 1 is completed.

RECOMMENDED CITY COMMISSION ACTION

August 9th Meeting of the Board of City Commissioners – consider the request for the zoning change as outlined in Ordinance 6228, and call for a public hearing on this item for the August 23rd meeting of the Board of City Commissioners.

August 23rd Meeting of the Board of City Commissioners – hold a public hearing on the request for the zoning change as outlined in Ordinance 6228, consider the request for approval of the final plat for Koch Creek Commercial Subdivision, including the granting of waiver to delay the paving of the of the roadways within the plat until the electrical substation located on Lot 1, Block 1 is completed, and take final action on both requests.

STAFF CONTACT INFORMATION

Please contact Jenny Wollmuth, CFM, the planner in our office assigned to this request, at 355-1845 or jwollmuth@bismarcknd.gov or Kim L. Lee, AICP, Planning Manager at 355-1846 or klee@bismarcknd.gov.

Planning Manager Kim Lee will present this item at the meetings.

ORDINANCE NO. 6228

<i>Introduced by</i>	_____
<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE 1986 CODE OF ORDINANCES, OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the A-Agriculture zoning district and included in the CG-Commercial zoning district:

Lots 1 and 2, Block 1, Koch Creek Commercial Subdivision

This zoning change is subject to the condition that Lot 2 (the southern lot) be annexed into the City of Bismarck and municipal services in place prior to development.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

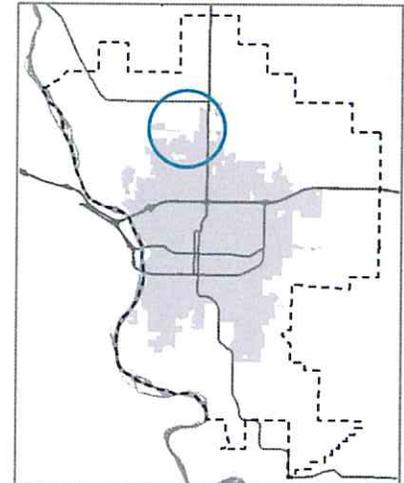
July 27, 2016

Application for: Zoning Change
Major Subdivision Preliminary Plat

TRAKiT Project ID: ZC2016-007
PPLT2016-004

Project Summary

Title:	Koch Creek Commercial Subdivision
Status:	Planning & Zoning Commission – Public Hearing
Owner(s):	Michael Koch
Project Contact:	Mike Hill, Ulteig Engineers
Location:	North of Bismarck, between US Highway 83 and North Washington Street, along the north side of ND Highway 1804.
Project Size:	8.56 acres
Request:	Plat and rezone property for development of an electrical substation now and commercial use in the future.



Site Information

Existing Conditions		Proposed Conditions	
Number of Lots:	1 Parcel	Number of Lots:	2 lots in 1 block
Land Use:	Undeveloped	Land Use:	Commercial uses, including electrical substation
Designated GMP Future Land Use:	Commercial	Designated GMP Future Land Use:	Commercial
Zoning:	A – Agricultural	Zoning:	CG – Commercial
Uses Allowed:	A – Agriculture	Uses Allowed:	CG – General commercial, multi-family residential, and offices
Max Density Allowed:	A – 1 unit / 40 acres	Max Density Allowed:	CG – 42 units / acre

Property History

Zoned:	N/A	Platted:	N/A	Annexed:	N/A
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Staff Analysis

The Planning and Zoning Commission at their April 25, 2016 meeting scheduled a public hearing for the

zoning change from the A – Agriculture zoning district to the CG – Commercial zoning district and tentatively approved the proposed preliminary plat.

(continued)

The zoning change and plat are being requested for future commercial development including an electrical substation to be located on Lot 1, Block 1 of the proposed subdivision. Future commercial development on the site will require approval of an annexation request by the Planning and Zoning Commission and the Board of City Commissioners.

A 15-foot buffer yard along the west side of Lot 1 and a 20-foot buffer yard along the west side of Lot 2 have been included on the plat. The buffer yards and corresponding landscaping are intended to provide a buffer between the proposed electrical substation on Lot 1 and proposed commercial uses on Lot 2 and the existing rural single-family uses to the west. Adjacent land uses include, undeveloped agriculturally-zoned property to the north, a religious institution to the east, undeveloped agriculturally-zoned property to the south across ND Highway 1804, and rural single-family uses to the west.

Williamson Drive, the north-south roadway within the plat, will provide access to the proposed subdivision and the adjacent religious institution to the east. Currently, the religious institution has two access points. The NDDOT has recommended that the eastern most access point be removed and that access to the religious institution be gained exclusively via Williamson Drive.

The applicant has requested a waiver to delay the paving of the roadways within the proposed plat. City Staff has deemed this request reasonable as the transportation of substation equipment, transformers and other materials may cause damage to a paved roadway. The applicant has indicated that the roadways will be paved once the substation is complete. In addition, at their meeting of April 4, 2016, the Burleigh County Board of Commissioners granted a waiver from the County's Gravel Road Improvement Policy, with the understanding that the roadways within the proposed plat shall be paved by the owner / developer once the construction of the electrical substation located on Lot 1, Block 1 is completed.

Required Findings of Fact

Zoning Change

1. The proposed zoning change generally conforms to the Future Land Use Plan in the 2014 Growth Management Plan, as amended;
2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed;
4. The Hay Creek Township Board of Supervisors has recommended conditional approval of the proposed zoning change;
5. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
6. The zoning change is in the public interest and is not solely for the benefit of a single property owner;
7. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
8. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
9. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Final Plat

1. All technical requirements for approval of a final plat have been met;
2. The final plat generally conforms to the preliminary for the proposed subdivision that was tentatively approved by the Planning and Zoning Commission.
3. The proposed subdivision generally conforms to the 2014 Fringe Area Road Master Plan (FARMP), as amended;

4. The storm water management plan for the subdivision has been approved by the City Engineer with written concurrence from the County Engineer;
5. The provision of neighborhood parks and open space is not needed because the proposed final plat is not an urban subdivision with residential zoning districts;
6. The Hay Creek Township Board of Supervisors has recommended approval of the proposed final plat;
7. The proposed subdivision plat includes sufficient easements and rights-of-way to provide for orderly development and provision of municipal services beyond the boundaries of the subdivision;
8. The City of Bismarck and other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the proposed subdivision at the time the property is developed;
9. The proposed subdivision is not located in an area that is subject to flooding, an area where the proposed development would adversely impact water quality and/or environmentally sensitive lands, and/or an area that is topographically unsuited for development;
10. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
11. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Staff Recommendation

Based on the above findings, staff recommends approval of the zoning change from the A – Agricultural zoning district to the CG – Commercial zoning district, approval of the final plat for Koch Creek Commercial Subdivision and the waiver to delay the paving of the of the roadways within the plat until the electrical substation located on Lot 1, Block 1 is completed.

Attachments

1. Location Map
2. Zoning Map
3. Reduction of Final Plat
4. Reduction of Preliminary Plat
5. Waiver Request

Staff report prepared by: Jenny Wollmuth, Planner
701-355-1845 | jwollmuth@bismarcknd.gov

Proposed Plat and Zoning Change (A to CG) Koch Creek Commercial Subdivision

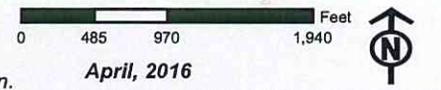
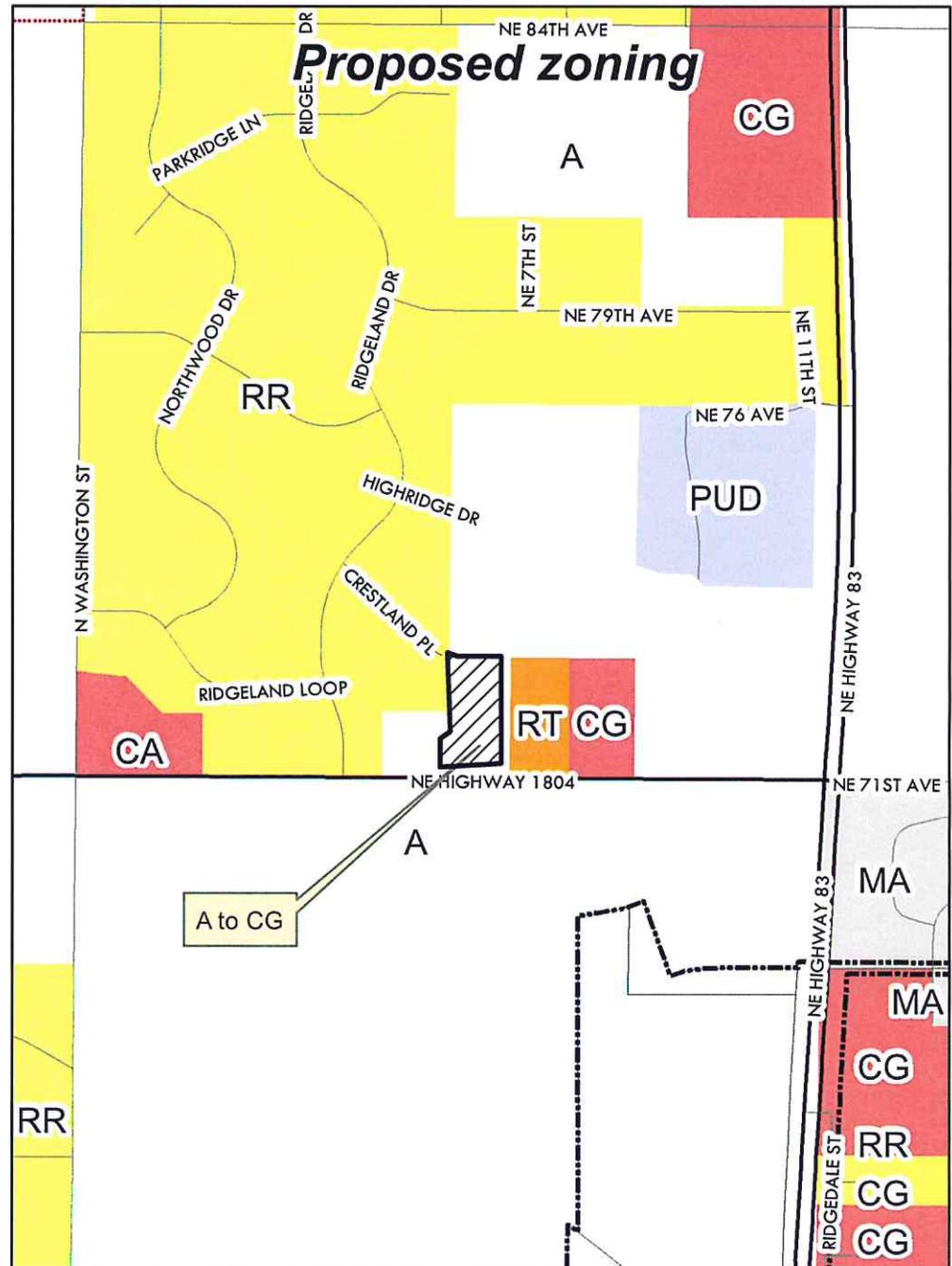
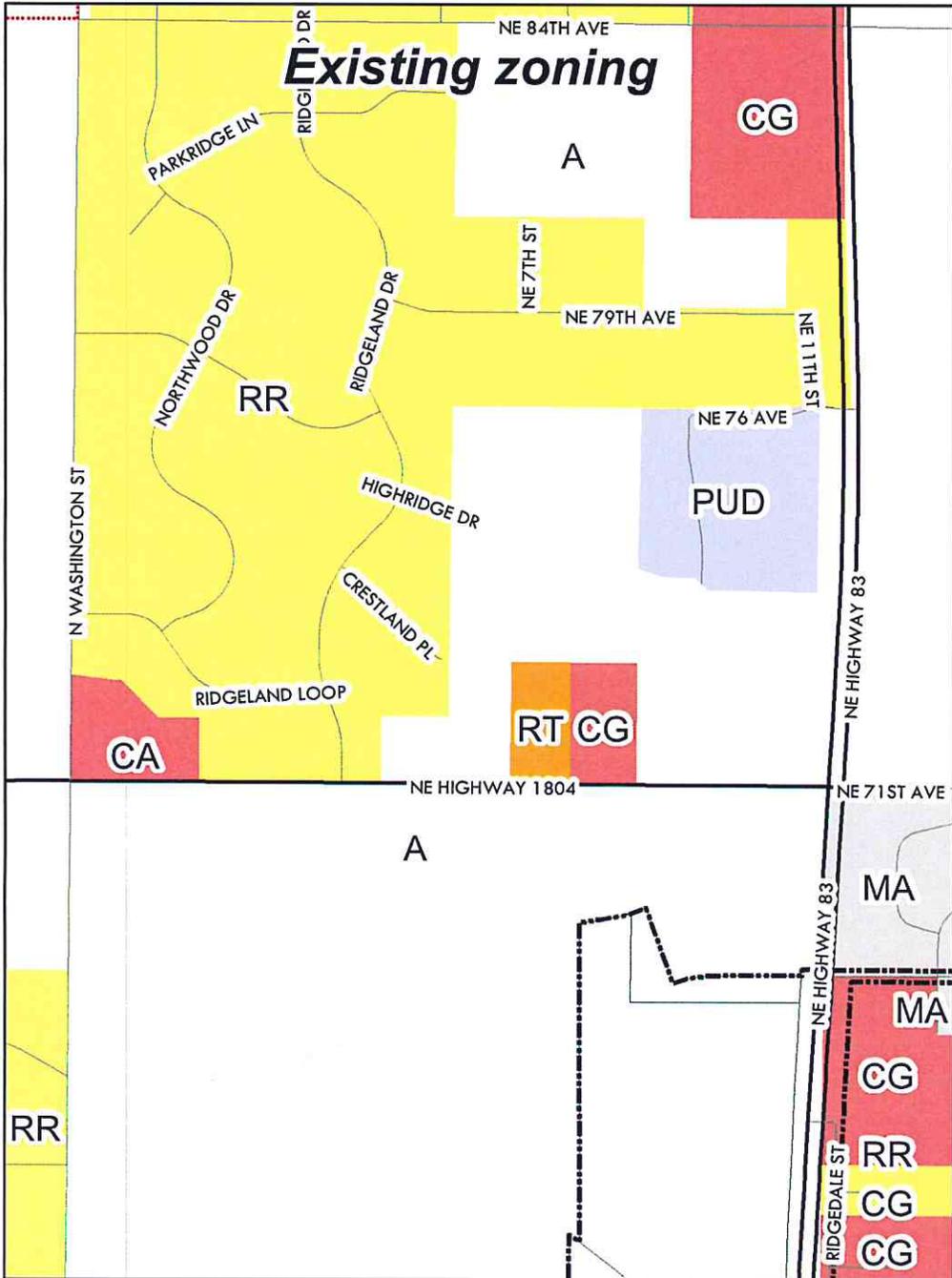


March, 28, 2016 (h1b)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



Koch Creek Commercial Subdivision



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

April, 2016



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: August 3, 2016
FROM: Carl D. Hokenstad, AICP, Director of Community Development
ITEM: Lots 1-3, Block 1, Sonnet Heights Subdivision – Zoning Change

REQUEST

Boustead Enterprises, LLC is requesting approval of a zoning change from the PUD – Planned Unit Development zoning district to the RM15 – Residential zoning district for Lots 1-3, Block 1, Sonnet Heights Subdivision. This action will reduce the number of allowable dwelling units from 45 to 33 and will allow more flexibility in development of the site.

The property is located in north Bismarck, west of US Highway 83 along the south side of 57th Avenue NE at the intersection with and west of Normandy Street.

Please place this item on the August 9, 2016 and the August 23, 2016 City Commission meetings.

BACKGROUND INFORMATION

The Planning & Zoning Commission held a public hearing on the zoning change request on July 27, 2016.

No members of the public spoke at the public hearing.

At the conclusion of the public hearing, and based on the findings contained in the staff report, the Planning & Zoning Commission unanimously recommended approval of the zoning change from the PUD – Planned Unit Development zoning district to the RM15 – Residential zoning district.

RECOMMENDED CITY COMMISSION ACTION

August 9th Meeting of the Board of City Commissioners – consider the request for the zoning change as outlined in Ordinance 6229, and call for a public hearing on this item for the August 23rd meeting of the Board of City Commissioners.

August 23rd Meeting of the Board of City Commissioners – hold a public hearing on the request for the zoning change as outlined in Ordinance 6229 and take final action on the request.

STAFF CONTACT INFORMATION

Please contact Daniel Nairn, AICP, the planner in our office assigned to this request, at 355-1854 or dnairn@bismarcknd.gov or Kim L. Lee, AICP, Planning Manager at 355-1846 or klee@bismarcknd.gov.

Planning Manager Kim Lee will present this item at the meetings.

ORDINANCE NO. 6229

<i>Introduced by</i>	_____
<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE 1986 CODE OF ORDINANCES, OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the PUD-Planned Unit Development zoning district and included in the RM15-Residential zoning district:

Lots 1-3, Block 1, Sonnet Heights Subdivision.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

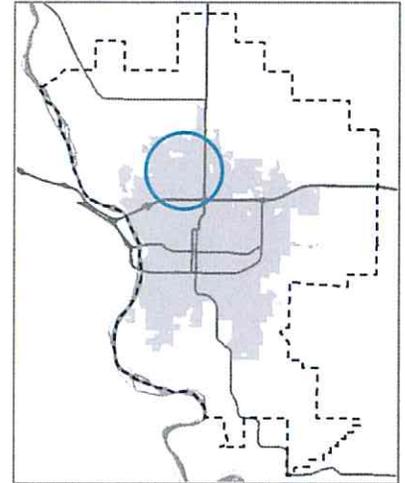
Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

Application for: Zoning Change

TRAKiT Project ID: ZC2016-014

Project Summary

Title:	Lots 1-3, Block 1, Sonnet Heights Subdivision
Status:	Planning & Zoning Commission – Public Hearing
Owner(s):	Boustead Enterprises, LLC
Project Contact:	Ken Nysether, SEH
Location:	In north Bismarck, on the south side of 57 th Avenue NE approximately a half mile west of US Highway 83.
Project Size:	2.25 Acres
Request:	Rezone three lots from PUD to RM15 to accommodate development.



Site Information

Existing Conditions		Proposed Conditions	
Number of Lots:	3 lots in 1 block	Number of Lots:	3 lots in 1 block
Land Use:	Undeveloped	Land Use:	Multifamily Residential
Designated GMP Future Land Use:	Already zoned. Not in Future Land Use Plan	Designated GMP Future Land Use:	Already zoned. Not in Future Land Use Plan
Zoning:	PUD – Planned Unit Development	Zoning:	RM15 – Residential
Uses Allowed:	PUD – Uses specified in PUD	Uses Allowed:	RM15 – Multi-family residential
Max Density Allowed:	PUD – Density specified in PUD	Max Density Allowed:	RM15 – 15 units / acre

Property History

Zoned:	RM 15 to PUD on 11/25/2014	Platted:	12/15/1980	Annexed:	04/10/2007
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Staff Analysis

During their June 26, 2016 meeting, the Planning and Zoning Commission considered this request to rezone these three lots in Sonnet Heights Subdivision from PUD – Planned Unit Development to RM15 – Residential.

The applicant intends to construct multifamily housing on the site. The existing PUD zoning district, explained in more detail below, allows the development of 45 dwelling units but also requires the development adhere to a specific site plan. The requested RM15 Zoning District would result in a reduction in the total allowable

(continued)

units from 45 to approximately 33 (which is 15 units/acre in a 2.25 acre site) in exchange for more flexibility in the building configuration and site design. The applicant has submitted a preliminary sketch of four separate four-plex condo buildings for illustrative purposes, but the requested zoning district would not strictly require this design.

Lots 1-3, Block 1, Sonnet Heights Subdivision were rezoned from RM15 – Residential to PUD – Planned United Development, in order to accommodate development that was proposed at the time. The PUD allowed greater density, but required general conformance to a site plan, as well as certain landscaping and design standards. The existing PUD is attached to this report.

Prior to the PUD rezoning, the Planning and Zoning Commission had recommended denial of a rezoning of these properties from RM15 to RM30, because of incompatibility with the adjacent single and two-family residential uses. The property owner adjusted the request to RM20 the following year, and the Planning Commission also denied this request. These zoning decisions were made prior to the construction of 57th Avenue NE and the construction of other multifamily housing directly to the east.

Required Findings of Fact

1. The proposed zoning change generally conforms to the Future Land Use Plan in the 2014 Growth Management Plan, as amended;
2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and other agencies would be able to provide necessary public services, facilities and programs to serve any

development allowed by the new zoning classification at the time the property is developed;

4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner;
6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
7. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

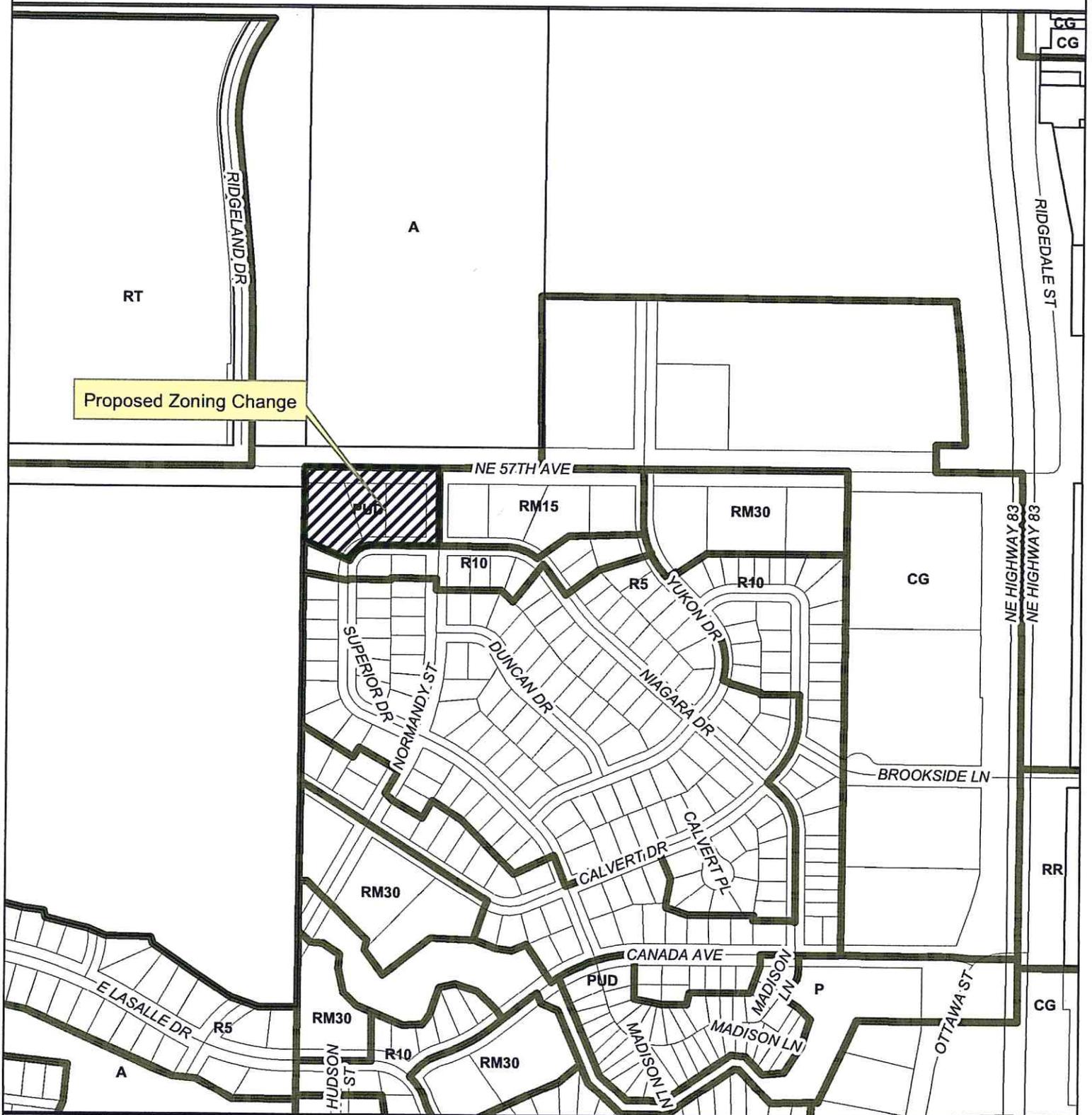
Staff Recommendation

Based on the above findings, staff recommends approval of the zoning change from PUD – Planned Unit Development zoning district to RM15 – Residential zoning district for Lots 1-3, Block 1, Sonnet Heights Subdivision.

Attachments

1. Location Map
2. Zoning Map
3. Tentative Preliminary Site Plan
4. Existing PUD Ordinance (proposed to be removed)

Proposed Zoning Change (PUD to RM15) Lots 1-3, Block 1, Sonnet Heights Subdivision



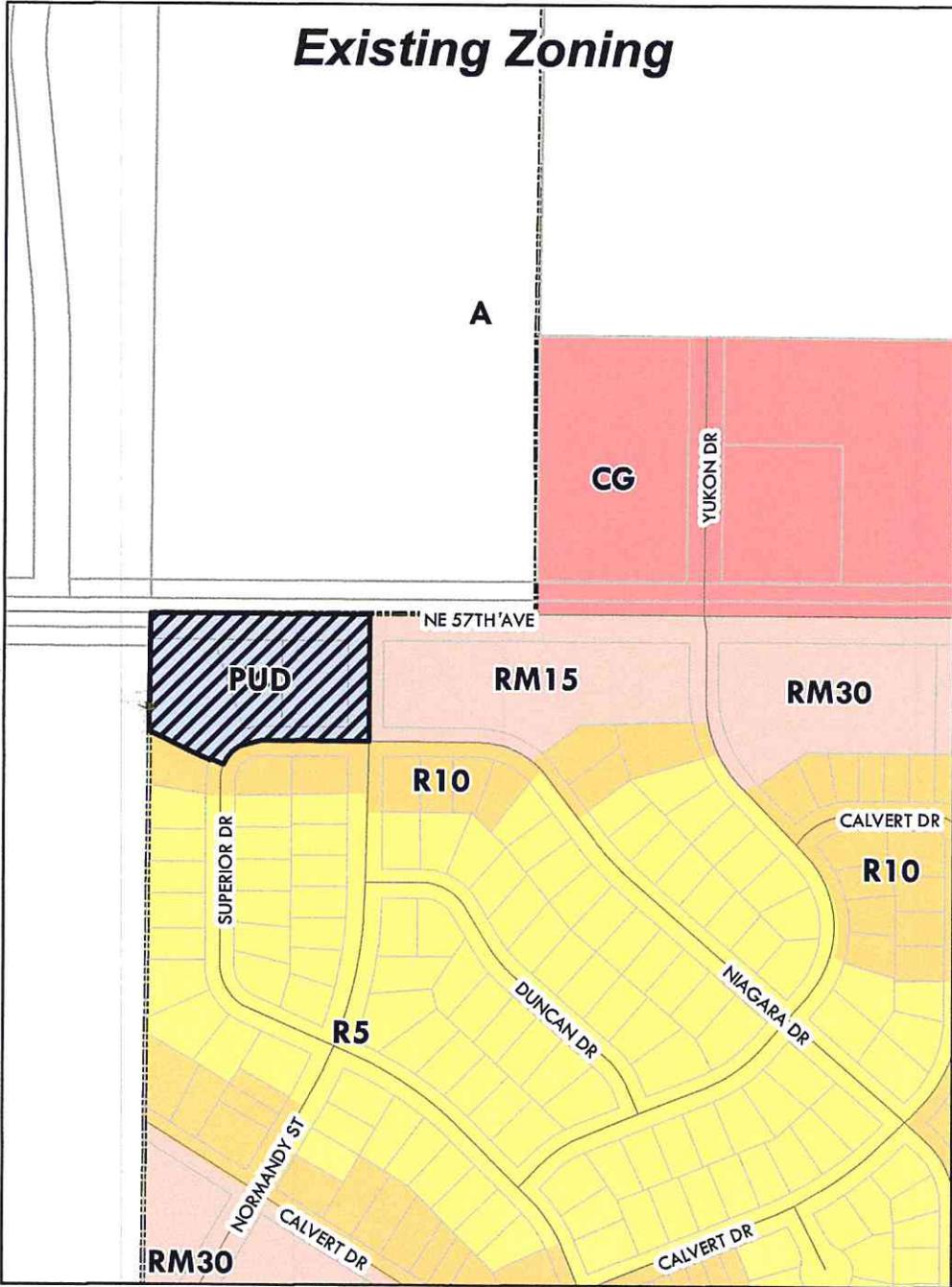
May 17, 2016 (h1b)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

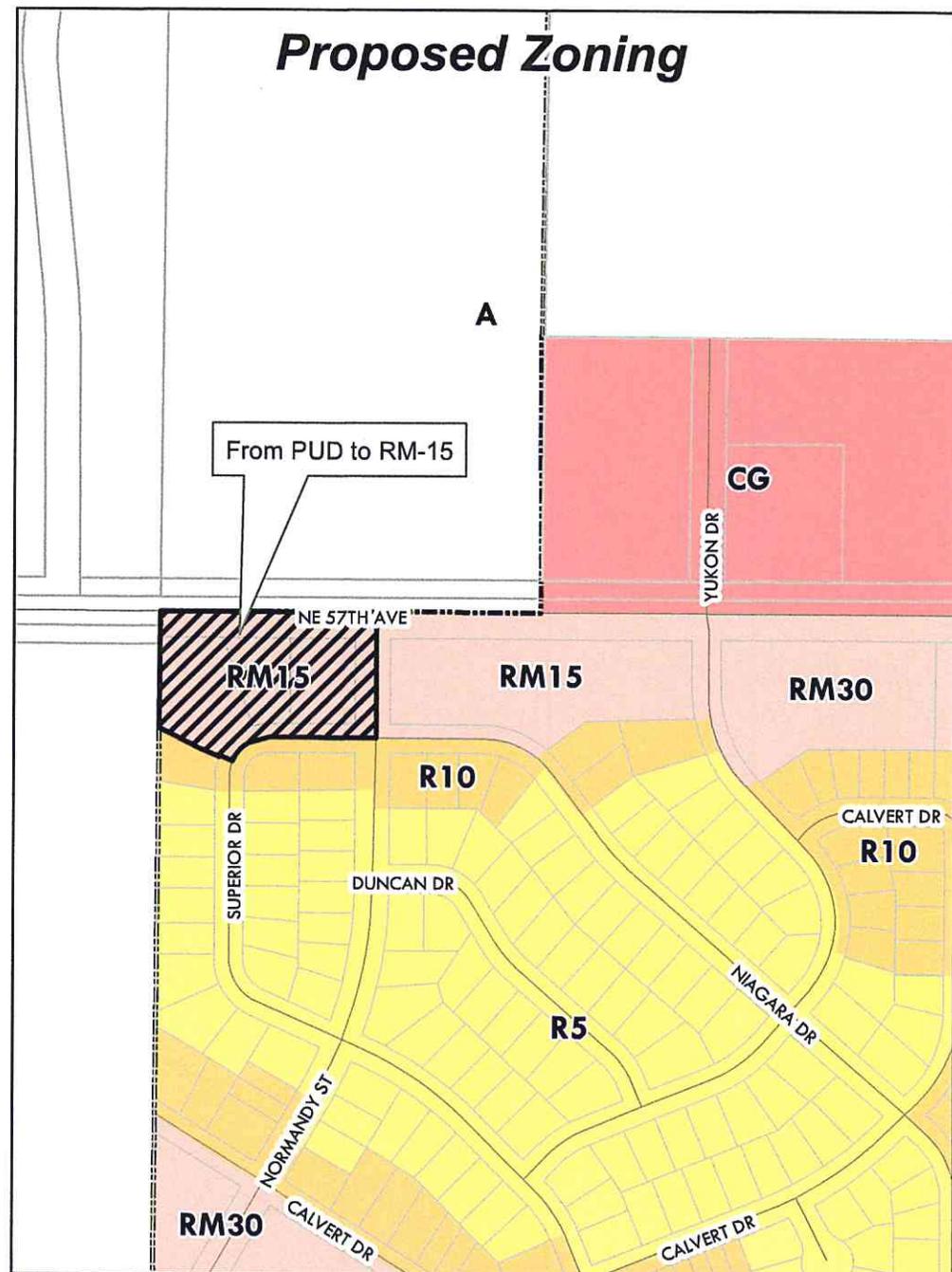


Sonnet Heights Subdivision, Lots 1-3, Block 1

Existing Zoning

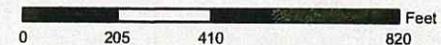


Proposed Zoning



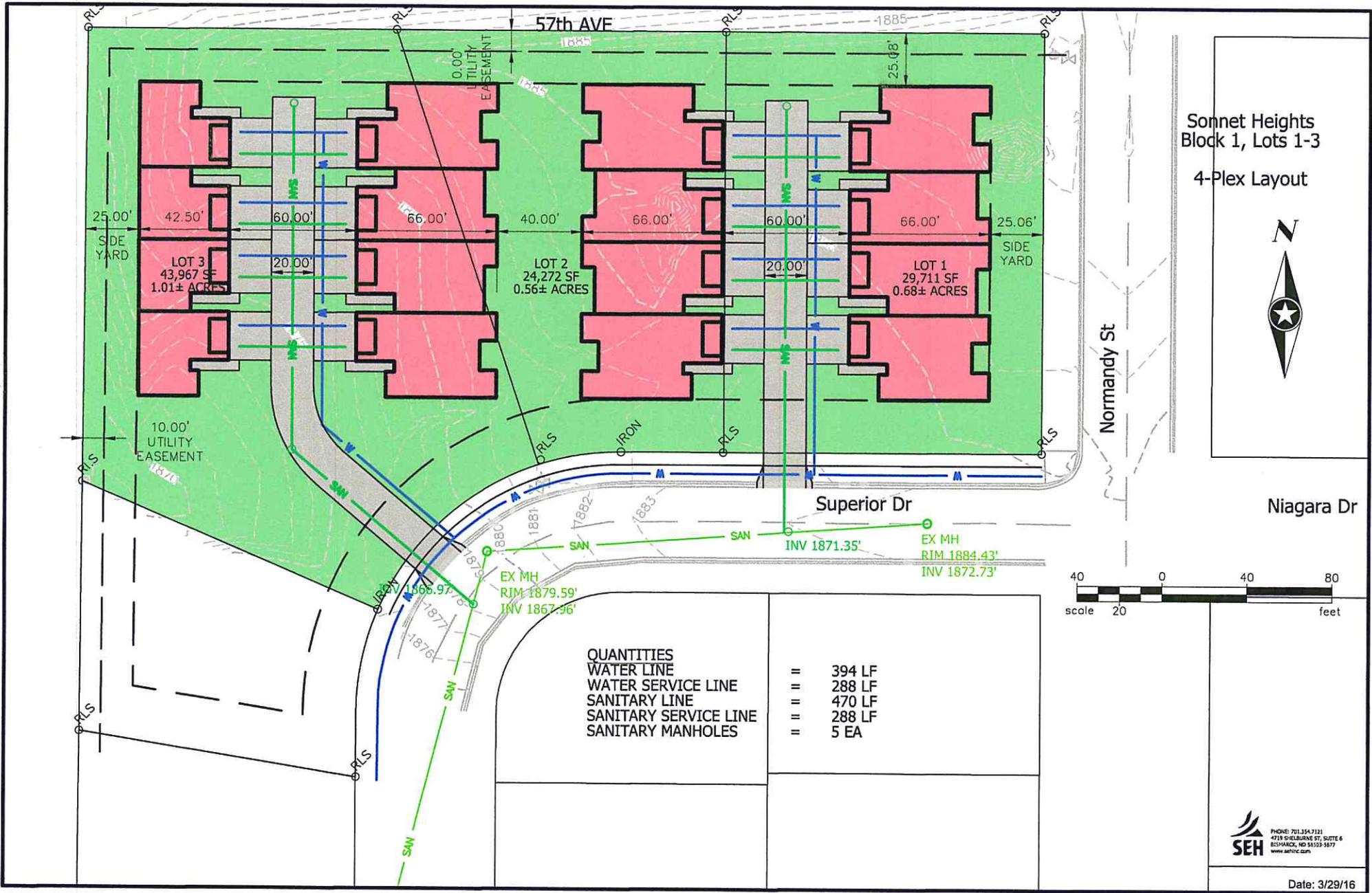
 SonnetHeights_Rezone
  Parcels to Rezone
  City Limits
  Extraterritorial Area

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



June, 2016





Somnet Heights
Block 1, Lots 1-3
4-Plex Layout



Niagara Dr

QUANTITIES	
WATER LINE	= 394 LF
WATER SERVICE LINE	= 288 LF
SANITARY LINE	= 470 LF
SANITARY SERVICE LINE	= 288 LF
SANITARY MANHOLES	= 5 EA

SEH
 PHONE: 703.354.7131
 4719 GUELBOURNE ST., SUITE 6
 BETHESDA, MD 20814-5677
 www.sehinc.com

Date: 3/29/16

ORDINANCE NO. 6092

<i>First Reading</i>	<u>November 11, 2014</u>
<i>Second Reading</i>	<u>November 25, 2014</u>
<i>Final Passage and Adoption</i>	<u>November 25, 2014</u>
<i>Publication Date</i>	<u>November 14 & 21, 2014</u>

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE 1986 CODE OF ORDINANCES, OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the RM15 – Residential District and included within the PUD – Planned Unit Development District.

Lots 1, 2, and 3, Block 1, Sonnet Heights Subdivision.

This PUD is subject to the following development standards:

1. *Uses Permitted.* The following uses are permitted within this Planned Unit Development:
 - a. A maximum of forty-five (45) residential units in a three-story multi-family building. The configuration of the site shall generally conform to the site plan submitted with the application dated September 8, 2014. Any change in the use of the property from that indicated above will require an amendment to this PUD.
2. *Dimensional Standards:*
 - a. Setbacks shall be provided in accordance with Section 14-04-07 of the City Code of Ordinances (RM District Regulations).
 - b. Heights. The maximum height of the building is thirty-seven (37) feet.
 - c. Lot Coverage. The maximum lot coverage for buildings and required off-street parking is fifty (50) percent of the total lot area.

3. *Design Standards:*

- a. Intent. It is the intent of the design standards to create and maintain a high visual quality and appearance for this development, encourage architectural creativity and diversity and create a lessened visual impact upon the surrounding land uses. Each building or structure shall utilize complementary building materials, colors and design features that will be present throughout the site. Exterior lighting shall be designed and installed in a manner intended to limit the amount off off-site impacts.

4. *Landscaping and Screening:*

- a. Landscaping and screening shall be provided in accordance with Section 14-03-11 of the City Code of Ordinances (Landscaping and Screening). Additional landscape plantings and buffering, including a three (3) foot high by four (4) foot wide (top) berm along the south side of the property adjacent to Superior Drive, shall be installed as shown in the site plan dated September 8, 2014 with a combination of trees and shrubs with no less than two (2) shade trees and two (2) ornamental trees and two (2) large upright coniferous trees to help mitigate the visual impacts and provide a transition between the multi-family residential building and the existing single and two-family dwellings to the south.
- b. Screening of Mechanical Equipment and Solid Waste Collection Areas. Mechanical equipment and solid waste collection areas shall be screened in accordance with Section 14-03-12 of the City Code of Ordinances (Screening of Mechanical Equipment and Solid Waste Collection Areas).

5. *Off-Street Parking and Loading:* Off-street parking and loading will be required in accordance with Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading).

6. *Changes:* This PUD shall only be amended in accordance with Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments). Major changes require a public hearing and a majority vote of the Bismarck Planning and Zoning Commission.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: August 3, 2016
FROM: Carl D. Hokenstad, AICP, Director of Community Development
ITEM: Lots 14-19, Block 4, South Meadows Addition – Zoning Change

REQUEST

Investcore, Inc. and Microvest, LLC are requesting approval of a zoning change from the R5 – Residential and R10 – Residential zoning districts to the Conditional R10 – Residential and RM15 – Residential zoning districts for Lots 14 – 19, Block 4, South Meadows Addition. This action will allow the combination of Lots 16 – 19 with the adjacent RM15 – zoned Lot 20 for development of a multi-family residential project (proposed to be an independent living residential facility for seniors) and provide for a zoning transition between this facility and the R5 – zoned lots to the west.

The property is located in southwest Bismarck, west of South Washington Street and south of West Burleigh Avenue along the south side of Meridian Drive.

Please place this item on the August 9, 2016 and the August 23, 2016 City Commission meetings.

BACKGROUND INFORMATION

The Planning & Zoning Commission held a public hearing on the zoning change request on July 27, 2016.

No members of the public spoke at the public hearing.

At the conclusion of the public hearing, and based on the findings contained in the staff report, the Planning & Zoning Commission unanimously recommended approval of the zoning change from the R5 – Residential zoning district to the Conditional R10 – Residential zoning district on Lots 14 & 15 and from the R10 – Residential zoning district to the RM15 – Residential zoning district on Lots 16-19, Block 4, South Meadows Addition, with the condition that the development of Lots 14 & 15 is limited to two-family dwellings in order to provide an appropriate land use transition between the single family residential land use to the west and the multi-family residential land use on Lots 16-20.

RECOMMENDED CITY COMMISSION ACTION

August 9th Meeting of the Board of City Commissioners – consider the request for the zoning change as outlined in Ordinance 6230, and call for a public hearing on this item for the August 23rd meeting of the Board of City Commissioners.

August 23rd Meeting of the Board of City Commissioners – hold a public hearing on the request for the zoning change as outlined in Ordinance 6230 and take final action on the request.

STAFF CONTACT INFORMATION

Please contact Kim L. Lee, AICP, the planner in our office assigned to this request, at 355-1846 or klee@bismarcknd.gov.

Planning Manager Kim Lee will present this item at the meetings.

ORDINANCE NO. 6230

<i>Introduced by</i>	_____
<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE 1986 CODE OF ORDINANCES, OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the R5-Residential zoning district and included in the R10-Residential zoning district:

Lots 14-15, Block 4, South Meadows Addition, with the following condition:

1. The development of these two lots will be limited to two-family dwellings.

The following described property shall be excluded from the R10-Residential zoning district and included in the RM15-Residential zoning district:

Lots 16-19, Block 4, South Meadows Addition.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

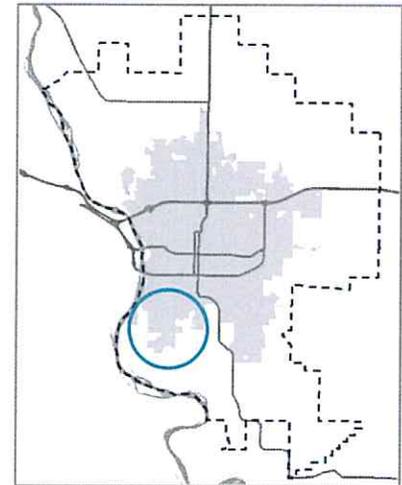
Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

Application for: Zoning Change

TRAKiT Project ID: ZC2015-029

Project Summary

Title:	Lots 14-19, Block 4, South Meadows Addition
Status:	Planning & Zoning Commission – Public Hearing
Owner(s):	Investcore, Inc. and Microvest, LLC
Project Contact:	Chad Wachter
Location:	In southwest Bismarck, west of South Washington Street and south of West Burleigh Avenue along the south side of Meridian Drive.
Project Size:	1.52 acres
Request:	Rezone property for multi-family residential development and required zoning transition.



Site Information

Existing Conditions		Proposed Conditions	
Number of Lots:	6 lots in 1 block	Number of Lots:	6 lots in 1 block (3 parcels)
Land Use:	Undeveloped	Land Use:	Multi-family residential project and two two-family lots to provide a zoning transition
Designated GMP Future Land Use:	Already zoned. Not in Future Land Use Plan	Designated GMP Future Land Use:	Already zoned. Not in Future Land Use Plan
Zoning:	R5 – Residential R10 – Residential	Zoning:	Conditional R10 - Residential RM15 – Residential
Uses Allowed:	R5 – Single-family residential R10 – Single and two-family residential	Uses Allowed:	Conditional R10 – Two-family residential RM15 – Multi-family residential
Max Density Allowed:	R5 – 5 units / acre R10 – 10 units / acre	Max Density Allowed:	Conditional R10 – 10 units / acre RM15 – 15 units / acre

Property History

Zoned:	10/2014	Platted:	10/2014	Annexed:	10/2014
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Staff Analysis

The Planning and Zoning Commission, at their October 28, 2015 meeting, scheduled a public hearing for the zoning change from the R5 – Residential and R10 – Residential zoning districts to the Conditional R10 – Residential and RM15 – Residential zoning districts.

The applicants are requesting a zoning change on Lots 16-19 in order to combine them with the adjacent RM15-Residential zoned Lot 20 for development of a multi-family residential project. Lots 14 & 15 are being rezoned to Conditional R10 – Residential in order to provide an appropriate zoning transition between the R5-zoned lots to the northwest and the proposed multi-family development. A buffer yard will also be required between the multi-family residential development on Lots 16-20 and the two-family residential use on Lot 15.

The proposed use of Lots 16-20 is an independent senior living facility with parking garages and a landscaped buffer yard; however, the zoning change would not limit the use to what is being proposed.

Required Findings of Fact

1. The proposed zoning change generally conforms to the Future Land Use Plan in the 2014 Growth Management Plan, as amended;
2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed;

4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner;
6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
7. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends approval of the zoning change from the R5 – Residential and R10 – Residential zoning districts to the Conditional R10 – Residential zoning district on Lots 14 and 15, and to the RM15 – Residential zoning district on Lots 16-19, Block 4, South Meadows Addition, with the understanding that the development of the two R10-Residential lots will be limited to two-family dwellings in order to provide an appropriate land use transition between the single-family residential land use to the west and the multi-family residential land use on Lots 16-20.

Attachments

1. Location Map
2. Zoning Map
3. Tentative Site Plan
4. Tentative Building Elevations

Proposed Zoning Change (R5 and R10 to R10 and RM15) Lots 14-19, Block 4, South Meadows Addition

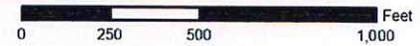
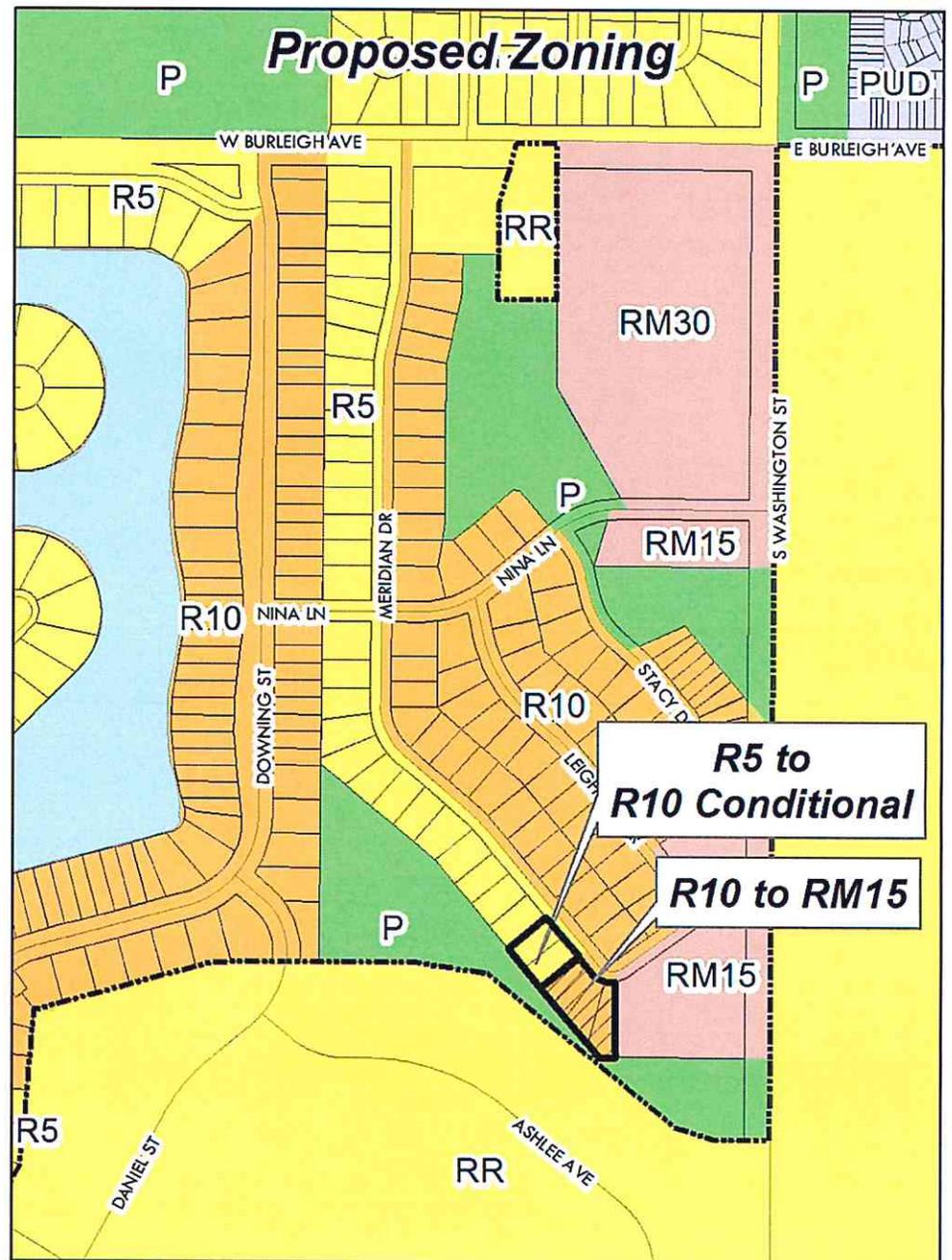
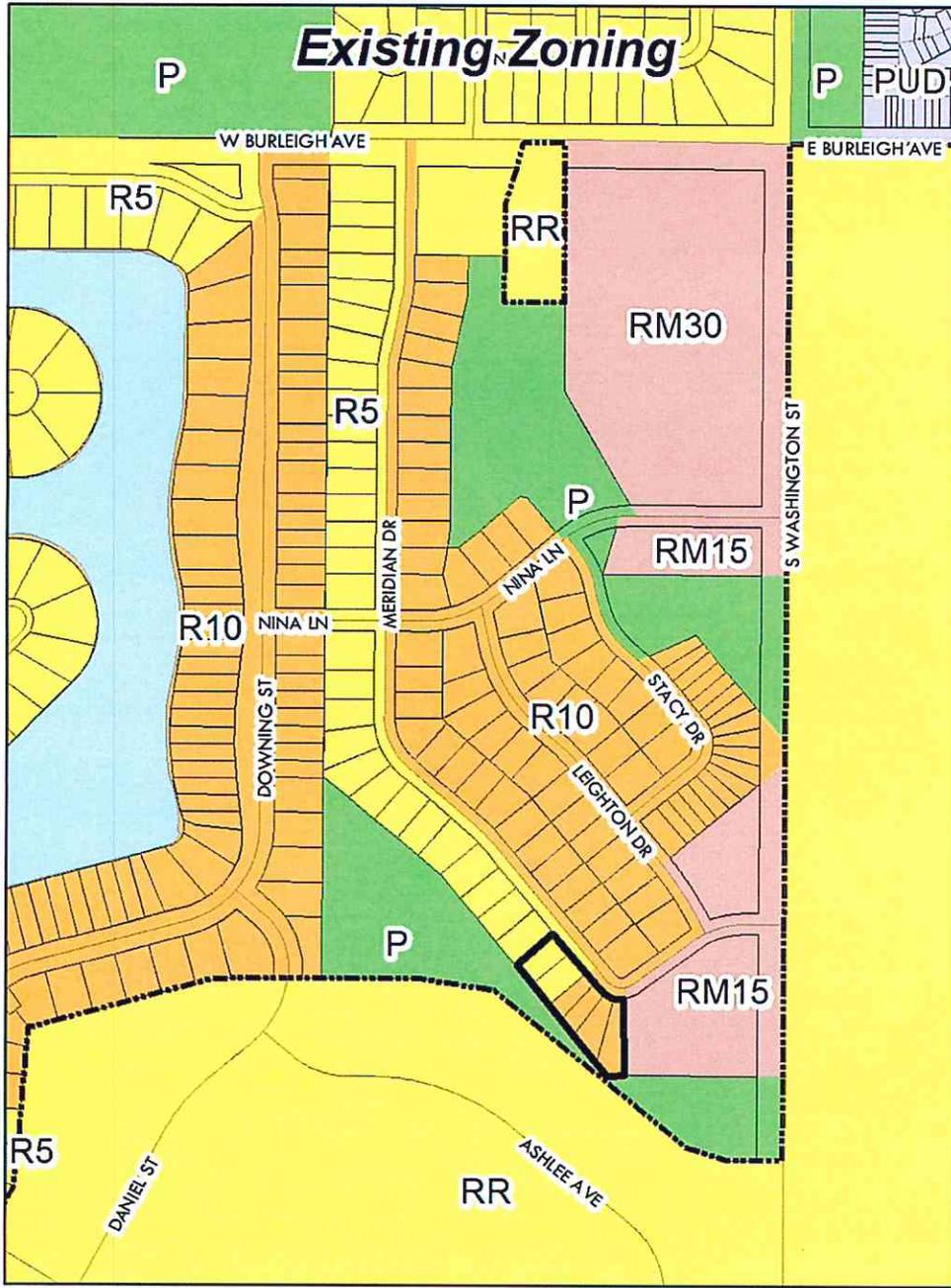


July 20, 2016 (klee)

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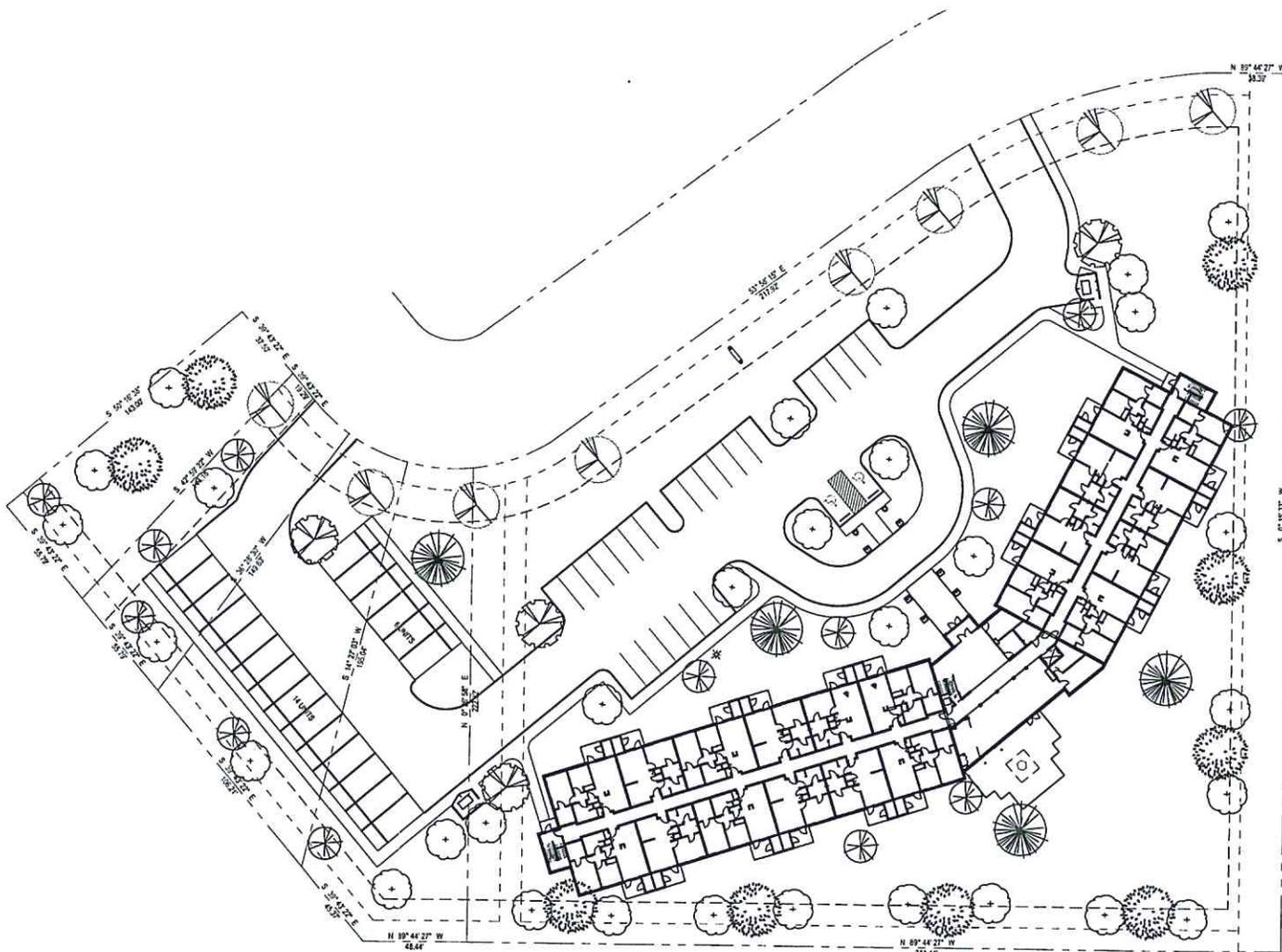


Lots 14-19, Block 4, South Meadows Addition - Zoning Change



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

October, 2015



TOTAL SITE SQ. FOOTAGE OF LOT 16, 17, 18, 19, 20 = 165,184 SQ. FT.

TOTAL BUILDING SQ. FOOTAGE IS AS FOLLOWS:

BUILDING SQ. FOOTAGE = 25,672 SQ. FT.

GARAGES SQ. FOOTAGE = 11,088 SQ. FT.

PARKING STALL SQ. FOOTAGE = 4,500 SQ. FT.

TOTAL = 41,260 SQ. FT.







COMMUNITY DEVELOPMENT DEPARTMENT

DATE: August 3, 2016

FROM: Carl D. Hokenstad, AICP, Director of Community Development

ITEM: Part of Lot 21, Lounsberry Outlots (Saxvik Elementary) – Zoning Change

REQUEST

Bismarck Public Schools is requesting approval of a zoning change from the P – Public zoning district to the PUD – Planned Unit Development zoning district for part of Lot 21, Lounsberry Outlots. This action will allow the adaptive reuse of the former Saxvik Elementary School for pre-kindergarten through 12th grade before and after school programming, adult education, community meeting space and office uses to support the proposed uses.

The property is located in central Bismarck, along the east side of North 21st Street between East Rosser Avenue and East Avenue B.

Please place this item on the August 9, 2016 and the August 23, 2016 City Commission meetings.

BACKGROUND INFORMATION

The Planning & Zoning Commission held a public hearing on the zoning change request on July 27, 2016.

No members of the public spoke at the public hearing.

At the conclusion of the public hearing, and based on the findings contained in the staff report, the Planning & Zoning Commission unanimously recommended approval of the zoning change from the P – Public zoning district to the PUD – Planned Unit Development zoning district on part of Lot 21, Lounsberry Outlots (former Saxvik Elementary School Property) as outlined in the PUD ordinance.

RECOMMENDED CITY COMMISSION ACTION

August 9th Meeting of the Board of City Commissioners – consider the request for the zoning change as outlined in Ordinance 6231, and call for a public hearing on this item for the August 23rd meeting of the Board of City Commissioners.

August 23rd Meeting of the Board of City Commissioners – hold a public hearing on the request for the zoning change as outlined in Ordinance 6231 and take final action on the request.

STAFF CONTACT INFORMATION

Please contact Kim L. Lee, AICP, the planner in our office assigned to this request, at 355-1846 or klee@bismarcknd.gov.

Planning Manager Kim Lee will present this item at the meetings.

CITY OF BISMARCK

Ordinance No. 6231

<i>First Reading</i>	
<i>Second Reading</i>	
<i>Final Passage and Adoption</i>	
<i>Publication Date</i>	

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE 1986 CODE OF ORDINANCES, OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the P - Public zoning district and included in the PUD - Planning Unit Development zoning district:

A Tract of Land in Lounsberry's Bismarck Outlots, described as beginning at a point 167 feet North of the Southwest corner of Outlot 21, thence North 340 feet, East 180 feet, North 50 feet, East 117 feet, South 390 feet, West 297 feet to the point of beginning, Outlot 21, Lounsberry's Bismarck Outlots.

This PUD is subject to the following development standards:

1. *Uses Permitted.* Uses permitted include adaptive reuse of the Saxvik Elementary School building and grounds for pre-kindergarten through 12th grade before and after school programming, adult education training, community meeting space and office uses to support the proposed uses.

2. *General Development Standards.* The lot coverage, setbacks and height limits shall be the same as the surrounding R10 - Residential zoning district.

3. Accessory buildings may be allowed in accordance with the provisions of Section 14-03-06 of the City Code of Ordinances (Incidental Uses) and shall be subject to the same setback requirements as the principal structure.

4. *Parking.* The existing off-street parking shall continue to be provided for the proposed reuses, with the understanding that additional parking may be provided if needed in accordance with applicable provisions of the City Code of Ordinances.

5. *Signage.* Signage is limited to the existing building signage and no more than one monument style sign with a face no more than 15 square feet in area on the front of the building. The existing signs may be upgraded and refurbished as needed, although the size of the faces cannot be increased.

6. *Changes.* This PUD shall only be amended in accordance with Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments). Major changes require a public hearing and a majority vote of the Bismarck Planning & Zoning Commission.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

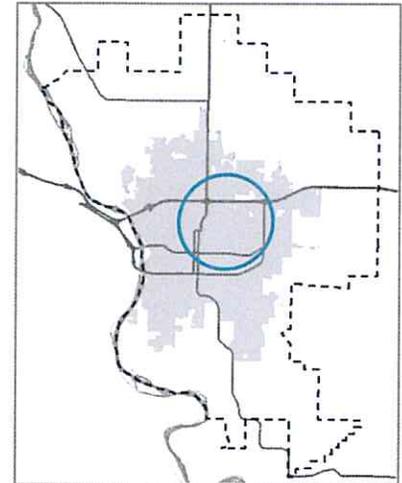
Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

Application for: Zoning Change

TRAKiT Project ID: ZC2016-016

Project Summary

Title:	Part of Lot 21, Lounsberry Outlots
Status:	Planning & Zoning Commission – Public Hearing
Owner(s):	Bismarck Public Schools
Project Contact:	Darin Scherr, PE, Business and Operations Manager
Location:	In central Bismarck, along the east side of North 21 st Street between East Rosser Avenue and East Avenue B.
Project Size:	2.45 acres
Request:	Rezone property to allow the adaptive reuse of the former Saxvik Elementary School for educational programming and community services.



Site Information

Existing Conditions		Proposed Conditions	
Number of Lots:	Part of 1 outlot	Number of Lots:	Part of 1 outlot
Land Use:	Elementary school	Land Use:	Adaptive reuse of building for pre-kindergarten through 12 th grade before and after school programming, adult education training room, community meeting space and office uses to support the proposed uses
Designated GMP Future Land Use:	Already zoned. Not in Future Land Use Plan	Designated GMP Future Land Use:	Already zoned. Not in Future Land Use Plan
Zoning:	P – Public Use	Zoning:	PUD – Planned Unit Development
Uses Allowed:	P – Parks, open space, stormwater facilities, and other public uses	Uses Allowed:	PUD – Uses specified in PUD
Max Density Allowed:	P – N/A	Max Density Allowed:	PUD – Density specified in PUD

Property History

Zoned:	03/2016	Platted:	12/1877	Annexed:	Pre-1940
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Staff Analysis

The applicant is requesting a zoning change to allow the adaptive reuse of the Saxvik Elementary School property. The Board of Education decided to close this elementary school at the end of the 2015-2016 school year and move the students to four neighboring schools.

Although a final plan for the reuse of the property is still being developed, the School District would like to continue to use the space for pre-kindergarten through 12th grade programming, including both before and after school programs.



West side of Saxvik Elementary School



Aerial of Saxvik Elementary School

The Missouri River Educational Coop has been providing before and after school programs at the school and the plan is for these services to continue. Children would come to the Saxvik building for before school programming and would be bussed to the neighboring schools from this location. At the end of the school day, they would be bussed back to this location for after school programming.

Other identified near term uses of the property include adult education training, community meeting space and office space to support these uses. If other uses are proposed for the building in the future, an amendment to this PUD would be required.

Required Findings of Fact

1. The proposed zoning change is outside of the area covered by the Future Land Use Plan in the 2014 Growth Management Plan, as amended;
2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed;
4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner;
6. The character and nature of the proposed planned unit development contains a planned and coordinated land use or mix of land uses that are compatible and harmonious with the area in which it is located;
7. The proposed planned unit development would preserve the natural features of the site inasmuch as possible, including the preservation of trees and natural drainage ways;

8. The internal roadway circulation system within the planned unit development has been adequately designed for the type of traffic that would be generated;
9. Adequate buffer areas have been provided between the planned development and adjacent land uses, if needed, to mitigate any adverse impact of the planned unit development on adjacent properties.
10. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
11. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
12. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Staff Recommendation

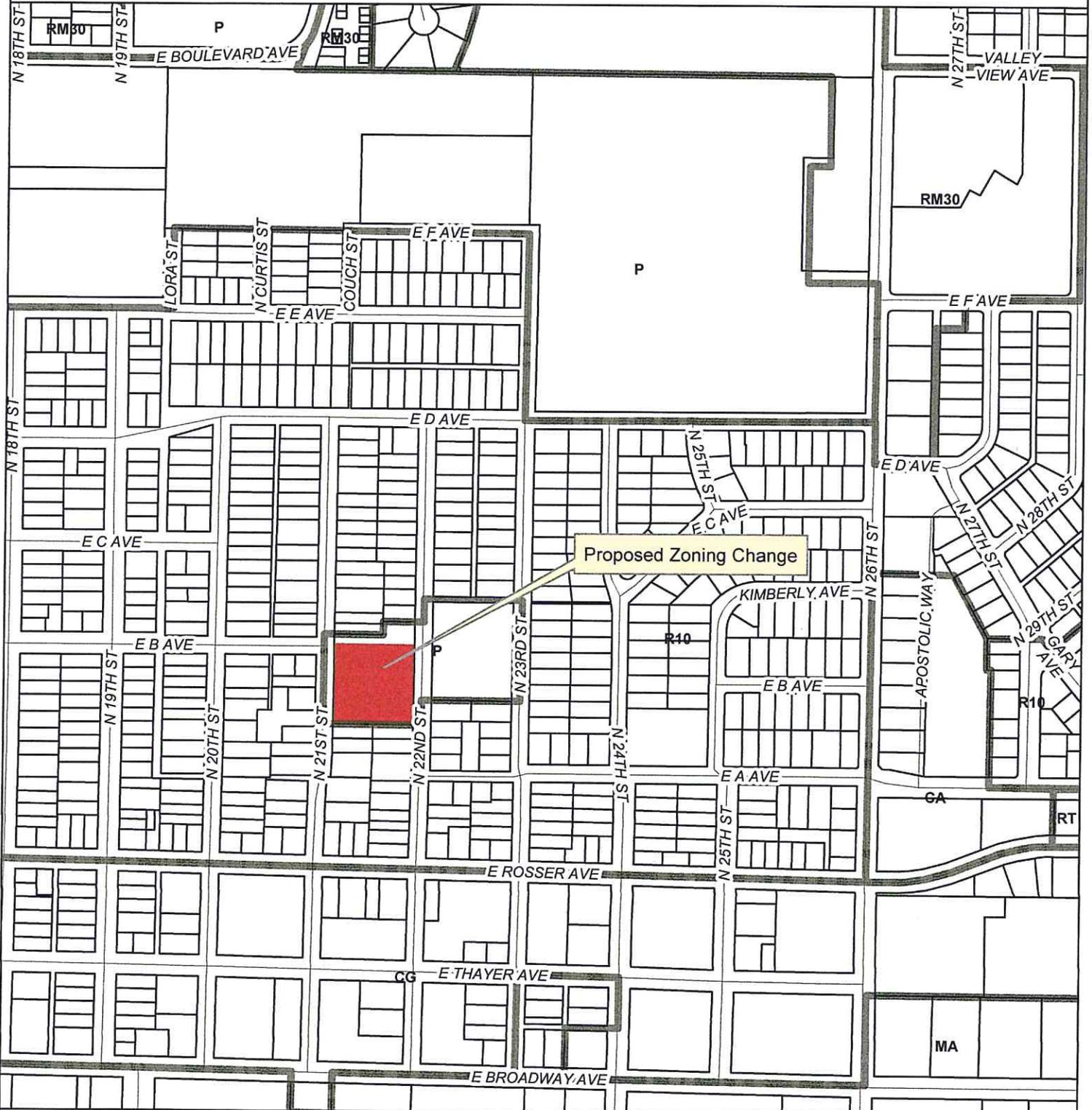
Based on the above findings, staff recommends approval of the zoning change from the P – Public zoning district to the PUD – Planned Unit Development zoning district for a tract of land in Lounsberry’s Bismarck Outlots occupied by the former Saxvik Elementary School, as outlined in the attached draft PUD ordinance.

Attachments

1. Draft PUD Ordinance
2. Location Map
3. Zoning Map
4. PUD Written Statement

Staff report prepared by: Kim L. Lee, AICP, Planning Manager
701-355-1846 | klee@bismarcknd.gov

Proposed Zoning Change (P to PUD) Part of Block 21, Lounsberry Outlots

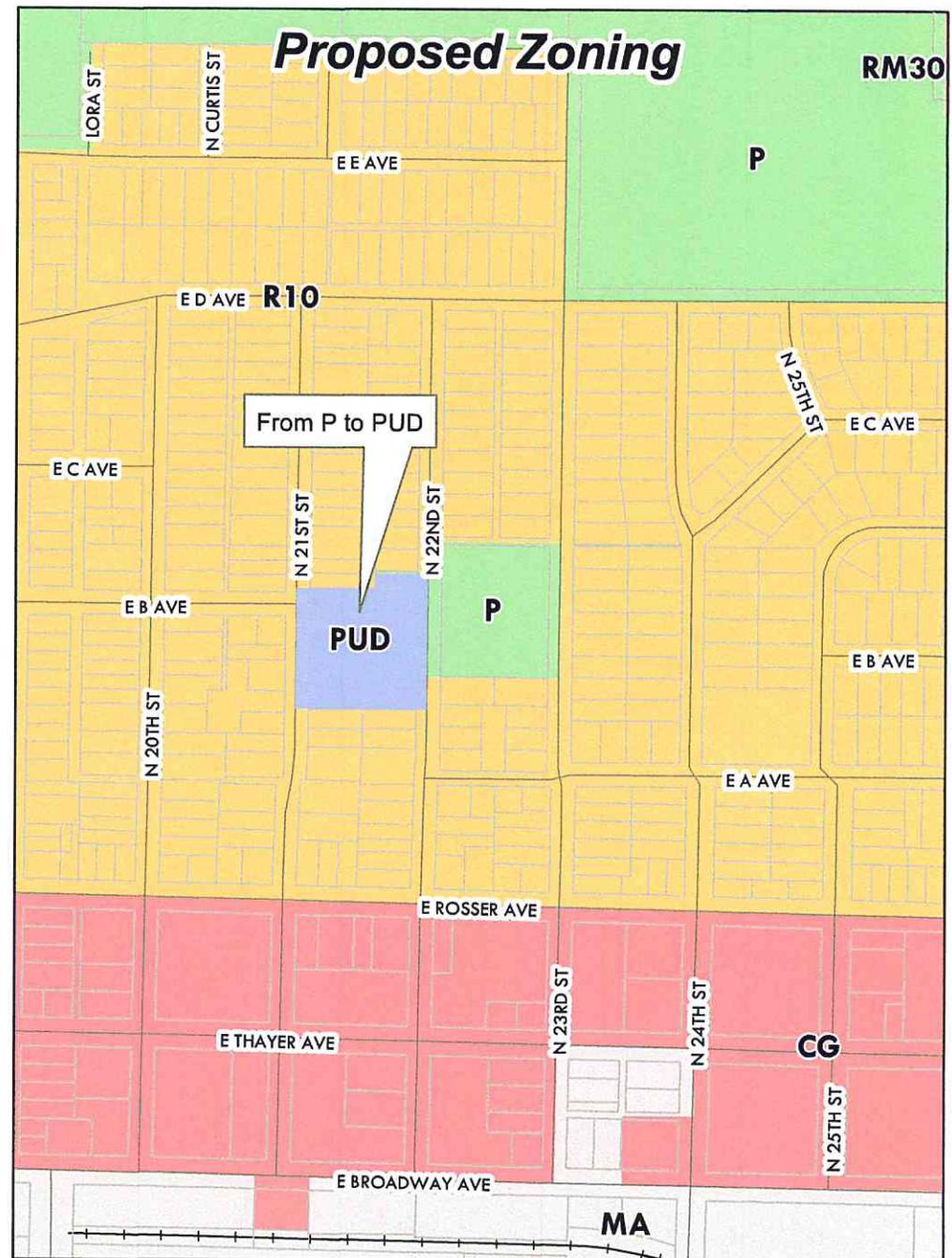
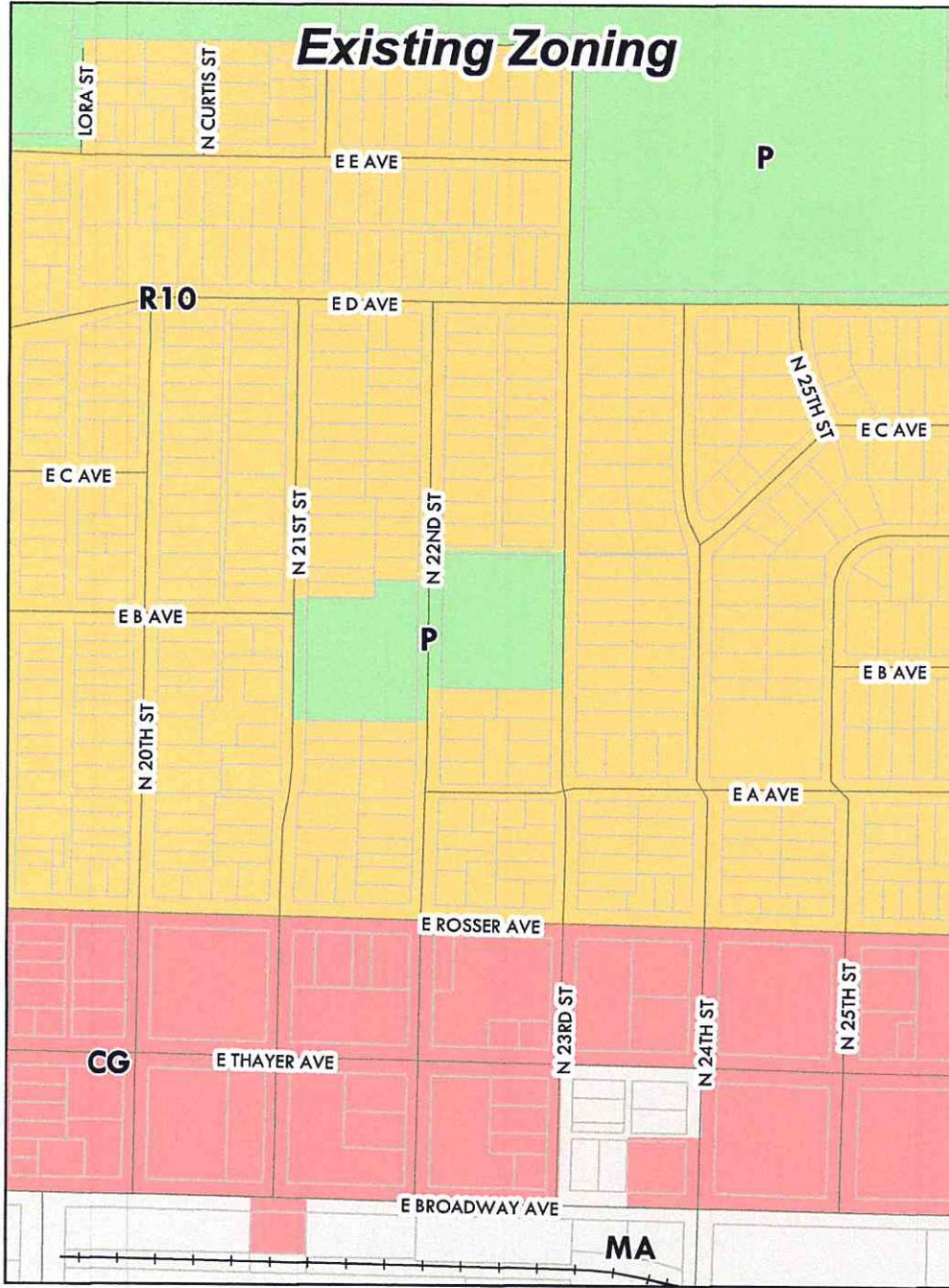


June 13, 2016 (hlb)

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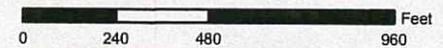


Lounsberry Outlots, Part of Lot 21



- Parcels to Rezone
- City Limits
- Extraterritorial Area

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



June, 2016



Saxvik School Building

Saxvik was an elementary school for Bismarck Public Schools. The board of education decided to close the school and move the students to four neighboring schools. The plan for Saxvik is being developed; however, we do know that we need to provide space for prek-12 programming at the start of next school year.

Old Use

k-5 elementary school.

Potential New Use

Pre k-12 student programming (before and after school)

Adult education training room

Community meeting space

Office space to support above items



ENGINEERING DEPARTMENT

DATE: August 16, 2016
FROM: Gabe Schell, PE | City Engineer *GS*
ITEM: Solid Waste Utility Project No. LF16-01

REQUEST

Authorization to Receive Bids and Award Contract.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

Solid Waste Utility Project No. LF16-01 consists of construction of a composite liner, leachate collector piping, and related items at the City of Bismarck Landfill.

Project Schedule

Receipt and Opening of Bids:	August 22, 2016
Award:	August 23, 2016
Construction Completion:	Fall 2016

RECOMMENDED CITY COMMISSION ACTION

Authorize receipt of bids and award of contract

STAFF CONTACT INFORMATION

Linda J. Oster
loster@bismarcknd.gov
701-355-1505

GJS/ps
cc: Jeff Heintz, Service Operations Director



ENGINEERING DEPARTMENT

DATE: August 16, 2016
FROM: Gabe Schell, PE | City Engineer 
ITEM: Sewer Utility Project No. SU 16-68

REQUEST

Authorization to Receive Bids and Award Contract.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

Sewer Utility Project No. 16-68 consists of construction of asphaltic concrete pavement and related items at the City of Bismarck Wastewater Treatment Plant.

Project Schedule

Receipt and Opening of Bids:	August 22, 2016
Award:	August 23, 2016
Construction Completion:	Fall 2016

RECOMMENDED CITY COMMISSION ACTION

Authorize receipt of bids and award contract

STAFF CONTACT INFORMATION

Linda J. Oster
loster@bismarcknd.gov
 701-355-1505

GJS/ps
 cc: Michelle Klose, PE, Director of Utility Operations (digital only)



ENGINEERING DEPARTMENT

DATE: August 16, 2016
FROM: Gabe Schell, PE | City Engineer 
ITEM: Part B1 of the 2016 City Sidewalk Construction (Hazardous Sidewalks)

REQUEST

Order the repair of the sidewalks listed below.

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

Sidewalks located on the following properties are deemed unsafe for pedestrian traffic. Letters were sent notifying the property owners of the hazard along with providing several options for the repair. Additionally, the owner was provided a 30 day window to respond with questions and to provide the City with signed petitions indicating which option they chose to resolve the hazard.

Those that did not respond to the initial letter were sent a second letter outlining their responsibilities with a 15 day window to return the petition. They were further notified that if they did not respond, a request would be forwarded to the Board of City Commissioners to order the repair of the sidewalks in accordance with applicable City of Bismarck Code of Ordinances. The requested repair, if so ordered, shall be completed under Part B1 of the 2016 City Sidewalk Construction Contract and the associated costs assessed to each property owner.

PROPERTY ADDRESS

3510 Stoneridge Place
501, 521, 611, 615, and 623 East Calgary Avenue
3406 Dominion Street
203 Estevan Drive
106 North Mandan Street
108 North Mandan Street
122 North Mandan Street
1208 North First Street

PROPERTY OWNER OF RECORD

Patrick and Sandra Nelson
Brandon Heights Village, LP
Iret Properties, LLC
Carl and Diane Fryhling
Herman Eggers
108 Mandan, LLC
Herman and Berit Eggers
Barbara Doan

1219 North First Street
1225 North First Street
616 West Bowen Avenue
730 West Bowen Avenue
406 South Anderson Street
502 North 21st Street
523 North 21st Street
600 North 21st Street
609 North 21st Street
708 North 21st Street
733 North 21st Street
416 West Thayer Avenue
521 North 13th Street
1311 East Avenue B
1322 East Avenue B
520 East Main Avenue

Lauren McMillian
Chad Herman
Jay and Angela Kruckenberg
Steven Bauman
Board of Education
Deutsche Bank National Trst. Co.
Board of Education
Richard Townsend
Gunsch Rentals Trust
Tera and Donovan Selensky
Norma and Ella Peightal
Scott Johnson
Avenue C Properties, LLC
Avenue C Properties, LLC
AST Acquisitions, LLC
Abused Adult Resource Center

RECOMMENDED CITY COMMISSION ACTION

Order the repair of the sidewalks listed above in accordance with applicable City of Bismarck Code of Ordinances

STAFF CONTACT INFORMATION

Gabe Schell, PE
gschell@bismarcknd.gov
701-355-1505

GJS/ps



ENGINEERING DEPARTMENT

DATE: August 16, 2016
FROM: Gabe Schell, PE, City Engineer 
ITEM: Project Update: North Washington Street and Quiet Rail Zone

REQUEST

Permission to Present Project Update

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

Provide information to the Board of City Commissioners as to the status of the North Washington Street Reconstruction project and the Quiet Rail Zone Project.

RECOMMENDED CITY COMMISSION ACTION

None

STAFF CONTACT INFORMATION

Mark A. Berg, PE
Traffic Engineer
mberg@bismarcknd.gov
701-355-1505



AIRPORT

DATE: August 16, 2016

FROM: Gregory B. Haug, Airport Director

ITEM: Agenda Item for August 23, 2016, Vehicle Parking Request for Proposals (RFP)

REQUEST

Consider proposals for Vehicle Parking Concession RFP and format of concession agreement.

BACKGROUND INFORMATION

Bismarck Airport has a management agreement with SP Plus to operate the vehicle parking concession (pay parking lot) at the airport terminal. This agreement has been in a month to month status and needed to be re-bid. Airport staff has advertised a request for proposals (RFP) with a proposal due date of August 4, 2016 at 4 p.m. A selection committee will review the proposals submitted and their recommendation will be brought to the Commission at the August 23, 2016 Commission meeting.

The RFP requires proposers to submit their bids for minimum annual guarantees as well as percentages of gross receipts each year through the initial and optional terms of the lease. The RFP also requires the concessionaire to purchase and install new revenue control equipment throughout all three parking lots and at the exit plaza. This new equipment is necessary as the current system is nearing 15 years old, it's not supported by the manufacturer any longer and the system cannot keep up with the amount of transactions that occur during peak travel times. A \$375,000 allowance has been made for this system in the RFP that will be recovered by the concessionaire in the first several months of the contract through a reduction in gross revenue payments to the Airport. The reason we acquire the equipment this way is because the parking lot concessionaires have a lot more buying power with the revenue control equipment companies than we do, so it represents some savings for this large purchase. This is the same method the airport used the last time new equipment was installed.

The initial term of the agreement is for 5 years with an optional term of 5 additional years with mutual agreement. The agreement will be finalized with the selected proposer after the

proposals have been received and the Commission has approved the selection of the best proposal. The final agreement will be coordinated with the City Attorney.

RECOMMENDED CITY COMMISSION ACTION

Receive proposals and consider selection committees recommendation to award and approval of format for Concession Agreement.

STAFF CONTACT INFORMATION

Greg Haug, Airport Director, 701-355-1808, ghaug@bismarcknd.gov

Enclosure:

1. Draft Concession Agreement

CONCESSION AGREEMENT

BETWEEN

THE CITY OF BISMARCK

AND

**FOR THE
VEHICLE PARKING LOT CONCESSION**

AT

BISMARCK AIRPORT

**June 13, 2016
Draft 1**

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PARKING CONCESSION AGREEMENT

Concession Agreement, hereinafter, the "Agreement" made and entered into by and between the City of Bismarck, a municipal corporation, acting through its Board of City Commissioners, hereinafter, the "City", and, _____ authorized to do business in the State of North Dakota, having its principal offices at _____, hereinafter, "Concessionaire".
Concessionaire's Federal Identification Number is _____. For purposes of this Agreement, City and Concessionaire may from time to time, be individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, the City is the owner and operator of the premises known as the Bismarck Airport located in Bismarck, North Dakota, hereinafter, the "Airport";

WHEREAS, the City desires to contract for the professional management and operation of the Airport's current vehicle Parking Facilities, the "Existing Facilities", and new management control and collection systems, the "New Equipment" for the convenience of Airport passengers and the general public utilizing such parking facilities at the Airport; and

WHEREAS, the Concessionaire submitted a Proposal to the City dated _____, 2016, hereinafter, the "Proposal", for the operation of the Existing Facilities; and the installation of new management, control and collection systems as well as the operation and management of the New Equipment; and

WHEREAS, the City and the Concessionaire have agreed upon the terms and conditions for the professional management and operation of said Facilities and New Equipment pursuant to the Concessionaire's Proposal.

NOW, THEREFORE, in consideration of the terms, conditions and covenants hereinafter set forth, the Parties agree as follows:

1. Term

- A. The Term of this Agreement shall be for a period of five (5) years, commencing on October 1, 2016 and expiring on September 30, 2021 (the "Initial Term"), plus one five (5) year option upon mutual consent, the "Option Term", unless sooner terminated, as hereinafter

provided. For purposes of this Agreement, the Initial Term and the Option Term shall hereinafter be collectively referred to as the "Term".

- B. To obtain the Option Term, the Concessionaire (i) shall give the City at least one year's prior written notice and (ii) shall not be in default of any of its obligations hereunder at the time of providing notice to the City or at any time subsequent to providing notice but prior to commencement of the Option Term.

2. Parking Facility Occupancy and Rights of Concessionaire

- A. The City hereby grants to Concessionaire the right and privilege to conduct and operate the Existing Facilities commencing October 1, 2016 and the exclusive right to use and occupy Existing Facilities at the Airport consisting of approximately 1,119 permanent parking spaces. The "Existing Facilities", are identified in Exhibit A attached hereto and made a part hereof.
- B. The Existing Facilities shall be used by Concessionaire solely as outdoor vehicle parking facilities for serving the patrons and tenants of the Airport and for no other purposes whatsoever.
- C. Concessionaire also agrees to manage the Terminal Employee Parking Lot adjacent to the commercial terminal and to administer the Terminal employee parking permits. Concessionaire shall have the right to charge a monthly fee to all Terminal employees for these services. Any fees so charged shall be: (i) paid to the Concessionaire, (ii) included as part of the gross receipts, (iii) subject to approval by the Airport Director and the provisions of Section 4.8. hereof, and (iv) not in conflict with the provisions of any existing Airport Terminal Building leases with specific provisions for free parking.

3. Minimum Annual Guarantee and Gross Receipts

- A. "Gross Receipts", as used herein, shall mean all sums collected by Concessionaire from customers at the Existing or any New or Expanded Facilities for parking and storage of vehicles on an hourly, daily, weekly, monthly or other basis, including without limitation, receipts, if any from parking meters, restaurant validations, electric plug-ins and parking coin machines and permit fees, determined in accordance with generally accepted accounting principles, consistently applied, but excluding any sales taxes imposed by law which are separately stated to, and paid by, customers and directly remitted by the Concessionaire to the taxing or tax-collecting authority.

B. During the Term of this Agreement, subject to the provisions of this Article 3 and Article 5 hereof, the Concessionaire shall pay to the City on the dates and in the manner specified in Section C) below, annual Gross Receipts Fees which shall be the sum of the following:

- 1) In Year 1, October 1, 2016, to September 30, 2017, a Minimum Annual Guarantee of _____ dollars (\$_____.__) in twelve (12) equal monthly installments, the "Monthly Guarantee", of _____ dollars and _____ cents (\$_____.__) and _____ percent (___%) of Gross Receipts from zero dollars (\$0) to _____ dollars (\$_____) and _____ percent (___%) of Gross Receipts from _____ dollars (\$_____) to _____ dollars (\$_____), net of the minimum annual guarantee, and _____ percent (___%) of Gross Receipts in excess of _____ (\$_____), net of the minimum annual guarantee.

- 2) In Year 2, October 1, 2017 to September 30, 2018, a Minimum Annual Guarantee of _____ dollars (\$_____.__) in twelve (12) equal monthly installments, the "Monthly Guarantee", of _____ dollars and _____ cents (\$_____.__) and _____ percent (___%) of Gross Receipts from zero dollars (\$0) to _____ dollars (\$_____) and _____ percent (___%) of Gross Receipts from _____ dollars (\$_____) to _____ dollars (\$_____), net of the minimum annual guarantee, and _____ percent (___%) of Gross Receipts in excess of _____ (\$_____), net of the minimum annual guarantee.

- 3) In Year 3, October 1, 2018 to September 30, 2019, a Minimum Annual Guarantee of _____ dollars (\$_____.__) in twelve (12) equal monthly installments, the "Monthly Guarantee", of _____ dollars and _____ cents (\$_____.__) and _____ percent (___%) of Gross Receipts from zero dollars (\$0) to _____ dollars (\$_____) and _____ percent (___%) of Gross Receipts from _____ dollars (\$_____) to _____ dollars (\$_____), net of the minimum annual guarantee, and _____ percent (___%) of Gross Receipts in excess of _____ (\$_____), net of the minimum annual guarantee.

- 4) In Year 4, October 1, 2019 to September 30, 2020, a Minimum Annual Guarantee of _____ dollars (\$_____.__) in twelve (12) equal monthly installments, the "Monthly Guarantee", of _____ dollars and _____ cents (\$_____.__) and _____ percent (___%) of Gross Receipts from zero dollars (\$0) to _____ dollars (\$_____) and _____ percent (___%) of Gross Receipts from _____ dollars (\$_____) to _____ dollars (\$_____), net of the minimum annual guarantee, and _____ percent

(__%) of Gross Receipts in excess of _____ (\$ _____), net of the minimum annual guarantee.

- 5) In Year 5, October 1, 2020 to September 30, 2021, a Minimum Annual Guarantee of _____ dollars (\$ _____) in twelve (12) equal monthly installments, the "Monthly Guarantee", of _____ dollars and _____ cents (\$ _____) and _____ percent (___%) of Gross Receipts from zero dollars (\$0) to _____ dollars (\$ _____) and _____ percent (___%) of Gross Receipts from _____ dollars (\$ _____) to _____ dollars (\$ _____), net of the minimum annual guarantee, and _____ percent (___%) of Gross Receipts in excess of _____ (\$ _____), net of the minimum annual guarantee.
- 6) In Option Year 1, October 1, 2021 to September 30, 2022, a Minimum Annual Guarantee of _____ dollars (\$ _____) in twelve (12) equal monthly installments, the "Monthly Guarantee", of _____ dollars and _____ cents (\$ _____) and _____ percent (___%) of Gross Receipts from zero dollars (\$0) to _____ dollars (\$ _____) and _____ percent (___%) of Gross Receipts from _____ dollars (\$ _____) to _____ dollars (\$ _____), net of the minimum annual guarantee, and _____ percent (___%) of Gross Receipts in excess of _____ (\$ _____), net of the minimum annual guarantee.
- 7) In Option Year 2, October 1, 2022 to September 30, 2023, a Minimum Annual Guarantee of _____ dollars (\$ _____) in twelve (12) equal monthly installments, the "Monthly Guarantee", of _____ dollars and _____ cents (\$ _____) and _____ percent (___%) of Gross Receipts from zero dollars (\$0) to _____ dollars (\$ _____) and _____ percent (___%) of Gross Receipts from _____ dollars (\$ _____) to _____ dollars (\$ _____), net of the minimum annual guarantee, and _____ percent (___%) of Gross Receipts in excess of _____ (\$ _____), net of the minimum annual guarantee.
- 8) In Option Year 3, October 1, 2023 to September 30, 2024, a Minimum Annual Guarantee of _____ dollars (\$ _____) in twelve (12) equal monthly installments, the "Monthly Guarantee", of _____ dollars and _____ cents (\$ _____) and _____ percent (___%) of Gross Receipts from zero dollars (\$0) to _____ dollars (\$ _____) and _____ percent (___%) of Gross Receipts from _____ dollars (\$ _____) to _____ dollars (\$ _____), net of the minimum annual guarantee, and _____ percent (___%) of Gross Receipts in excess of _____ (\$ _____), net of the minimum annual guarantee.

9) In Option Year 4, October 1, 2024 to September 30, 2025, a Minimum Annual Guarantee of _____ dollars (\$_____.__) in twelve (12) equal monthly installments, the "Monthly Guarantee", of _____ dollars and _____ cents (\$_____.__) and _____ percent (____%) of Gross Receipts from zero dollars (\$0) to _____ dollars (\$_____) and _____ percent (____%) of Gross Receipts from _____ dollars (\$_____) to _____ dollars (\$_____), net of the minimum annual guarantee, and _____ percent (____%) of Gross Receipts in excess of _____ (\$_____), net of the minimum annual guarantee.

10) In Option Year 5, October 1, 2025 to September 30, 2026, a Minimum Annual Guarantee of _____ dollars (\$_____.__) in twelve (12) equal monthly installments, the "Monthly Guarantee", of _____ dollars and _____ cents (\$_____.__) and _____ percent (____%) of Gross Receipts from zero dollars (\$0) to _____ dollars (\$_____) and _____ percent (____%) of Gross Receipts from _____ dollars (\$_____) to _____ dollars (\$_____), net of the minimum annual guarantee, and _____ percent (____%) of Gross Receipts in excess of _____ (\$_____), net of the minimum annual guarantee.

11) Title to such Gross Receipts Fees shall vest in the City immediately upon the Concessionaire's collection of Gross Receipts at the Airport in excess of the amounts specified in Sections 8.1) through 8.10) hereof, and the Concessionaire, as custodian for the City, shall be solely responsible for all such funds until their delivery to the City.

C. On or before the twentieth day of each calendar month, Concessionaire shall furnish the City with a statement, prepared in accordance with generally accepted accounting principles, consistently applied, showing:(i) the total Gross Receipts derived from the operation of the Parking Facilities during the preceding month and (ii) the cumulative Gross Receipts from the beginning of the annual period to the end of the month for which such statement is rendered. The Concessionaire shall pay the Gross Receipts Fee due to the City for the Concessionaire's preceding month's operation at the time of submission of said statement net of the Monthly Guarantee noted in Section D hereof.

D. Notwithstanding the Gross Receipts Fee payments, Concessionaire, subject to the provisions of Section 3.B.1) hereof, guarantees to the City for each year of the Term of the Agreement Minimum Annual Guarantees as shown below:

Year One (10/01/16 to 09/30/17)	\$_____
Year Two (10/01/17 to 09/30/18)	\$_____

Year Three (10/01/18 to 09/30/19)	\$ _____
Year Four (10/01/19 to 09/30/20)	\$ _____
Year Five (10/01/20 to 09/30/21)	\$ _____
Option Year One (10/01/21 to 09/30/22)	\$ _____
Option Year Two (10/01/22 to 09/30/23)	\$ _____
Option Year Three (10/01/23 to 09/30/24)	\$ _____
Option Year Four (10/01/24 to 09/30/25)	\$ _____
Option Year Five (10/01/25 to 09/30/26)	\$ _____

Concessionaire shall pay to the City on or before the first day of each and every month one twelfth (1/12) of the Minimum Annual Guarantee, the "Monthly Guarantee", applicable to each year of this Agreement in accordance with the amounts specified above.

1) Concessionaire shall keep the following books of account and records of gross receipts from its operation:

- i General Ledger Books
- ii Shift Reports
- iii Daily Revenue Reports
- iv Bank Statements
- v Deposit Slips

hereinafter collectively referred to as "Financial Records", which shall be kept in accordance with generally accepted accounting principles, consistently applied. The Concessionaire shall retain, the Financial Records relating to its operations for five (5) years after the year to which such records apply except for machine tickets from the ticket spitters. Machine tickets from the ticket spitters shall be kept for the two previous contract years. The Shift Reports, Daily Revenue Reports and Deposit Slips and the machine tickets from the ticket spitters shall be retained by the Concessionaire at the Airport. In addition, the Concessionaire shall make its General Ledger Book available at the Airport as requested by the City. All such Financial Records shall be subject to inspection and audit by the City at all reasonable times during normal business hours.

2) Concessionaire, at its sole cost and expense, shall submit to the City, no later than ninety (90) days following the conclusion of each calendar year during the Term hereof, an audited statement of its gross receipts, as defined in Section 3.A hereof, for such year. Within sixty (60) days of the submission of such audited statement, the Concessionaire shall make available to the City copies of all its Financial Records relating to its operations for such audited year as reasonably requested by the City. The audited statement referred

to in this Section 3.C.2) shall be prepared by a reputable certified public accountant or a licensed public accountant.

- 3) All monies paid by or charged to Concessionaire's customers at the Existing or New Facilities shall be recorded on cash registers with cumulative totaling and taping capacity or a comparable computerized cash management system and Concessionaire shall deliver such cash register or computer tapes or disks to the City on an annual basis in accordance with Section C.2) and shall allow the City to inspect the such cash management systems in accordance with Section C.1) above.
 - 4) If, as a result of an inspection thereof, it is determined that Concessionaire has paid the City less than the amount to which it is entitled under Section 3.8 hereof, Concessionaire shall pay to the City the amount of such deficiency within thirty (30) days of an invoice therefore and, if the amount of such deficiency is five per cent (5%) or more of the amount reported for the period under audit, the Concessionaire shall reimburse the City for the costs of making such inspection of said books and records. This obligation of reimbursement shall be in addition to all other obligations of Concessionaire hereunder. Termination of this Agreement by the City for cause shall not nullify such obligations.
- E. It is further agreed by the Parties that a service charge in the amount of one and one half percent (1.5%) per month shall be added to any balance due and owing by the Concessionaire for a period of thirty days or more.
- F. Payment of all fees shall be by check or money order payable to the order of City of Bismarck, and shall be mailed to Bismarck Airport, P.O. Box 991, Bismarck, ND 58502, or personally delivered to the Airport Director's office.
- G. Except as otherwise expressly provided herein, it is the intention of the Parties that the Gross Receipts Fee herein specified shall be net to the City and that all costs, expenses and obligations of every kind relating to the Existing or New Facilities which may arise or become due during the Term shall be paid by the Concessionaire and the Concessionaire shall indemnify the City against such costs, expenses and obligations. The Gross Receipts Fee shall be paid to the City without notice or demand and without abatement, deduction or set-off.

4. Concessionaire Parking Rates

- A. Parking rates charged by Concessionaire at the Existing or New Facilities effective October 1, 2016 shall be according to the following schedule:

<u>SHORT TERM</u>	<u>LONG TERM</u>	<u>ECONOMY LOT</u>
1st 20 Minutes - Free	\$1.00 each Hour	\$1.00 each Hour
\$1.50 each additional ½ Hour	\$8.00 Per Day	\$7.00 Per Day

\$10.00 Maximum Per Day

\$40.00 Weekly

\$35.00 Weekly

- B. An increase in the parking rate schedule may be implemented in the first month of Option Year 1, October 1, 2021, subject to the mutual agreement of the Parties to reflect then current economic conditions.
- C. Upon the request of the Airport Director, Concessionaire shall be prepared to implement a validation program providing Airport Terminal patrons with a stipulated amount of free parking in return for a minimum purchase in consideration of a validation charge to be paid by the airlines or Terminal concessionaires. The final terms and conditions of such a validation program shall be subject to the prior written approval by the Airport Director.

5. Existing and New Facilities Improvements

- A. The Concessionaire shall commit to and fully implement the New Equipment Improvements, the "Improvements", presented and described in Exhibit C to this Agreement which is attached hereto and made a part hereof.
- B. As stated in Exhibit C, the cost of Concessionaire's recommended option, is _____ (\$ _____). Concessionaire further agrees to contribute on the City's behalf, an additional _____ (\$ _____) towards the New Equipment Improvements. Costs for construction and New Improvements in excess of \$ _____ (\$ _____) shall be funded by the City.
- C. Also, as stated in Exhibit C, Concessionaire will serve in a project management capacity and oversee the procurement, installation, testing and training associated with the New Facilities at no additional cost to the City.
- D. Concessionaire will use its best efforts to assure that in its project management role it will provide for the delivery of the requisite equipment identified in Exhibit C within the estimated time frames stipulated (November 15, 2016).
- E. All Improvements shall be made to the reasonable satisfaction of the City and shall be subject to the provisions of Article 9 hereof.

6. Undertakings of Concessionaire

The Concessionaire shall cooperate and work with the City, at its direction, to implement the required undertakings set forth in Articles 5 and 6, including but not limited to those listed below.

- A. Install, to the extent required, so as to be operational by the dates stated in Sections D., of Article 5 the Improvements in the New Facilities.
- B. Provide adequate staffing of uniformed attendants trained and disciplined to perform their duties in an efficient manner and adequate to meet a goal to process exiting vehicles with a wait time not to exceed eight (8) minutes.
- C. Operate the Existing and New Facilities twenty-four (24) hours a day, seven (7) days a week.
- D. Employ qualified management to perform duties and responsibilities in accordance with those set forth in Exhibit "C" attached hereto and made a part hereof.
- E. Operate and maintain the Existing and New Facilities provided hereunder and keep the same and the Improvements installed therein and thereon all in good order, condition and repair, including the removal of all trash and debris.
- F. Be responsible for all maintenance, repair and rehabilitation of the paved surface of the Existing and New Facilities and the attendant equipment, normal wear and tear excepted.
- G. Be responsible for snow removal and ice control using due diligence to provide adequate and safe access for Airport patrons, invitees, tenants and employees at all times so as to accommodate the demand for parking at the Airport. The City may provide any sanding or chemical treatment needed for snow and ice control at the gates.
- H. Provide adequate accessible parking spaces to accommodate vehicles of persons with disabilities, as required by law.
- I. Display parking rates in a conspicuous location on attractive, legible signs.
- J. Install and maintain all traffic control devices, signing pertaining to rates and exit location and marking of parking places and traffic lanes; such to be in compliance with recognized industry standards considering the traffic volumes and the geometry and uses of the Existing and New Facilities.
- K. Furnish its service on a fair, equal and not unjustly discriminatory basis to the public, and to charge fair, reasonable, and not unjustly discriminatory prices.
- L. Provide the services necessary to properly serve the needs of the general public, passengers and invitees at the Airport.
- M. Obtain, at its sole expense, all licenses and permits necessary for its operations under this Agreement. All operations shall be in strict conformity with all applicable Federal and

State laws, rules and regulations.

- N. Control the conduct and demeanor of its agents and employees and, upon objection from the City, the Concessionaire shall immediately take lawful steps to remove the cause of the objection. If the City so requests, Concessionaire agrees to supply and require its employees to wear suitable attire and to wear or carry badges or other suitable means of identification, which shall be subject to prior and continuing approval of the City.
- O. Faithfully submit its payments under this Agreement and the reports of its operations, as defined in Article 3 and this Article 6 hereof.
- P. Prepare and deliver to the City, on or before the twentieth day of each calendar month during the Term of this Agreement, a statement which shall be subscribed and certified to as correct by Concessionaire, or its authorized representatives, showing a duly certified monthly operating statement on forms prescribed or approved by the City, showing all of the gross receipts, as defined in Section 3.A hereof, from Concessionaire's operations at the Airport for the previous month. The certification shall be by an official of the Concessionaire who is responsible for the Financial Records of the Concessionaire at the Airport.
- Q. Within ninety (90) days following the earlier expiration or termination of this Agreement, the Concessionaire, at its sole expense, shall submit to the City an audited statement of its Financial Records of operation at the Airport.
- R. Operate its business at the Airport so that parking tickets, serially numbered shall be issued with each parking transaction. Concessionaire shall keep its Financial Records in accordance with standard accounting practices consistently applied and such other records as are satisfactory to the City. Tickets or other records of issuance of same and all other Financial Records of Concessionaire, as aforesaid, shall be available for 90 days and shall be open for inspection by authorized representatives of the City at all reasonable times during business hours. If such an inspection is made by said authorized representatives and it is determined as a result thereof that Concessionaire has underpaid the City by more than 5% of the amount to which it is entitled under Article 3 hereof, Concessionaire shall reimburse the City for its costs of making such inspection of said Financial Records, and this obligation of reimbursement shall be in addition to all other obligations of Concessionaire hereunder. Termination of this Agreement for fraud shall not serve to nullify such obligation. With the payment of Gross Receipts Fees each month as provided above, Concessionaire shall submit to the City a detailed statement showing gross receipts from the operation of the parking concession for the preceding calendar month. These reports shall show such reasonable detail and breakdown as may be required by the City.
- S. Provide to the City upon the execution of this Agreement and thereafter maintain in effect throughout the Term of this Agreement a Performance Bond in an amount of one hundred

twenty thousand dollars (\$120,000.00) to assure the faithful performance by Concessionaire of its obligations under this Agreement.

- T. Cooperate with the Airport's law enforcement staff, in developing and implementing reasonable security measures to protect against vehicle vandalism and theft at the Existing and New Facilities.
- U. The Concessionaire shall conduct its operations hereunder in an orderly and proper manner, considering the nature of such operation so as not to unreasonably annoy, disturb, endanger or be offensive to others.
- V. Further, the Concessionaire shall take all reasonable measures not to produce on the Airport through the operation of machinery or equipment any electrical, electronic or other disturbance that interferes with the operation by the City or the Federal Aviation Administration of air navigational, communication or flight equipment on the Airport or on aircraft using the Airport, or with ground transportation communications.
- W. The Concessionaire shall provide and use suitable covered metal or other rigidly and sturdily constructed receptacles, suitably screened from public view, for all garbage, trash and other refuse created on or arising in connection with the activities conducted on the Existing and New Facilities. Concessionaire shall use extreme care when effecting removal of all such waste to prevent littering the Airport.
- X. The Concessionaire shall commit no nuisance, waste or injury on the Existing and New Facilities, and shall not do, or permit to be done, anything which may result in the creation, commission or maintenance of such nuisance, waste or injury on the Existing and New Facilities.
- Y. The Concessionaire shall take measures to insure security in compliance with applicable Federal Aviation Regulations and the Airport Security Plan.

7. CITY'S OBLIGATIONS, RULES AND REGULATIONS

- A. Except as herein provided, the City agrees that it will, with reasonable diligence and in a manner consistent with that of a reasonably prudent operator of an airport of comparable size, operate, maintain, develop and keep in good repair and order the Airport and all common use and public appurtenances, facilities and equipment provided by the City as the same relates to Concessionaire's business, including the lighting of the Existing and New Facilities. The City agrees that it will operate the Airport in a manner consistent with standards established by the Federal Aviation Administration, or any successor Federal agency exercising similar powers for airports of comparable size and in accordance with rules and regulation of the Federal Aviation

Administration and any other governmental agency having jurisdiction thereof.

- B. From time to time, the City may adopt and enforce Rules and Regulations. Concessionaire agrees to observe and obey any and all such Rules and Regulations and all other Federal, State and municipal rules, regulations and laws and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same.
- C. The City reserves the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such Rules and Regulations and laws.

8. UTILITIES

- A. The City shall provide electrical service to the Existing and New Facilities at no cost to Concessionaire.
- B. The Concessionaire shall, at its expense, contract with the furnishers of any other utilities for the furnishing of such services to the Existing and New Facilities, which are not currently provided, or planned to be provided, by the City. The location and routing of all utilities on the Airport must have the written approval of the City prior to installation.

9. CONSTRUCTION, MAINTENANCE AND REPAIR OF THE EXISTING AND NEW FACILITIES

- A. The Concessionaire shall, throughout the Term of this Agreement, assume the entire responsibility, cost and expense, for all routine repair and maintenance of the Existing and New Facilities and all improvements thereon in a good workmanlike manner. Provided, however, that the City shall be responsible for the repair and maintenance of (i) the underground wiring associated solely with the overhead lighting and (ii) the overhead lighting. Subsequent to the satisfactory completion of the New Facilities Improvements by the Concessionaire, the City shall be responsible for all major structural surface repairs.

Additionally, the Concessionaire, without limiting the generality hereof, shall:

- 1) Keep at all times, in a clean and orderly condition and appearance, the Existing and New Facilities, all improvements thereon, including the "Improvements" defined in Exhibit C, structures, fixtures and equipment which are now or subsequently located on any part of the Existing and New Facilities pursuant to the provisions of this Article 9. The Concessionaire shall also be responsible for the maintenance and repair of underground wiring associated with the improvements, as herein defined, notwithstanding that title to the improvements is vested in the City.

- 2) Repair any damage caused by Concessionaire to paving or other surface of the Existing and New Facilities caused by any oil, gasoline, grease, lubricants or other flammable liquids and substances having a corrosive or detrimental effect thereon.
 - 3) Be responsible for the maintenance and repair of all utility services lines placed on the Existing and New Facilities and used by the Concessionaire exclusively.
- B. In the event the Concessionaire fails: to comply with the above provisions within a period of thirty (30) days after written notice from the City to do any maintenance or repair work required to be done under the provisions of this Agreement, then, the City may, at its option, and in addition to any other remedies which may be available to it, enter the Existing and New Facilities, without such entering causing or constituting a cancellation of this Agreement, and repair, replace, rebuild or paint all or any part of the Existing and New Facilities or the improvements thereon, and do all things reasonably necessary to accomplish the work required, and the cost and expense thereof shall be payable to the City by the Concessionaire on demand. The City's costs and expenses shall include, but not be limited to, all direct and indirect costs and expenses of the City, its agents, contractors, and employees and all financing charges, if any, and all allocations of fringe benefits, overhead, legal, and administration charges the City deems appropriate. Furthermore, should the City, its officers, employees or agents undertake any work hereunder, the Concessionaire hereby waives any claim for damages, consequential or otherwise, as a result there from except for claims for damages arising from the negligence of the City, its agents and contractors. The foregoing shall in no way affect or alter the primary obligations of Concessionaire as set forth in this Agreement, and shall not impose or be construed to impose upon the City any obligations to maintain the Existing and New Facilities, unless specifically stated otherwise herein.
- C. Concessionaire may construct or install, at its own expense, any equipment, improvements, trade fixtures and facilities, including the Improvements and any additions thereto on all or any part of the Existing and New Facilities, under the conditions, as hereinafter set forth. Concessionaire shall keep and maintain all such improvements and facilities and additions thereto constructed or installed by it in good condition, reasonable wear and tear excepted.
- D. No improvements, structures, alterations, or additions shall be made in, to, or upon the Existing and New Facilities without the prior written consent of the City, and all such improvements, structures, alterations, additions and work shall be in accordance with any conditions relating thereto then stated in writing by the City.
- E. At the time of requesting approval by the City, the Concessionaire shall submit preliminary plans for such improvements, which shall conform to the general architectural scheme and overall plans adopted by the City for the Airport. Upon approval of said preliminary plans, the Concessionaire shall prepare and obtain the City's approval of working drawings and specifications which shall be a true and accurate reflection of the preliminary plans so

approved. All construction shall conform to the approved working drawings and specifications. No substantial change, addition or alteration shall be made in said working plans or specifications or in the construction called therefore without the City's prior written approval. When construction work is commenced, it shall be completed with reasonable dispatch. Upon completion of said improvements, the Concessionaire shall furnish the City, at no charge, two (2) complete sets of "as built" drawings of the improvements as constructed.

- F. All improvements constructed by the Concessionaire pursuant to this Section shall conform in all respects to all applicable building codes, ordinances, statutes, rules and regulations of all governmental agencies having jurisdiction.
- G. During the Term of this Agreement, title to all improvements, including the Improvements and structures, alterations or additions erected or installed in or on the Existing and New Facilities by the Concessionaire pursuant to this Section shall vest in the City and so remain upon the expiration or earlier termination of this Agreement.

10. INSURANCE, DAMAGE OR DESTRUCTION

- A. The Concessionaire shall procure and maintain, throughout the Term of this Agreement, insurance protection for fire and extended coverage on the Improvements and other improvements to the Existing and New Facilities for one hundred percent (100%) of their actual replacement cost. Such insurance shall be issued by insurers of recognized financial standing and authorized to conduct business in the State of North Dakota. If said insurers become financially incapable of performing under the terms of said policy, the Concessionaire will promptly obtain a new policy issued by a financially responsible carrier and shall submit revised evidence of insurance as previously provided. If the Concessionaire is, at any time, unable to obtain such insurance to the extent required, this Agreement shall automatically terminate unless the City is able and elects to insure the Improvement and other improvements and Concessionaire is willing to pay the City the requisite insurance premiums therefore.
- B. The Concessionaire shall settle all losses directly with the insurance carrier. The proceeds of all insurance shall be paid to the Concessionaire and shall be for the repair and reconstruction of the Improvements to the Existing and New Facilities upon the City's approval pursuant to the provisions of Article 9 hereof.
- C. In the event the Improvements and other improvements are damaged or destroyed to the extent that they are unusable by Concessionaire for the purposes for which they were used prior to such damage, or same is destroyed, the Concessionaire shall repair or reconstruct the improvements substantially as they were immediately prior to such casualty or in a new or modified design consistent with Concessionaire's use thereof under the provisions of Article 9 hereof.

- D. Concessionaire shall, at its expense, replace and repair any and all of the City's Improvements and Concessionaire's fixtures, equipment and other personal property necessary to properly and adequately continue its business on the Airport, but in no event shall Concessionaire be obligated to provide equipment and fixtures in excess of those existing prior to such damage or destruction except for requirements of construction codes existing at the time of repair or replacement.
- E. In the event of damage or destruction of Airport property caused by the Concessionaire, its agents, employees, aircraft or other equipment, Concessionaire agrees to repair, reconstruct, or replace the affected property to the condition which existed prior to such damage or destruction. Concessionaire further agrees to cause such repair, reconstruction or replacement of affected property with due diligence and to the satisfaction of the City.

11. SECURITY

- A. Concessionaire agrees to abide by the security measures the City deems necessary from time to time for the proper identification of persons and vehicles and to prevent or deter the unauthorized access of persons or vehicles to or on its Existing and New Facilities.
- B. Concessionaire shall reimburse the City in full for any fines or penalties levied against the City for any violation of Federal, State and local laws, rules or regulations as a result of any act or failure to act on the part of the Concessionaire, its agents, suppliers, or employees.

12. CITY'S RIGHT TO ENTER EXISTING AND NEW FACILITIES

The City reserves the right to inspect the Existing and New Facilities and improvements at any reasonable time, with prior notification, throughout the Term of this Agreement. When, for any reason, an entry is deemed necessary, and Concessionaire is not present to permit such entry, the City, its agents and employees, shall be permitted to enter the Existing and New Facilities and improvements. The City's agents or employees shall not be liable for any civil or criminal claim or cause of action for damage because of entering the Existing and New Facilities or improvements at reasonable times and in a reasonable manner for purposes consistent with its responsibilities as owner and operator of the Airport.

13. INDEMNITY AND WAIVER OF DAMAGES

- A. The Concessionaire shall indemnify, defend and keep and hold the City of Bismarck, its

electd and appointed officials, agents and employees, free and harmless from any and all claims and actions, loss, damage expense or cost including attorney's fees (where allowable by law) incidental to the investigation and defense thereof claimed by anyone by reason of injury, or death or damage to persons or property sustained as a result of the Concessionaire's use, maintenance and operation of the Existing and New Facilities and operations, (individually and collectively "Claims") including but not limited to, any Concessionaire breach or uncured default arising hereinafter, excluding only Claims caused by the gross negligence or willful misconduct of the City, its elected and appointed officials, agents and employees, or the gross negligence of said Parties in concert with a third party, provided, that, the City shall give the Concessionaire prompt and reasonable notice of any such claim or action made or filed against it, and shall tender the defense thereof to Concessionaire. In the event that the Concessionaire does not settle or compromise such claim, then the Concessionaire shall undertake the legal defense of such claim both on behalf of the Concessionaire and behalf of the City. It is specifically agreed, however, that the City at its own cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, rendered against the City for any cause for which the Concessionaire is liable hereunder shall be conclusive against the Concessionaire as to liability and amount upon the expiration of the time for appeal. The forgiving indemnity shall survive the expiration or early termination of this Agreement.

- B. Notwithstanding any other provision of this Agreement, under no circumstances shall the City be liable to Concessionaire for any indirect, incidental, consequential, special, exemplary or punitive damages hereunder, whether asserted in contract, warranty, indemnity, tort (including strict liability and negligence), or under any other legal theory, such as, but not limited to, loss of revenue, diminution or loss of value, loss of use or loss of anticipated profits, even if the possibility of such damages was known in advance of any claim.
- C. The City hereby reserves the right to adopt Rules and Regulations not in conflict with Federal rules and regulations pertaining to the Airport. The Concessionaire hereby agrees to operate in compliance with said Rules and Regulations so adopted and hereby waives any claims, rights, damages or costs of any kind against the City incurred by Concessionaire in complying with said rules and regulations.

14. ENVIRONMENTAL CONSIDERATIONS

- A. In order to assure that the Leased Premises described in Section 2.A hereof are environmentally acceptable, the City shall conduct on or before October 1, 2016 a Phase I and, if required, Phase II Environmental Baseline Studies consistent with protocols approved by the City, the "First Studies", to ascertain whether adverse environmental conditions or hazardous materials exist on the Leased Premises. The costs of such First Studies shall be borne by the City. If the First Studies reveal the presence of adverse environmental conditions or hazardous materials on the Leased Premises, appropriate remedial action as required by law shall be undertaken. The City shall be responsible for

all costs of such remedial action relating to adverse conditions, provided, however, that nothing herein shall be construed as a limitation of the City's rights to pursue contributions from third parties who might have caused or contributed to such adverse conditions. Upon expiration or earlier termination of this Agreement, additional Phase I and, if required, Phase II Environmental Baseline Studies shall be conducted by the City and paid for by the Lessee, the "Second Studies", to determine if the Lessee has caused or allowed adverse environmental conditions to occur. If so, Lessee shall be liable for, and be required to immediately undertake, at its sole cost and expense, all remedial actions as required by applicable law.

15. INSURANCE

- A. Concessionaire shall, at its expense, maintain insurance in full force and effect during the Term of this Agreement in such amounts as to meet the minimum limits of liability specified in Schedule A attached hereto. The insurance shall be placed with companies or underwriters satisfactory to the City and licensed to conduct business in the State of North Dakota. The insurance policy(ies) shall be the standard comprehensive commercial liability insurance coverage, covering all operations of the Concessionaire within the City of Bismarck and shall include, but not by way of limitation, bodily injury, personal injury, property damage, independent contractors, products liability, automobile and contractual coverage. The City of Bismarck, its elected and appointed officials, agents and employees shall be named as additional insured's with respect to Concessionaire's use of the Airport and the and New Facilities which are the subject of this Agreement.
- B. Concessionaire shall promptly upon execution of this Agreement, furnish to the City appropriate certificates of insurance evidencing coverage affected and to be maintained for the Term of this Agreement. The coverage shall not be less than the amounts specified in Schedule A, attached hereto and made a part hereof. Such amounts are subject to periodic adjustments upward by Concessionaire based on Concessionaire's own assessment of the risks associated with its operations at the Airport. City shall not, in any event, be liable for any shortfall in Concessionaire's coverage. The insurance policies shall not be subject to cancellation except after notice to the City by registered mail at least thirty (30) days prior to the date of such cancellation or material change. Where any policy(ies) has (have) normal expirations during the Term of this Agreement, written evidence of renewal shall be furnished to the City at least thirty (30) days prior to such expiration.

16. ADVERTISING AND SIGNS

Concessionaire shall have the right, at its own expense, to install and maintain signs for the purpose of identification and advertising. Prior to installation of such signage, the

Concessionaire shall submit plans and obtain the approval of the City. Said approval shall not be unreasonably withheld. In the event the signs are removed and not replaced, Concessionaire shall repair the area to its normal appearance.

17. TAXES

- A. Concessionaire agrees to pay all lawful taxes and assessments which, during the Term hereof or any extension as provided for herein, may become a lien or which may be levied or charged by the State, County, City or other tax-levying body upon Existing and New Facilities, the operations of Concessionaire, or upon any taxable interest acquired by the Concessionaire in this Agreement, or any taxable possessory right which the Concessionaire may have in or to the Existing and New Facilities hereby leased or the improvements thereon, by reason of its occupancy thereof, or otherwise, as well as all taxes on the taxable property, real or personal, owned by the Concessionaire in or about the Existing and New Facilities. Failure to taxes when due, prior to delinquency, will be considered a breach of this agreement.
- B. Nothing herein shall prevent the Concessionaire from protesting, through due process, any taxes levied.
- C. In the event a tax is imposed by the City which adversely impacts Concessionaire's ability to pay the Minimum Annual Guarantee and Gross Receipts fees as set forth in Article 3 hereof, the City agrees to negotiate with Concessionaire to establish a reasonable adjustment to the provisions of Article 3 to compensate for the impact of the tax imposed.
- D. Upon any termination of this Agreement all taxes then levied, or liens upon any of said property or taxable interest therein, shall be paid in full without proration by the Concessionaire forthwith, or as soon as a statement thereof has been issued by the tax collector, if termination occurs during the interval between the attachment of the lien and issuance of statement.

18. GOVERNMENT RESERVATIONS AND RESTRICTIONS

The Existing and New Facilities being leased and rights granted by this Agreement shall be subject to all enforced reservations and restrictions, including but not limited to, the following:

- A. It is understood and agreed to by Concessionaire that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by Section 308 of the Federal Aviation Act of 1958 and as amended.

- B. During the time of war or national emergency, City shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the agreement or lease with the Government, shall be suspended.
- C. This Agreement shall be subject to the terms of any Sponsor's Assurances and agreements now required or imposed in the future, between the City and the Federal Aviation Administration or any successor Federal agency.
- D. This Agreement shall be subordinate to the provisions of any existing or future agreement between the United States Government and the City relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. Failure of Concessionaire to comply with the requirements of any existing or future agreement between the City and the United States Government, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Concessionaire's rights hereunder, subject to Concessionaire's right of appeal and condemnation rights.

19. CITY'S RIGHT OF TERMINATION

In addition to any conditions as specified herein and all other remedies available to the City, this Agreement shall be subject to termination by the City should any one or more of the following occur:

- A. If Concessionaire shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or any other similar law or statute of the United States or any state, or government, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of the property of the Concessionaire.
- B. If, by order or decree of a court of competent jurisdiction, Concessionaire shall be adjudged bankrupt or an order shall be made approving a petition seeking its reorganization, or the readjustment of its indebtedness under the Federal bankruptcy laws or any law or statute of the United States or any state, territory, or possession thereof, or under the law of any other state, nation or government; provided, that, if any such judgment or order be stayed or vacated within ninety (90) days after the entry thereof, any notice of cancellation given shall be and become null, void and of no effect.

- C. If, by or pursuant to any order or decree of court or governmental authority, board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Concessionaire for the benefit of creditors, provided that if such order or decree be stayed or vacated within sixty (60) days after the entry thereof or during such longer period in which Concessionaire diligently and in good faith contests the same, any notice of cancellation shall be and become null, void and of no effect.
- D. If Concessionaire shall voluntarily abandon or discontinue the conduct and operation of its business at the Airport for a continuous period of ninety (90) days, except when such abandonment is caused by fire, earthquake, war, strike or other calamity beyond the Concessionaire's control.
- E. If Concessionaire shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Agreement, provided that upon the happening of any contingency recited in this Section, Concessionaire Shall be given written notice to correct or cure such default, failure to perform or breach. If, within thirty (30) days from the date of receipt of such notice, the default, breach or complaint shall not have been corrected in a manner satisfactory to the City, then and in such event, the City shall have the right at once to declare this Agreement terminated. The City does, however, reserve the right to extend the time period to correct the default if, in its opinion, due diligence is shown by Concessionaire in curing the default.
- F. If under any of the foregoing provisions of this Article, the City shall have the right to re-enter and take possession of the Existing and New Facilities, the City may enter and eject Concessionaire and those claiming through or under it, and remove their property and effects (using reasonable force, if necessary) without any liability therefore: without prejudice to any remedies of the City in the event of default by the Concessionaire: and without liability for any interruption of the conduct of the affairs of Concessionaire or those claiming through or under it.

20. CONCESSIONAIRE'S RIGHT OF TERMINATION

- A. In addition to all other remedies available to the Concessionaire, this Agreement shall be subject to termination by Concessionaire should any one or more of the following occur:
 - 1) The permanent abandonment of the Airport;
 - 2) The issuance of any order, rule or regulation by the U.S. Department of Transportation, the Federal Aviation Administration, or their successor Federal agencies, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport provided, that, none of the foregoing has been initiated, caused or contributed to by the Concessionaire:

- 3) The breach by the City of any covenants, terms or conditions of this Agreement to be kept, performed and observed by the City and the failure to remedy such breach for a period of sixty (60) days after written notice from Concessionaire of the existence of such a breach;
 - 4) The assumption by the United States Government or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict Concessionaire from conducting its business, if such restrictions be continued for a period of ninety (90) days or more:
 - 5) The inability of Concessionaire to conduct its business at the Airport in substantially the same manner and to the same extent as theretofore conducted, for a period of at least ninety (90) days, because of (1) any law, or (2) any rule, order, judgment, decree, regulation or other action or non-action of any governmental authority, board, agency or officer having jurisdiction thereof, without fault of the Concessionaire:
 - 6) The taking of the whole or any part of the Existing and New Facilities by the exercise of any right of condemnation or eminent domain.
 - 7) The occurrence of an act of terrorism resulting in a twenty-five percent (25%) loss in enplanements over those of the previous year for a period of ninety days or more.
- B. In the event any of the contingencies described in this Article 20, Section A, Paragraphs 1, 2, 4, 5, 6 and 7 herein occur, The Minimum Annual Guarantee and Gross Receipts shall be adjusted from the time of such happening until the affected premises are returned for Concessionaire's use and / or enplanements return to within ten percent (10%) of those of the previous year.

21. AGREEMENT SUBORDINATE TO BOND INSTRUMENTS

This Agreement and all rights of the Concessionaire hereunder are expressly subordinated and subject to the lien and provisions of any pledge or assignment made by the City of Bismarck to secure any bonds authorized by law to be issued for the development or improvement of Bismarck Airport, and the City and the Concessionaire agree that the holders of the said Bonds shall possess, enjoy and may exercise all rights of the City hereunder to the extent such possession, enjoyment and exercise are necessary to ensure compliance by Concessionaire and the City with the terms and provisions of the bond covenant. Concessionaire shall receive notification of any new bonding ordinance affecting City's Airport operations.

22. ASSIGNMENT AND SUBLETTING

Neither Concessionaire nor any successor of Concessionaire shall in any manner, directly or indirectly, by operation of law or otherwise, assign, sublet, transfer or encumber any of Concessionaire's rights in and to this Agreement or any interest therein, nor license or permit the use or the rights herein granted in whole or in part without the prior written consent of the City. Such consent shall not be unreasonably withheld, providing, that, any such assignee shall be professionally qualified to do business on the Airport, acceptable to the City, possess sufficient financial resources and security to assure compliance with all the terms and conditions of this Agreement.

23. ADVANCES BY THE CITY

If the Concessionaire should fail to do anything required to be done under the terms and conditions of this Agreement, except for the payment of rents, fees or charges, the City may, at its sole option and after giving written notice to the Concessionaire, perform such act on behalf of the Concessionaire. Upon notification to the Concessionaire of the cost thereof by the City, the Concessionaire shall promptly pay the City the amount due as additional Gross Receipts Fees.

24. LEGAL CLAIMS AND ATTORNEY FEES

- A. Each Party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with the Existing and New Facilities or the operation of the Concessionaire's business at the Airport. The City and Concessionaire shall each have the right to settle and/or defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other Party. The Concessionaire is an "Independent contractor in every respect, and not the agent of the City.
- B. If any legal action is instituted by the Parties hereto to enforce this Agreement, or any part thereof, the prevailing Party shall be entitled to recover reasonable attorney's fees and court cost. Any such legal action shall be commenced and maintained in Burleigh County, North Dakota, regardless of Concessionaire's residence or place of business.

25. ENCUMBRANCES AND LIENS

- A. The Concessionaire's interest in the Existing and New Facilities may not be encumbered by the Concessionaire for any purpose.

- B. Concessionaire agrees that it shall pay directly, or cause to be paid, all costs and expenses for work done and materials delivered to the Existing and New Facilities and improvements at Concessionaire's request, during the leasehold term, for improvement to the Existing and New Facilities. Concessionaire shall keep the Existing and New Facilities free and clear of all mechanic's or material men's liens or any other liens on account of any work done on the Existing and New Facilities at Concessionaire's request. Concessionaire agrees to and shall indemnify, and hold the City of Bismarck free from and harmless against all liability, loss, damage, cost, attorney's fees (where allowable by law) and all other expenses on account of claims of lien of laborers or material men, or others, for work performed or materials or supplies furnished to Concessionaire for use on the Existing and New Facilities.

26. NON-DISCRIMINATION

- A. Concessionaire, for it, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Existing and New Facilities, for a purpose for which a United States Government program or activity is extended, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- B. Concessionaire, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Existing and New Facilities: (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Concessionaire shall use the Existing and New Facilities in compliance with all other requirements imposed by or pursuant to Title 49, code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- C. Concessionaire assures that it will undertake an affirmative action program as required by 14CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, sex, age, disability or marital status be excluded from participation in any

employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart E. Concessionaire assures that it will require that its covered sub organizations provide assurances to Concessionaire that they similarly will undertake affirmative action program and that they will require assurances from their sub organizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.

- D. Concessionaire agrees to comply with all other State and Federal statutory and constitutional non-discrimination provisions. In addition, Concessionaire agrees to comply with all pertinent provisions of the Americans with Disabilities Act of 1990, P.L. 101-336, July 26, 1990, 42 USC 12101, et seq.; and all pertinent regulations pursuant thereto. Concessionaire shall not discriminate in the use of the Existing and New Facilities or any access thereto if such Existing and New Facilities are used as a public accommodation or in connection with a public service. Concessionaire will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.
- E. In this connection, the City reserves the right to take whatever action it might be entitled by law to take in order to enforce this provision. This provision is to be considered as a covenant on the part of Concessionaire, a breach of which, continuing after notice by the City to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this Agreement and will entitle the City, at its option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.
- F. Concessionaire shall include the foregoing provisions in every agreement or concession pursuant to which any person or persons, other than Concessionaire, operates any facility on the Existing and New Facilities providing service to the public and shall include thereon a provision granting the City a right to take such action as the United States may direct to enforce such covenant.
- G. Concessionaire shall indemnify and hold harmless the City from any claims and demands of third persons including the United States of America resulting from Concessionaire's noncompliance with any of the provisions of this Section and Concessionaire shall reimburse the City for any loss or expense incurred by reason of such noncompliance.

27. PRIOR AND COLLATERAL AGREEMENTS

This Agreement shall constitute the entire Agreement between the Parties and no other stipulation, agreement or understanding, written or oral, expressed or implied of the Parties

hereto or of their agents, relating to the Agreement and use of the Existing and New Facilities described in Article 2 herein, shall limit or modify its terms. This Agreement shall, as of the commencement date hereof, cancel and supersede all prior agreements, written or oral, expressed or implied, between the Parties for the rights granted herein. This Agreement shall not be subject to modification or change except by written instrument duly signed.

28. SEVERABILITY

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

29. NON-WAIVER OF BREACH

The waiving of any of the covenants of this Agreement by either Party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by the City to any act by Concessionaire requiring City's consent shall not be deemed to waive consent to any subsequent similar act by Concessionaire.

30. VENUE

This Agreement is to be construed in accordance with the applicable laws, rules and regulations of the City of Bismarck, the County of Burleigh and the State of North Dakota.

31. TIME OF ESSENCE

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

32. HOLDOVER POSSESSION OF EXISTING AND NEW FACILITIES BY CONCESSIONAIRE

Any holding over at the expiration or termination of the Term of this Agreement, with or without the consent of the City, shall constitute a tenancy from month-to-month. The month-to-month tenancy shall be subject to all other terms and conditions of this Agreement, with the exception of fees and rates which shall be mutually determined by the City and Concessionaire, provided, however, that the fees and rates shall not be less than those in effect in Option Year 5 as it

pertains to both fees to the City and parking rates for users.

33. SURRENDER OF POSSESSION

Upon the expiration of this Agreement or its earlier termination as herein provided, Concessionaire shall remove all of its personal property from the Airport and surrender entire possession of its rights at the Airport to the City, unless, at the discretion of the

City, this Agreement is renewed or replaced.

34. APPROVAL OR DIRECTION BY CITY

Wherever consent, approval or direction by the City is required under this Agreement, such consent, approval or direction by the City shall be effective if given by the Airport Director or his designee in the manner set forth in this Agreement. Nothing requiring consent, approval or direction from the City shall be unreasonably requested by Concessionaire nor shall such consent, approval or direction be unreasonably withheld by the City.

35. NOTICES

All payments, demands and notices required herein shall be deemed to be properly served if hand delivered or if sent by certified or registered mail, postage prepaid, to the last address previously furnished by the Parties hereto. Until hereafter changed by the Parties, in writing, notices shall be addressed as follows:

<u>City</u>	<u>CONCESSIONAIRE</u>
<u>Courier</u>	Name
AIRPORT DIRECTOR	Company
BISMARCK AIRPORT	Address
2301 University Drive Bldg. 17, Suite 225B	City, State Zip
Bismarck, ND 58502	
	With a copy to:
<u>US Mail</u>	Name
AIRPORT DIRECTOR	Company
BISMARCK AIRPORT	Address
P.O. Box 991	City, State Zip
Bismarck, ND 58502	

The date of service of such notice shall be the date such notice is delivered by hand or is deposited in a Post Office of the U.S. Postal Service or with a courier service for delivery.

36. ARTICLE HEADINGS

Article headings contained herein are for convenience in reference only, and are not intended to define or limit the scope of any provisions of this Agreement.

37. ENTIRE AGREEMENT

- A. Agreement consists of Articles 1 to 37, inclusive, Schedule A, Exhibits A, B, C and D.

- B. It constitutes the entire agreement of the Parties hereto and may not be changed, modified, discharged or extended except by written instrument duly executed by the City and Concessionaire. The Parties agree that no representations or warranties shall be binding upon the City or Concessionaire unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year written below.

RECOMMENDED APPROVAL
TERMS AND CONDITIONS BY:

APPROVED AS TO FORM AND LEGALITY
BY:

Gregory B. Haug
Airport Director

Charles C. Whitman
City Attorney

ATTEST:

CITY OF BISMARCK, ND

Keith J. Hunke
City Administrator

Michael C. Seminary
President, Board of City Commissioners
Date: _____

ATTEST:

CONCESSIONAIRE:

Name:
Title:
Business Name:
Date:

SCHEDULE A

Concessionaire shall, at its own cost and expense, take out and maintain such insurance for the Term of this Agreement as the Concessionaire is required under the Workers' Compensation Act; and also take out and maintain such public liability insurance as will protect the Concessionaire, the City and its elected and appointed officials, agents and employees from any claims for damage to persons, property, etc., arising out of, occurring or caused by operations under this Agreement by the Concessionaire or otherwise arising out of this Agreement. The policy will provide the amounts of insurance specified in this Schedule A. Upon execution of this Agreement, certificates of insurance in form acceptable to the City and marked "premium paid" should be submitted to the City. Each certificate shall have endorsed thereon:

- A clause naming the City of Bismarck and its elected and appointed officials, agents and employees as additional insureds under the policies.
- "No cancellation or change in the policy shall become effective until after thirty (30) days notice by registered mail to the Airport Director, Bismarck Airport, P.O. Box 991, Bismarck, North Dakota 58502."

Upon failure of Concessionaire to furnish, deliver and maintain such insurance as above provided, the City may obtain such insurance and charge Concessionaire as additional rental, the cost of the insurance plus all appropriate administrative charges and incidental expenses associated with the transaction. Failure of Concessionaire to take out and/or maintain, or the taking out and/or maintenance or any required insurance shall not relieve Concessionaire from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of Concessionaire concerning indemnification.

All required insurance must be in effect and shall continue during the Term of this Agreement (and for a period of one (1) year following its expiration or termination) in not less than the following amounts:

- A. Workers' Compensation Unlimited - Statutory - in compliance with the Laws of the State of North Dakota.
- B. Employer's Liability Coverage (Stop Gap) in the amount of \$1,000,000 per occurrence and \$1,000,000 annual aggregate.
- C. General Liability Insurance with a maximum combined single limit of \$2,000,000 per occurrence and \$4,000,000 annual aggregate.
- D. Commercial Liability Umbrella in the amount of \$3,000,000.
- E. Garage keepers Legal Liability coverage in the amount of \$1,000,000.

This insurance shall indicate on the Certificate(s) of Insurance, marked "premium paid", the following coverage, all on a per occurrence basis:

Comprehensive Commercial Liability

Premises/Operations

Contractual Liability

Independent Contractors

Products and Completed Operations

Broad Form Property Damage

Bodily Injury

Personal Injury

F. Auto Liability (combined single limit)

Owned, Non-owned and Hired- \$2,000,000., with an express acknowledgement that the policy shall be effective on airport premises.

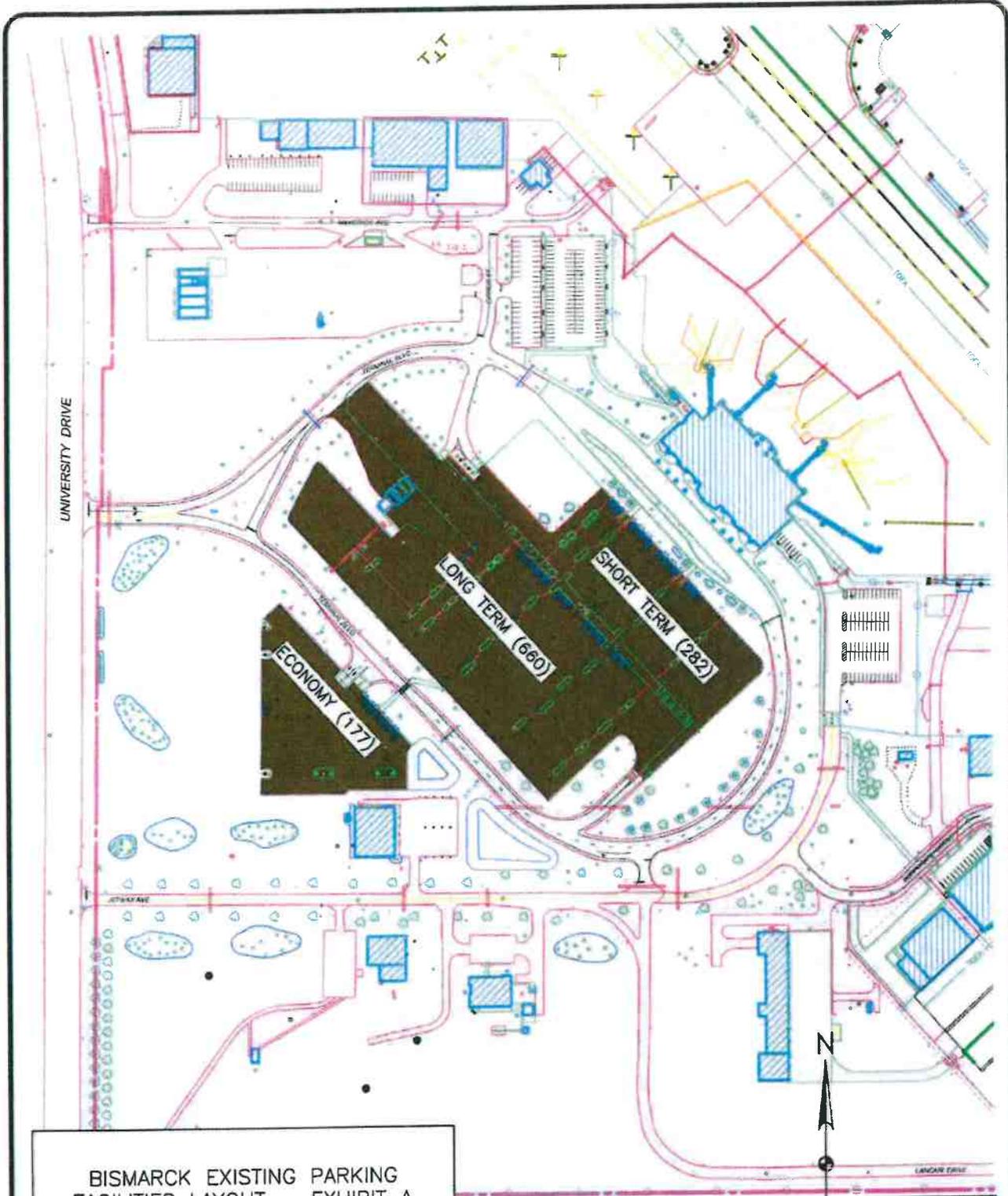
Location of operation shall be "Bismarck Airport, City of Bismarck, County of Burleigh, North Dakota".

Nothing herein contained shall prevent the Concessionaire from taking out any other insurance for protection of its interest which it deems advisable or necessary.

All Concessionaires' policies set forth and required herein shall expressly waive the underwriters and insurance carriers' right of subrogation against the City and its insurance carriers.

Consistent with the indemnification provisions of this Agreement, Concessionaire's insurance policies will respond on a primary basis, with any insurance carried by the City to be constructed as secondary or excess coverage.

Notwithstanding the insurance requirements of this Agreement and this Schedule A, Concessionaire expressly agrees and understands its potential liability is not limited to the amount of insurance coverage it maintains nor to the limits required herein.



BISMARCK EXISTING PARKING FACILITIES LAYOUT – EXHIBIT A



DRAFTED BY: APT
 REVIEWED BY: BT
 PROJECT NO: 1515709
 ISSUE DATE: 06/14/2016

BISMARCK AIRPORT
 THE CITY OF BISMARCK
 BISMARCK, NORTH DAKOTA



EXHIBIT B
(Example)

CONCESSIONAIRE'S IMPROVEMENT PROGRAM FOR THE NEW FACILITIES

A. Revenue Control System Upgrade

After considerable consultation with the City, (selected concessionaire) has developed a revenue control upgrade plan utilizing (type/brand) equipment. The following is an itemized list of the major system components, the "Improvements".

Revenue Control Equipment			
_____	-	_____	-
_____	-	_____	-
_____	-	_____	-
_____	-	_____	-
_____	-	_____	-
Office Equipment			
_____	-	_____	-
_____	-	_____	-
_____	-	_____	-

B. System Description

C. Signage Upgrades

D. Contribution

_____ will contribute \$_____ towards the total cost of its program, reducing the cost to the City to \$_____.

G. Projected Airport Returns

	Year One	Year Two	Year Three	Year Four	Year Five
Projected Gross					
Percentage Rent					
*Equipment Lease					
Airport Return					

'Note: Assumes 7- Year lease on System Option (2) Presented Herein.

In addition to the tax exempt financing referenced above, _____ would be willing to finance the revenue control system at an 8% interest rate on a short-term basis ranging from six to nine months depending upon the system option selected. The following is an illustration of airport returns using system option (2) On-line without pay station financed for six months by _____ at an ___% rate.

	Year One	Year Two	Year Three	Year Four	Year Five
Projected Gross					
Percentage Rent					
*Equipment Lease					
Airport Return					

_____ financial contributions, coupled with the substantial discount we will pass along on the revenue control system add significant value to our proposal. Most importantly, however, the upgrades to the parking operations at the Bismarck Airport will help us to be more efficient and to provide a higher level of customer satisfaction. Throughout the years, _____ has invested considerably in the growth and development of the airport parking operation and we appreciate having the opportunity to participate in this most important project.

EXHIBIT C
(Example)

Location Manager

The Resident Manager is responsible for the daily management and operation of the public Parking Facilities. Responsibilities encompass implementing and enforcing all procedures. The Location Manager provides assistance to the Airport with customer/airport relations and in developing efficient methods of operation.

The Location Manager's duties include, but are not limited to, the following:

- A. Plan, schedule and have general responsibility for the work of all Concessionaire's employees on-site, including employment and termination.
- B. Abide by Airport policies and regulations and the Concession Agreement between the Airport and Concessionaire.
- C. Liaise to the Airport on matters of mutual concern, including suggestions for improving service.
- D. Maintain contact with police and airport personnel regarding such issues as traffic congestion, patron security and abandoned vehicles.
- E. Administer local contracts for supplies, maintenance and services.
- F. Administer policies for Affirmative Action and Equal Opportunity Employment.
- G. Direct the training of new employees and improve the job performance of current employees. Identify employees who merit promotion.
- H. Enforce standards for employees' personal appearance and demeanor, so employees exhibit courtesy in dealing airport and parking patrons.
- I. Conduct unannounced personal inspections of the facilities to observe operations.
- J. Oversee financial and revenue reporting functions.
- K. Assign supervisory responsibility and hours to provide sufficient management seven days a week, including peak traffic periods.

Shift Supervisors

Shift Supervisors assist the Location Manager by directing personnel, monitoring revenue collection activities and documenting location activity. Shift Supervisors will assume the duties and responsibilities of the Manager in the absence of the Manager.

The duties of Shift Supervisors include the following:

- A. Train cashiering, parking and shuttle personnel.
- B. Audit parking tickets, bank deposits and reports.
- C. Perform spot on-site inspections.

- D. Procure operating supplies and materials.
- E. Assist parking patrons and airport representatives.
- F. Maintain a labor pool to assure a full complement of qualified service employees.
- G. Transfer revenues safely to off-site cash secure areas.

Cashiers

Cashier responsibilities have been established from the following criteria;

- A. Cashiers are to possess sufficient mathematical skills to allow for accurate and rapid fee computation utilizing information as provided by the revenue control system.
- B. Cashiers are required to have accurate money handling and change providing skills.
- C. Cashiers shall have sufficient knowledge of the Bismarck Airport ground transportation roadway system and the surrounding airport area to allow rapid and accurate information dissemination in response to patron questions.
- D. While on duty, be pleasant and courteous with every customer. Do not get involved in arguments. Refer all complaints to the Resident Manager or the Shift Supervisor.

Exhibit D FAA Required Provisions

1. Airport and Airway Improvement Act of 1982, Section 520 - General Civil Rights Provisions

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- A. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- B. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

2. Civil Rights Act of 1964, Title VI – Contractor Contractual Requirements

A. Title VI Solicitation Notice

(Source: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

B. Title VI Solicitation Notice:

The City of Bismarck, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. Title VI Clauses for Compliance with Nondiscrimination Requirements

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- A. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- B. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- D. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.

- F. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

4. **Title VI List of Pertinent Nondiscrimination Authorities**

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation

regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

5. **Clauses for Deeds Transferring United States Property**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the (*Title of Recipient*) will accept title to the lands and maintain the project constructed thereon in accordance with the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200), the regulations for the administration of the University Transportation Centers Program, and the policies and procedures prescribed by the Office of the Secretary of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim, and convey unto the (*Title of Recipient*) all the right, title and interest of the U.S. Department of Transportation in and to said lands.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Title of Recipient*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real

property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the *(Title of Recipient)*, its successors and assigns.

The *(Title of Recipient)*, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the *(Title of Recipient)* will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].

6. Clauses For Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the *(Title of Recipient)* pursuant to the provisions for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, *(Title of Recipient)* will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the *(Title of Recipient)* will have the right to enter or re-enter the lands and

facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (Title of Recipient) and its assigns.

7. Clauses for Construction/Use, Access to Real Property Acquired Under the Activity, Facility or Program

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (Title of Recipient) pursuant to the provisions for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above of the above Non-discrimination covenants, (Title of Recipient) will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, (Title of Recipient) will there upon revert to and vest in and become the absolute property of (Title of Recipient) and its assigns.



FINANCE DEPARTMENT

DATE: August 23, 2016
FROM: Sheila Hillman *SH*
ITEM: 2016 Budget Adjustment for Liability Insurance Fund

REQUEST

Consider approval of the loan prepayment to the Liability Insurance Fund

Please place this item on the August 23, 2016 City Commission meeting.

BACKGROUND INFORMATION

In prior years, the Liability Insurance Fund was self-insured by the City with funding from the property tax levy. A reserve of \$2 million was established to help fund any catastrophic losses. The mill levy was discontinued in 2000 when the reserve totaled \$2.6 million. In 2003 the City converted to purchased coverage from North Dakota Insurance Reserve (NDIRF) for the general liability, vehicle and equipment insurance. The reserve paid the annual insurance premium for the General and Special Funds departments and the Enterprise and Internal Services Funds departments paid their share of the premium. Other small claims continue to be paid from the Fund.

In 2003, the Commission authorized the purchase of the Workers Compensation Building at the corner of 5th and Front Street for \$1,850,000. The purchase was funded by an internal loan from the Liability Insurance Fund cash reserve. This allowed for effective utilization of the cash reserve and the avoidance of paying interest on a commercial loan. The repayment of the loan was a 15 year term with an annual payment of \$144,000 from the General Fund. We are currently in the 11th year of the repayment schedule.

The annual premium paid from the reserve was initially an estimated \$115,000. In recent years the annual loan payment and the annual conferment of benefits payment from NDIRF have provided adequate funding to pay the premium. Now with the total annual premium of \$224,000 and a decline of the NDIRF conferment from an average of \$55,000 to \$1,714 in 2016, there are not adequate funds for the cost of the premium.

The Budget Committee discussed the funding issue and recommended that the outstanding loan of \$720,000 be prepaid from the General Fund cash balance. This is projected to provide adequate funds to pay the premiums in 2016 and 2017. Additional funds would need to be identified for the 2018 budget. Although this recommendation was initially for the 2017 budget, the recommendation is for the prepayment of \$720,000 to be made in 2016 so there are adequate funds in both years.

RECOMMENDED CITY COMMISSION ACTION

Approve the 2016 budget increase for the loan prepayment of \$720,000 from the General Fund cash balance to the Liability Insurance Fund.

STAFF CONTACT INFORMATION

Sheila Hillman: shillman@bismarcknd.gov or 355-1600