



November 16, 2016

Board of City Commissioners  
Bismarck, ND

Dear Commissioners:

The Board of City Commissioners is scheduled to meet in regular session on Tuesday, November 22, 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:

- December 13 & 27, 2016
- January 10 & 24, 2017
- February 14 & 28, 2017

Proclamation: Small Business Saturday (November 26, 2016)

BOARD OF CITY COMMISSIONERS

1. Consider approval of the minutes of the regular meeting on November 8, 2016.
2. CONSENT AGENDA
  - A. Consider approval of expenditures.
  - B. Consider approval of personnel actions.

Documents:

[Personnel actions for November 22nd Board meeting.pdf](#)

- C. Consider request from the Administration Department for approval of the proposed City Commission meeting dates for 2017.

Documents:

[Proposed 2017 City Commission meeting dates.pdf](#)

- D. Consider request from the Bismarck Airport for approval of request for a \$1,500 sponsorship to the North Dakota Aviation Council (NDAC) for the 2017 Upper Midwest Aviation Symposium.

Documents:

[Airport sponsorship NDAC for 2017 Upper Midwest Aviation Symposium.pdf](#)

- E. Consider request from the Assessing Division for approval of tax abatement applications for Disabled Veteran Credit.

Documents:

[Abatements for 112216 meeting.pdf](#)

- F. Consider the following requests from the Bismarck-Burleigh Public Health Department:

- Make changes to Titles 4 and 8 of the City Code of Ordinances by introduction of and call for a public hearing on the following:
  - Ordinance 6239 relating to permits required under the provisions of Title 8;
  - Ordinance 6240 relating to pools; operation permits, permit fee and operational practices (Title 4, Chapter 4-06); and
  - Ordinance 6241 relating to the repeal of Chapter 8-2 (Frozen Desserts).
- Approval to enroll in FDA Voluntary National Retail Food Regulatory Standards program.

Documents:

[BBPH ordinance changes for Titles 4 and 8.pdf](#)  
[Permission to enroll in US FDA program.pdf](#)

- G. Consider request from the Community Development Department for approval of the modification to the final plat of Harvest Ridge Subdivision First Replat.

Documents:

[Harvest Ridge Subdivision First Replat.pdf](#)

- H. Consider request from the Engineering Department for approval of the request to approve Change Order #3 with Northern Improvement Company for \$77,921.81 for reconciliation of actual quantities at project closeout for Street Improvement District 14-479.

Documents:

[Change Order 3 with Northern Improvement Co for SI 14 479.pdf](#)

- I. Consider request from the Finance Department for approval to reallocate \$4,086 of one-time Building Maintenance funds from Bismarck-Burleigh Public Health to the City/County Building for asbestos abatement costs associated with carpet replacement on first floor.

Documents:

[Reallocation 2016 one-time Building Maintenance funds.pdf](#)

- J. Consider request from the Fire Department for approval of Change Order G04 with Weisz & Sons Inc for a time extension for the fire burn building project.

Documents:

[Change order with Weisz and Sons for burn building.pdf](#)

- K. Consider request from the Public Works Utility Operations Department for permission to purchase corrosion control and hydrogen sulfide reducing chemicals based on quotes as needed through April 30, 2017.

Documents:

[Purchase of chemicals during transition.pdf](#)

**L. Addendum Item: Approval of the revised development agreement with RBK Ventures, LLC. and Ronald M. and Ruth A. Knutson for Memory 1st Addition.**

**Documents:**

[Memory 1st Addition Revised Development Agreement.pdf](#)

REGULAR AGENDA

3. Public comment (restricted to items on the Regular Agenda, excluding public hearing items).

Note: Those appearing should complete the sign-in sheet at the podium with name, address, contact phone number, etc.

*(No attachment)*

4. Consider request from the Finance Department for approval of resolutions authorizing the issuance and award of bonds for the following:

- \$18,365,000 Refunding Improvement Bonds for 2016, Series L;
- \$1,970,000 Sidewalk Curb and Gutter Warrants, Series SCG-2015.

Documents:

[Resolutions authorizing the issuance and award of bids for bonds.pdf](#)

**Addendum Item: PUBLIC HEARING regarding a proposal to issue a revenue note pursuant to the Municipal Industrial Development Act of 1955 as provided by the North Dakota Century Code, Series 2016, for various housing projects located in several cities, including Bismarck, by Lutheran Social Services.**

**Documents:**

[Public hearing for Lutheran Social Services City of Maddock revenue notes.pdf](#)

5. Consider request from the Administration Department to allow representatives from Fort Abraham Lincoln Foundation to work with city staff to negotiate a lease agreement.

Documents:

[Lease negotiation with Fort Abraham Lincoln Foundation.pdf](#)

6. Consider request from the Community Development Department for Roy Rickert, Director of Bis-Man Transit, to appear and continue discussion to develop acceptable changes to the transit service.

Documents:

[Amended proposed changes to BisMan Transit Service.pdf](#)

7. PUBLIC HEARING on the request from Fotlom Properties, LLC. to transfer a Class E liquor license from Capsco Entertainment, Inc. (dba The Pier Convenience Store) to Fotlom Properties, LLC. and for site approval to conduct off-sale under the Class E liquor license at the Pony Express Shell located at 1020 South Washington Street.

Documents:

[Request to transfer Pier Class E liquor license to Pony Express Shell.pdf](#)

8. Consider the following requests relating to Boulder Ridge 6th Addition, requested by Five Guys Investment, LLP and Boulder Ridge Development, Inc. The Bismarck Planning & Zoning Commission recommends approval.

- PUBLIC HEARING on Ordinance 5981 relating to annexation;
- PUBLIC HEARING on Ordinance 5982 relating to zoning change from the A-Agriculture zoning district to the R5-Residential and P-Public zoning districts;
- Approval of final plat for Boulder Ridge 6th Addition.

Documents:

[Boulder Ridge 6th Addition.pdf](#)

9. Consider the following requests relating to Sonnet Heights Subdivision Seventh Replat, requested by Calvert Creek Condos, LLC. The Bismarck Planning & Zoning Commission recommends approval.

- PUBLIC HEARING on Ordinance 6238 relating to zoning change from RM30-Residential zoning district to the R10-Residential zoning district;
- Approval of minor subdivision final plat.

Documents:

[Sonnet Heights Subdivision Seventh Replat.pdf](#)

10. Consider the following requests from the Public Works Service Operations Department:

- Receive and consider disposition of bids for janitorial services.
- ~~Discussion on request to advertise on City of Bismarck property.~~ ***This item was pulled at the request of Mr. Heintz.***

Documents:

[Bids for janitorial services.pdf](#)

11. Consider the following requests from the Engineering Department:

- Receive and consider disposition of bids for Sewer Utility Project 16-66.
- Approval of Development Agreement with CK Auto (Chris Krein).
- Receive the Main Avenue four-lane to three-lane conversion after study.
- Permission to pursue North Dakota Department of Transportation (NDDOT) Highway Safety Improvement Funding (HSIP) for conversion of two-lane roadways to three-lane roadways.

Documents:

[Bids for sewer utility project 16 66.pdf](#)  
[Development agreement with CK Auto\\_Chris Klein.pdf](#)  
[Main Ave Conversion Report.pdf](#)  
[NDDOT HSIP funding solicitation.pdf](#)

12. Consider other business.

*(No attachment)*





## PERSONNEL ACTIONS FOR THE MEETING ON Nov. 22, 2016

### Full-Time and Part-Time Appointments

Binder, Dennis Seasonal Truck Driver	Public Works	Part time appointment @ \$17.50/hr. 11/6/2016
LaFramboise, Jeremy Seasonal Truck Driver	Public Works	Part time appointment @ \$17.00/hr. 11/6/2016
Newman, Joseph Seasonal Truck Driver	Public Works	Part time appointment @ \$17.50/hr. 11/6/2016

### Separations

Banker, Brad Lee Event Safety Officer II	Event Center	Resigned. 10/31/2016
Sackor, Quayee Maintenance Attendant I	Event Center	Resigned. 11/1/2016
Siirtola, Roland Maintenance Attendant I	Event Center	Resigned. 11/8/2016
Weigel, Lucille Concessions	Event Center	Resigned. 11/4/2016
Bauer-Susie, Cora Financial Analyst	Finance/Fiscal	Resigned. 12/2/2016
Demke, Keith Utilities Advisor	Public Works	Resigned. 11/6/2016

### Others

Trhlik, Cassandra Acting Financial Analyst	Finance/Fiscal	Salary adj. @ \$24.38/hr. 11/14/2016
Brunelle, Dawn PT - Client Services Representative	Public Health	Annual salary adj. @ \$18.74/hr. 12/18/2016
Doerner, Joan PT - Community Health Nurse	Public Health	Annual salary adj. @ \$27.46/hr. 12/18/2016

Geithman, Cassie PT – Community Health Nurse	Public Health	Annual salary adj. @ \$26.12/hr. 12/18/2016
Hegland, Jan PT – Client Services Representative	Public Health	Annual salary adj. @ \$17.01/hr. 12/18/2016
Hovland, Fran PT – Community Health Nurse	Public Health	Annual salary adj. @ \$26.25/hr. 12/18/2016
Linneman, Jessica PT – Community Health Nurse	Public Health	Annual salary adj. @ \$28.61/hr. 12/18/2016
Miller, Brittany PT – Community Health Nurse	Public Health	Annual salary adj. @ \$25.87/hr. 12/18/2016



## ADMINISTRATION

**DATE:** November 15, 2016  
**FROM:** Kristi Hass *keh*  
**ITEM:** City Commission meeting dates for 2017

### REQUEST

Approval of the meeting dates in 2017 for the City Commission.

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

City Commission meetings are held the second and fourth Tuesdays of every month. Exceptions are when a holiday falls on one of those Tuesdays, in which case the date will be adjusted.

### RECOMMENDED CITY COMMISSION ACTION

Please consider approving the proposed dates for City Commission meetings in 2017.

### STAFF CONTACT INFORMATION

Kristi Hass, 355-1300, [khass@bismarcknd.gov](mailto:khass@bismarcknd.gov)

# **MARK YOUR CALENDARS**



## BOARD OF CITY COMMISSIONERS 2017 MEETING SCHEDULE

<b>2<sup>nd</sup> Tuesday</b>	<b>4<sup>th</sup> Tuesday</b>
January 10	January 24
February 14	February 28
March 14	March 28
April 11	April 25
May 9	May 23
June 13	June 27
July 11	July 25
August 8	August 22
September 12	September 26
October 10	October 24
November 14	November 28
December 12	December 26



# Bismarck

## AIRPORT

**DATE:** November 14, 2016  
**FROM:** Gregory B. Haug, Airport Director  
**ITEM:** Agenda Item for November 22, 2016



### REQUEST

Consider a \$1,500 sponsorship to the North Dakota Aviation Council (NDAC) for the 2017 Upper Midwest Aviation Symposium.

### BACKGROUND INFORMATION

Airport Staff requests the Board consider a \$1,500 sponsorship to the North Dakota Aviation Council (NDAC) for the Upper Midwest Aviation Symposium held at the Holiday Inn Riverside in Minot on March 5-7, 2017. Bismarck Airport has attended and participated in the Upper Midwest Aviation Symposium for many years. The symposium promotes staff professional development and fosters the aviation industry in the State of North Dakota.

Airport staff actively supports the professional development activities of the NDAC and its member organization, the Airport Association of North Dakota (AAND). AAND conducts the majority of the professional development offered to airports at the symposium. Airport staff has supported these efforts over the years by participating in presentations, organizing and acting as representatives or officers of NDAC and AAND. Our Marketing and Operations Manager, Matthew Remynse, currently serves as President of AAND. Our Assistant Director, Timothy Thorsen, is an AAND board member.

In the past, the hosting community airport generally sponsors the symposium with \$5,000. The other large commercial service airports also support the symposium with \$1,500 sponsorships. For this sponsorship, Bismarck Airport will get its name and logo on posters, banners, programs and other printed material for the symposium.

This sponsorship is in accordance with the FAA's "Policy and Procedures Concerning the Use of Airport Revenue". The Bismarck Airport would pay the sponsorship from budgeted marketing funds.

## **RECOMMENDED CITY COMMISSION ACTION**

1. Airport staff recommends that the Board of City Commissioners favorably consider this sponsorship.

## **STAFF CONTACT INFORMATION**

Greg Haug, Airport Director, 701-355-1808, [ghaug@bismarcknd.gov](mailto:ghaug@bismarcknd.gov)

November 2016



Dear Potential Sponsor,

On March 5-7, 2017, the North Dakota Aviation Council (NDAC) will be hosting the Upper Midwest Aviation Symposium (UMAS) at the Holiday Inn Riverside in Minot, ND. This event is the premier showcase and gathering of aviation related professionals (Federal, State and Local) in the Upper Midwest. Over 400 attendees from across the region gather for this three-day event. This year, the theme will be "Inspiring the Next Generation" with guest speaker Howie Franklin, Air Force One steward under five presidents.

As a business that understands and appreciates the value of aviation in the Upper Midwest, we believe that there is no better opportunity to support and help grow the industry. Please consider participating as a sponsor for our great event.

<b>Air Traffic Control Sponsors- \$10,000 or more</b>	
<b>Approach Control Sponsors- \$5,000 or more</b>	<b>Control Tower Sponsors- \$3,000 or more</b>
<b>Ground Control Sponsors- \$2,000 or more</b>	<b>Main Runway Sponsors - \$1,000 or more</b>
<b>Crosswinds Runway Sponsors- \$500 or more</b>	<b>Taxiway Sponsors- \$200 or more</b>

With your Sponsorship, your company's logo will be displayed on banners at the symposium, printed in the program and will be announced throughout the event.

The NDAC's objectives are accomplished through volunteers, and support from the industry and event participants. Any amount will be truly appreciated and will be used to help keep aviation strong in our region.

If you would like to participate let us know your intentions by January 1<sup>st</sup>, 2017 to ensure that your business is properly recognized during the event. You may mail sponsorships to NDAC, PO BOX 5020, BISMARCK, ND 58502 or submit sponsorship online at [www.ndac.aero](http://www.ndac.aero). Company logos should be sent to [REDACTED] no later than February 1<sup>st</sup>, 2017. If you have any questions, please make sure to contact Don Larson at [REDACTED]

Sincerely,



Don Larson

Site Committee Chair



**Abatements for November 22, 2016 City Commission Meeting**

- 2019 S Grandview Ln (0570-001-105) – 2015 & 2016 – Disabled Veteran Credit



## ASSESSING DIVISION

**DATE:** November 4, 2016  
**FROM:** Debi Goodsell, City Assessor *DKG*  
**ITEM:** Application for Abatement

### REQUEST

Please schedule the attached application for abatement on the agenda for the City Commission consideration.

Applications for Abatement for 2015 & 2016  
Property Owner – Clement Weber  
Property Address – 2019 S Grandview Ln (0570-001-105)

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

The above applicant has met all the requirements set forth in the N.D.C.C. § 57-02-08 to apply for the Disabled Veteran Credit.

### RECOMMENDED CITY COMMISSION ACTION

The Assessing Division recommends approval of the application for abatement as presented.

### STAFF CONTACT INFORMATION

Debi Goodsell  
dgoodsell@bismarcknd.gov  
355-1630

Application For Abatement Or Refund Of Taxes

North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1 of the year following the year in which the tax becomes delinquent.

State of North Dakota Assessment District
County of BURLEIGH Property I.D. No. 0570-001-105
Name CLEMENT WEBER Telephone No.
Address 2019 S GRANDVIEW LN BISMARCK, ND 58503-0852

Legal description of the property involved in this application:
LOT 22, BLOCK 2, GRANDVIEW HEIGHTS

Table with 2 columns: 'Total true and full value of the property described above for the year 2016 is:' and 'Total true and full value of the property described above for the year 2016 should be:'. Rows include Land, Improvements, and Total. Handwritten values are present.

The difference of \$ 150,000 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
2. Residential or commercial property's true and full value exceeds the market value
3. Error in property description, entering the description, or extending the tax
4. Nonexisting improvement assessed
5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
6. Duplicate assessment
7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
8. Error in noting payment of taxes, taxes erroneously paid
9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
10. Other (explain)

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go directly to question #5.
1. Purchase price of property: \$ Date of purchase:
Terms: Cash Contract Trade Other (explain)
Was there personal property involved in the purchase price? Estimated value: \$
2. Has the property been offered for sale on the open market? If yes, how long?
Asking price: \$ Terms of sale:
3. The property was independently appraised: Purpose of appraisal:
Market value estimate: \$
Appraisal was made by whom?
4. The applicant's estimate of market value of the property involved in this application is \$
5. The estimated agricultural productive value of this property is excessive because of the following condition(s):

Applicant asks that my disabled veteran credit be approved as presented.

By filing this application, I consent to an inspection of the above-described property by an authorized assessment official for the purpose of making an appraisal of the property. I understand the official will give me reasonable notification of the inspection. See N.D.C.C. § 57-23-05.1.

I declare under the penalties of N.D.C.C. § 12.1-11-02, which provides for a Class A misdemeanor for making a false statement in a governmental matter, that this application is, to the best of my knowledge and belief, a true and correct application.

Signature of Preparer (if other than applicant) Date Signature of Applicant Date

**Recommendation of the Governing Body of the City or Township**

Recommendation of the governing board of \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_, the governing board of this municipality, after examination of this application and the facts, passed a resolution recommending to the Board of County Commissioners that the application be \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
 \_\_\_\_\_  
 City Auditor or Township Clerk

**Action by the Board of County Commissioners**

Application was \_\_\_\_\_ by action of \_\_\_\_\_ County Board of Commissioners.  
 \_\_\_\_\_  
 Approved/Rejected

Based upon an examination of the facts and the provisions of North Dakota Century Code § 57-23-04, we approve this application. The taxable valuation is reduced from \$ \_\_\_\_\_ to \$ \_\_\_\_\_ and the taxes are reduced accordingly. The taxes, if paid, will be refunded to the extent of \$ \_\_\_\_\_. The Board accepts \$ \_\_\_\_\_ in full settlement of taxes for the tax year \_\_\_\_\_.

We reject this application in whole or in part for the following reason(s). Written explanation of the rationale for the decision must be attached. \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Dated \_\_\_\_\_,  
 \_\_\_\_\_  
 County Auditor Chairperson

**Certification of County Auditor**

I certify that the Board of County Commissioners took the action stated above and the records of my office and the office of the County Treasurer show the following facts as to the assessment and the payment of taxes on the property described in this application.

Year	Taxable Value	Tax	Date Paid (if paid)	Payment Made Under Written Protest? yes/no

I further certify that the taxable valuation and the taxes ordered abated or refunded by the Board of County Commissioner are as follows:

Year	Reduction in Taxable Valuation	Reduction in Taxes

\_\_\_\_\_  
 County Auditor Date

**Application For Abatement  
 Or Refund Of Taxes**

Name of Applicant Clement Weber

County Auditor's File No. 116-245

Date Application Was Filed With The County Auditor 11/3/16

Date County Auditor Mailed Application to Township Clerk or City Auditor 11/3/16  
(must be within five business days of filing date)

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# Application For Abatement Or Refund Of Taxes

North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1 of the year following the year in which the tax becomes delinquent.

State of North Dakota Assessment District \_\_\_\_\_  
 County of BURLEIGH Property I.D. No. 0570-001-105  
 Name CLEMENT WEBER Telephone No. \_\_\_\_\_  
 Address 2019 S GRANDVIEW LN BISMARCK, ND 58503-0852

Legal description of the property involved in this application:

LOT 22, BLOCK 2, GRANDVIEW HEIGHTS

Total true and full value of the property described above for the year 2015 is:

Land \$ 80,000  
 Improvements \$ 333,800  
 Total \$ 413,800  
(1)

Total true and full value of the property described above for the year 2015 should be:

Land \$ 80,000  
 Improvements \$ 333,800  
 Adj. Total \$ 263,800  
(2)

The difference of \$ 150,000 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
- 2. Residential or commercial property's true and full value exceeds the market value
- 3. Error in property description, entering the description, or extending the tax
- 4. Nonexisting improvement assessed
- 5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
- 6. Duplicate assessment
- 7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
- 8. Error in noting payment of taxes, taxes erroneously paid
- 9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of 100% full yr. the application.
- 10. Other (explain) \_\_\_\_\_

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go directly to question #5.

1. Purchase price of property: \$ \_\_\_\_\_ Date of purchase: \_\_\_\_\_  
 Terms: Cash \_\_\_\_\_ Contract \_\_\_\_\_ Trade \_\_\_\_\_ Other (explain) \_\_\_\_\_  
 Was there personal property involved in the purchase price? \_\_\_\_\_ Estimated value: \$ \_\_\_\_\_  
yes/no
2. Has the property been offered for sale on the open market? \_\_\_\_\_ If yes, how long? \_\_\_\_\_  
yes/no  
 Asking price: \$ \_\_\_\_\_ Terms of sale: \_\_\_\_\_
3. The property was independently appraised: \_\_\_\_\_ Purpose of appraisal: \_\_\_\_\_  
yes/no  
 Market value estimate: \$ \_\_\_\_\_  
 Appraisal was made by whom? \_\_\_\_\_
4. The applicant's estimate of market value of the property involved in this application is \$ \_\_\_\_\_
5. The estimated agricultural productive value of this property is excessive because of the following condition(s): \_\_\_\_\_

Applicant asks that my disabled veteran credit be approved as presented.

By filing this application, I consent to an inspection of the above-described property by an authorized assessment official for the purpose of making an appraisal of the property. I understand the official will give me reasonable notification of the inspection. See N.D.C.C. § 57-23-05.1.

I declare under the penalties of N.D.C.C. § 12.1-11-02, which provides for a Class A misdemeanor for making a false statement in a governmental matter, that this application is, to the best of my knowledge and belief, a true and correct application.

Signature of Preparer (if other than applicant) \_\_\_\_\_ Date \_\_\_\_\_ Signature of Applicant Clement Weber Date 11/1/16

**Recommendation of the Governing Body of the City or Township**

Recommendation of the governing board of \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_, the governing board of this municipality, after examination of this application and the facts, passed a resolution recommending to the Board of County Commissioners that the application be \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
 City Auditor or Township Clerk

**Action by the Board of County Commissioners**

Application was \_\_\_\_\_ by action of \_\_\_\_\_ County Board of Commissioners.  
 Approved/Rejected

Based upon an examination of the facts and the provisions of North Dakota Century Code § 57-23-04, we approve this application. The taxable valuation is reduced from \$ \_\_\_\_\_ to \$ \_\_\_\_\_ and the taxes are reduced accordingly. The taxes, if paid, will be refunded to the extent of \$ \_\_\_\_\_. The Board accepts \$ \_\_\_\_\_ in full settlement of taxes for the tax year \_\_\_\_\_.

We reject this application in whole or in part for the following reason(s). Written explanation of the rationale for the decision must be attached. \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Dated \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
 County Auditor Chairperson

**Certification of County Auditor**

I certify that the Board of County Commissioners took the action stated above and the records of my office and the office of the County Treasurer show the following facts as to the assessment and the payment of taxes on the property described in this application.

Year	Taxable Value	Tax	Date Paid (if paid)	Payment Made Under Written Protest? yes/no

I further certify that the taxable valuation and the taxes ordered abated or refunded by the Board of County Commissioner are as follows:

Year	Reduction in Taxable Valuation	Reduction in Taxes

\_\_\_\_\_  
 County Auditor Date

**Application For Abatement  
 Or Refund Of Taxes**

Name of Applicant Clement Weber  
 County Auditor's File No. 16-244  
 Date Application Was Filed With The County Auditor 11/3/16  
 Date County Auditor Mailed Application to Township Clerk or City Auditor Heaven P. Elliott by epb.  
(must be within five business days of filing date)



## BISMARCK-BURLEIGH PUBLIC HEALTH

**DATE:** November 14, 2016

**FROM:** Anton Sattler, Environmental Health Administrator  
Renaë Moch, Director *RM*

**ITEM:** Proposed Amendments to Title 8 and Chapter 4-06 of city ordinance

### REQUEST

Consider request from Bismarck/Burleigh Public Health to amend Title 8 Health & Sanitation and Chapter 4-06 Swimming Pools of Bismarck's Code of Ordinances.

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

Expiration dates in ordinance need to be updated with the recent approval of adjusting the Environmental Health license expiration date from December 31 to March 31. While reviewing the Environmental Health ordinances with staff, additional changes were identified and are recommended.

### RECOMMENDED CITY COMMISSION ACTION

Recommend approval of proposed amendments to Title 8 and Chapter 4-06

### STAFF CONTACT INFORMATION

Renaë Moch, Public Health Director, 701-355-1541, [rmoch@bismarcknd.gov](mailto:rmoch@bismarcknd.gov)  
Anton Sattler, Environmental Health Administrator, 701-355-3401, [asattler@bismarcknd.gov](mailto:asattler@bismarcknd.gov)

## **SUPPORTING INFORMATION:**

### **Replace “Permit” with “License”:**

Staff believes the word “license” is more appropriate for the following reasons:

- Environmental Health issues licenses (i.e.: food, lodging, body art, swimming pools, tanning) similar to a liquor license as they are valid for period of time and require annual renewal. They are unlike a building permit taken out for a project and upon completion the permit expires.
- The majority of the public refer to them as licenses rather than permits (i.e.: food license).
- Less confusion for the public and the staff as we are currently using licenseTrak (as opposed to permitTrak) for our records management system.

### **Update License Expiration Date:**

Change license expiration date language from December 31 to March 31 as approved during the November 8<sup>th</sup> commission meeting.

### **4-06-09 – Swimming Pool Samples:**

The current ordinance reads such that swimming pools can fail no more than 15 percent of their total pool samples. This is difficult to enforce, as we do not have the results of every pool sample taken, since the day it was opened. Furthermore the ordinance doesn't specify what action may be taken if a swimming pool fails more than 15 percent. For these reasons, staff recommends amending the ordinance to state that a swimming pool may be subject to closure, if the same pool fails three consecutive water samples.

### **Repeal Chapter 8-02 Frozen Desserts**

Dairy processing facilities are regulated by the North Dakota Department of Agriculture. If there was issue/concern with frozen desserts food establishments (i.e.: restaurant, grocery store, convenience store, etc.) Environmental Health would have authority via the North Dakota Department of Health Food Code (which we have adopted by reference in city ordinance 8-03-01) to address the matter and take regulatory action if necessary. For this reason, Chapter 8-02 is not needed for enforcement of food establishments by the Environmental Health Division and staff recommends removing it.

### **Repeal definitions of “Temporary food market” & “Vendor”**

We currently do not charge vendors selling only whole, unprocessed produce. Both of these license types have been removed from our fees and charges.

### **8-03-10 – Food Inspections:**

Currently we inspect all food establishments (i.e.: restaurants, grocery stores, bars, convenience stores, coffee shops, etc.) once every six months. The FDA scientifically points out that primary risk factors including the types of food served, the food preparation processes used, the volume of food, and the population served, all have a bearing on the occurrence of foodborne illness. Based on this information, the FDA recommends that regulatory jurisdictions develop and use a process that groups food establishments into at least three categories based on potential and inherent food safety risks. Risk level 1 establishments (i.e.: coffee shops, bars and convenience stores) would be inspected annually. Risk level 2 establishments (i.e.: fast food restaurants) would be inspected twice a year. Risk level 3 establishments (i.e.: full scale restaurants) would be inspected three times a year. Staff prefers this risk based inspection frequency rather than treating all food establishments the same and inspecting each once every six month. Lastly, we are currently using a paperless inspection report which is emailed to the operator after receiving their electronic signature. For this reason, we want to add “email to a confirmed email address” as an appropriate means of notification to the operator.

**CITY OF BISMARCK**  
**Ordinance No. 6239**

<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 SECTIONS 8-01-13, 8-03-01, 8-03-04, 8-03-05, 8-03-06, 8-03-07, 8-03-08, 8-03-09, 8-03-10, 8-03-13, 8-03-14, 8-03-15, 8-03-16, 8-04.1-09, 8-04.1-10, 8-04.1-11, 8-04.1-12, 8-04.1-13, 8-11-01, 8-11-03, 8-11-04, 8-11-05, 8-11-06, 8-11-07, 8-11-08, 8-11-09, 8-13-01, 8-13-02 AND 8-13-07 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING PERMITS REQUIRED UNDER THE PROVISIONS OF TITLE 8.

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

Section 1. Amendment. Section 8-01-13 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Fees is hereby amended and re-enacted to read as follows:

**8-01-13. Fees**. The fees for any permit license or inspection required by this title are as determined from time to time by the city commission and a complete schedule of fees for this chapter shall be on file with the office of the city administrator.  
(Ord. 5660, 05-13-08)

Section 2. Amendment. Section 8-03-01 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Code Adopted is hereby amended and re-enacted to read as follows:

**8-03-01. Code Adopted**. The City hereby adopts the Food Code as adopted by the North Dakota Department of Health relating to food handling establishments including retail sales of food, defining food, potentially hazardous food, mobile food unit, temporary food ~~service~~ establishment, regulatory authority, utensils, equipment, etc.; providing for sale of only sound, properly labeled food; regulating the sources of food; establishing sanitation standards for food, food protection,

food service personnel, food service operations, food equipment and utensils, sanitary facilities and controls, and other facilities; requiring ~~permits~~ a license for the operation of food service establishments; regulating the inspection of such establishments; providing for the examination and condemnation of food; which is hereby incorporated by reference thereto, except as hereby amended. All equipment and multi-use utensils shall comply with applicable National Sanitation Foundation standards or their equivalent.

Chapter 102(2) is amended as follows:

~~"Temporary food market" means a fruit or vegetable stand or truck restricted in operation as to place and time as determined by the health officer. The time shall not exceed six consecutive months of operation.~~

"Temporary food-service establishment" means any food-service establishment which operates at a fixed location for a temporary period of time, not to exceed seven days in connection with a fair, carnival, circus, public exhibitions or similar transitory gathering.

Chapter 102, Section BB is amended by adding thereto:

~~"Vendor" means a person who distributes foods for consumption on or off premises which contain potentially hazardous food and generally do not need further processing except for heating and/or partial cooking (sandwiches, pizzas, etc.)~~

(Ord. 4956, 12-08-98; Ord. 5616, 07-24-07)

Section 3. Amendment. Section 8-03-04 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Stands Restricted is hereby amended and re-enacted to read as follows:

**8-03-04. Stands Restricted**. It is unlawful for any person to erect, construct, maintain or operate on any street, alley or public way within the city any popcorn machine, ice cream stand, or any structure, vehicle or building where popcorn, candy, ice cream, confectionery or other merchandise of any kind is kept, given away or offered for sale or sold except with a permit license issued by the city as permitted by this Title.

(Ord. 5616, 07-24-07)

Section 4. Amendment. Section 8-03-05 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Required is hereby amended and re-enacted to read as follows:

**8-03-05. Permit License Required.**

1. It is unlawful for any person without a permit license to operate a food-processing establishment, food-service establishment or a temporary food-service establishment in the city or its police jurisdiction.

2. Only persons who comply with the requirements of this article are entitled to receive and retain a permit license under the provisions of this chapter.

Section 5. Amendment. Section 8-03-06 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Fees is hereby amended and re-enacted to read as follows:

**8-03-06. Permit License Fees.** The fees to be charged for permits licenses required by this chapter are as set from time to time by the city commission and contained in the schedule of fees on file with the office of the city administrator.

*(Ord. 4877, 11-25-97; Ord. 5616, 07-24-07)*

Section 6. Amendment. Section 8-03-07 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Display is hereby amended and re-enacted to read as follows:

**8-03-07. Permit License Display.** Each permit license issued under the provisions of this chapter must be posted in a conspicuous place in the place of business of the operator. At temporary food-service establishments permits licenses must be posted wherever the operator is serving meals or dispensing food products.

Section 7. Amendment. Section 8-03-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Suspension or Revocation is hereby amended and re-enacted to read as follows:

**8-03-08. Suspension or Revocation.** Any permit license issued under the provisions of this chapter may be temporarily suspended or revoked by the board of health, after notice and an opportunity for a hearing, for a violation of the provisions of this chapter.

Section 8. Amendment. Section 8-03-09 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Term of Permit; Proration of Fee is hereby amended and re-enacted to read as follows:

**8-03-09. Term of Permit License; Proration of Fee.** The ~~permit license~~ issued under the provisions of this chapter shall cover the period commencing ~~January~~ April 1<sup>st</sup> and ending ~~December~~ March 31<sup>st</sup> of ~~each~~ the following year. All ~~permits licenses~~ expire on ~~December~~ March 31<sup>st</sup> of each year. In the event a ~~permit license~~ is issued during a ~~permit license~~ period, the ~~permit license~~ shall be prorated at a ~~full permit fee for more than six months and one-half the permit license fee for less than six months~~ if paid after October 1 of each license year.

Section 9. Amendment. Section 8-03-10 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Inspection - Procedure for Violations - Suspension is hereby amended and re-enacted to read as follows:

**8-03-10. Inspection - Procedure for Violations - Suspension.** ~~At least once every six months the health officer shall inspect each retail food market located within the city. Every food establishment within the city shall be inspected by the Health Officer as often as necessary to determine compliance with this chapter. The frequency of inspections shall be based on a system of risk categorization which involves types of foods served, the preparation steps these foods require, volume of food, populations served and previous compliance history. If the health officer discovers a violation on any item of sanitation the operator must be served with written notice or notice by email to confirmed email address of the operator of the violation and an order to comply within a reasonable time. Failure to comply as ordered is grounds for suspension of the operator's permit license by the Board of Health, following notice and an opportunity for a hearing. The period of suspension shall be until the operator complies with section 8-03-13.~~

*(Ord. 5616, 07-24-07)*

Section 10. Amendment. Section 8-03-13 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Required is hereby amended and re-enacted to read as follows:

**8-03-13. Permit License Required.**

1. It is unlawful for any person to operate a retail food market, to offer to sell or to sell food or drink in the city without a ~~permit~~ license from the health officer.

2. Only persons who comply with the provisions of this chapter are entitled to receive and retain a ~~permit~~ license under the provisions of this chapter.

*(Ord. 5616, 07-24-07)*

Section 11. Amendment. Section 8-03-14 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Fee is hereby amended and re-enacted to read as follows:

**8-03-14. Permit License Fee**. The fee to be charged and paid for any ~~permit~~ license required by the provisions of this chapter is as set from time to time by the city commission and contained in the fee schedule on file with the office of the city administrator.

*(Ord. 4877, 11-25-97; Ord. 5616, 07-24-07)*

Section 12. Amendment. Section 8-03-15 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Term of Permit is hereby amended and re-enacted to read as follows:

**8-03-15. Term of Permit License**. ~~Permits Licenses~~ issued under the provisions of this chapter are valid ~~for a calendar year, expiring on December 31st of each year, except temporary permits which expire as indicated on the permit from April 1<sup>st</sup> through March 31<sup>st</sup> of the following year.~~ Temporary permits licenses may be issued only for a period not to exceed six months.

*(Ord. 5616, 07-24-07)*

Section 13. Amendment. Section 8-03-16 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Display is hereby amended and re-enacted to read as follows:

**8-03-16. Permit License Display**. Each ~~permit~~ license issued under the provisions of this chapter must be posted in a conspicuous place in the place of business of the ~~permittee~~ licensee.

*(Ord. 5616, 07-24-07)*

Section 14. Amendment. Section 8-04.1-09 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Required is hereby amended and re-enacted to read as follows:

**8-04.1-09. Permit License Required.** It is unlawful for any person without a permit license to operate a lodging establishment in the city or its police jurisdiction. Only persons who comply with the requirements of this chapter are entitled to receive and retain a permit license under the provisions of this chapter.  
(Ord. 5617, 07-24-07)

Section 15. Amendment. Section 8-04.1-10 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Fees is hereby amended and re-enacted to read as follows:

**8-04.1-10. Permit License Fees.** The fee to be charged for the permit license required by this chapter is as determined from time to time by the city commission and a complete schedule of fees for this chapter shall be on file with the office of the city administrator Nothing in this chapter relieves a lodging establishment from obtaining any other ~~permit(s)~~ license(s) required for its operations.  
(Ord. 5617, 07-24-07)

Section 16. Amendment. Section 8-04.1-11 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Display is hereby amended and re-enacted to read as follows:

**8-04.1-11. Permit License Display.** Each permit license issued under the provisions of this chapter must be posted in a conspicuous place so as to be seen from the customer side of the registration counter.  
(Ord. 5617, 07-24-07)

Section 17. Amendment. Section 8-04.1-12 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Suspension or Revocation is hereby amended and re-enacted to read as follows:

**8-04.1-12. Suspension or Revocation.** Any permit license issued under the provisions of this chapter may be temporarily suspended or revoked by the board of health, after notice and an opportunity for a hearing, for a violation of the provisions of this chapter.  
(Ord. 5617, 07-24-07)

Section 18. Amendment. Section 8-04.1-13 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Term of Permit; Proration of Fee is hereby amended and re-enacted to read as follows:

**8-04.1-13. Term of Permit License; Proration of Fee.** The permit license issued under the provisions of this chapter shall cover the period commencing ~~January~~ April 1<sup>st</sup> and ending ~~December~~ March 31<sup>st</sup> of ~~each~~ the following year. All ~~permits~~ licenses expire on ~~December~~ March 31<sup>st</sup> of each year. In the event a permit license is issued during a permit license period, the permit license shall be prorated at a ~~full permit fee for more than six months~~ and one-half the permit license fee for ~~less than six months~~ if paid after October 1<sup>st</sup> of each license year.

(Ord. 5617, 07-24-07)

Section 19. Amendment. Section 8-11-01 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Definitions is hereby amended and re-enacted to read as follows:

**8-11-01. Definitions.**

\* \* \* \* \*

5. "Operator" means a permittee licensee, or person working for a permittee licensee, performing body art services.

\* \* \* \* \*

(Ord. 5264, 07-08-03; Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)

Section 20. Amendment. Section 8-11-03 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Required is hereby amended and re-enacted to read as follows:

**8-11-03. Permit- License Required.** No person, firm or corporation shall establish, operate, conduct, maintain or manage any establishment or place offering body art services without first obtaining a permit license to do so.

1. A permit license issued under the provisions of this chapter shall be for a period of up to one year and all permits shall expire on ~~December~~ March 31<sup>st</sup> of each year.

2. A permit license is required for both permanent and temporary locations. All of the requirements of this chapter apply to both permanent and temporary locations.

3. The annual fee for a permit license is as set from time to time by the city commission and contained in

the fee schedule on file with the office of the city administrator.

4. The ~~permit~~ license must be posted in the permitted location in a manner visible to customers at all times of operation.

5. A ~~permit~~ license issued under this chapter is not transferable to another operator or location.

*(Ord. 5264, 07-08-03; Ord. 5618, 07-24-07)*

Section 21. Amendment. Section 8-11-04 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Application for Permit is hereby amended and re-enacted to read as follows:

**8-11-04. Application for Permit License.** Any person, firm, or corporation, that desires to engage in the business of body art within the city, shall make application for a Body Art ~~Permit~~ License to the public health department, environmental health division. Prior to issuance of a Body Art ~~Permit~~ License, the public health department, environmental health division shall conduct an inspection of the applicants proposed location and equipment to insure compliance with this chapter. The application shall be in writing on forms provided by the public health department, environmental health division. A ~~permit~~ license issued under this chapter shall be limited to the location specified in the ~~permit~~ license. No person, firm, or corporation shall provide body art services at any place other than the place or location named in the ~~permit~~ license.

*(Ord. 5264, 07-08-03; Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)*

Section 22. Amendment. Section 8-11-05 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Inspection is hereby amended and re-enacted to read as follows:

**8-11-05. Inspection.** The initial inspection shall occur prior to opening the business and be made to ensure that ~~permit~~ license requirements are met. Each ~~permitted~~ licensed body art establishment shall be inspected by an Environmental Health Practitioner at least annually.

*(Ord. 5264, 07-08-03)*

Section 23. Amendment. Section 8-11-06 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Body Art Establishments; General Provisions is hereby amended and re-enacted to read as follows:

**8-11-06. Body Art Establishments; General Provisions.**

\* \* \* \* \*

2. Effective measures shall be taken by the ~~permittee~~ licensee to protect against the entrance of or the breeding or presence of insects, vermin, or rodents in the permitted location. Insects, vermin, and rodents shall not be present in any part of the permitted location, its appurtenances, or appertaining premises.

\* \* \* \* \*

4. The ~~permitted~~ licensed location shall be well-ventilated and provided with an artificial light source equivalent to at least 20 foot-candles at a height of 3 feet off the floor, except that at least 100 foot-candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

\* \* \* \* \*

6. A hand-sink with hot and cold potable water, under pressure, preferably equipped with wrist-or foot-operated controls and supplied with liquid soap and disposable paper towels shall be readily accessible to each procedural area within the ~~permitted~~ licensed location. There shall be at least one hand-sink for each three operators.

\* \* \* \* \*

(Ord. 5264, 07-08-03)

Section 24. Amendment. Section 8-11-07 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Sanitation and Sterilization Procedures is hereby amended and re-enacted to read as follows:

**8-11-07. Sanitation and Sterilization Procedures.**

\* \* \* \* \*

5. Each ~~permittee~~ licensee shall demonstrate that the sterilizer used is capable of attaining sterilization by appropriate spore destruction tests. These tests shall be verified through an independent laboratory. The ~~permit~~

license shall not be issued or renewed until documentation of the sterilizer's ability to destroy spores is received by the public health department, environmental health division. These test records shall be retained by the body art establishment for a period of three (3) years and made available to the public health department, environmental health division upon request.

\* \* \* \* \*

(Ord. 5264, 07-08-03; Ord. 6156, 10-13-15)

Section 25. Amendment. Section 8-11-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Professional Standards is hereby amended and re-enacted to read as follows:

**8-11-08. Professional Standards.** Body art operators shall comply with the following practices:

\* \* \* \* \*

6. All ~~permittee's~~ licensees shall have at least one person certified in CPR present during hours of operation.

\* \* \* \* \*

(Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)

Section 26. Amendment. Section 8-11-09 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Suspension or Revocation is hereby amended and re-enacted to read as follows:

**8-11-09. Permit License Suspension or Revocation.** Any ~~permit~~ license issued under the provisions of this chapter may be suspended or revoked by the board of health for a violation of the provisions of this chapter, after notice and an opportunity for a hearing.

(Ord. 4572, 01-04-94; Ord. 4891, 03-24-98; Ord. 5264, 07-08-03)

Section 27. Amendment. Section 8-13-01 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Definitions is hereby amended and re-enacted to read as follows:

**8-13-01. Definitions.** As used in this chapter, unless the context otherwise requires:

\* \* \* \* \*

4. "Tanning facility" means a place or business that provides individuals access to a tanning device. Tanning facilities ~~is~~ located in individual dwelling units for personal use are exempt from this chapter.

(Ord. 5607, 11-27-07; Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)

Section 28. Amendment. Section 8-13-02 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Fee is hereby amended and re-enacted to read as follows:

**8-13-02. Permit-Fee**. A person may not operate a tanning facility without a permit license issued by the department under this chapter. The holder of a permit license shall display the permit license in a conspicuous place at the tanning facility for which the permit license is issued. Permits Licenses issued under this chapter expire annually. An applicant for a permit license shall submit an application for a permit license to the department on a form provided by the department with a permit license fee as established by the city commission. The application must include the name and the complete mailing address and the street address of the tanning facility and any other information reasonably required by the department for the administration of this chapter.

(Ord. 5607, 11-27-07)

Section 29. Amendment. Section 8-13-07 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Suspension or Revocation is hereby amended and re-enacted to read as follows:

**8-13-07. Permit License Suspension or Revocation**. Any permit license issued under the provisions of this chapter may be suspended or revoked by the board of health for a violation of the provisions of this chapter, after notice and an opportunity for a hearing. A violation of any provision of this chapter is an offense.

(Ord. 5607, 11-27-07)

Section 30. 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 31. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

**CITY OF BISMARCK**  
**Ordinance No. 6240**

<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 SECTIONS 4-06-07, 4-06-08 AND 4-06-09 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO POOLS; OPERATION PERMITS, PERMIT FEE AND OPERATIONAL PRACTICES.

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

Section 1. Amendment. Section 4-06-07 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Operation Permits is hereby amended and re-enacted to read as follows:

**4-06-07. Operation Permits Licenses.** A person may not operate or maintain a public or semi-public swimming pool unless a permit license has been obtained to operate such pool. The permit license must be obtained by ~~January~~ April 1<sup>st</sup> of each year from the director of public health, and is valid until March 31<sup>st</sup> of the following ~~for one~~ year unless revoked for cause. A person operating a semi-public or public pool must be licensed as a "Certified Pool Operator" by the National Swimming Pool Foundation. If a certified operator is no longer employed by the pool owner, the new operator, if not already certified, must seek certification at the earliest opportunity not to exceed six months.

(Ord. 4865, 08-26-97; Ord. 5316, 05-25-04; Ord. 5642, 11-13-0, Ord. 5707, 02-24-09; Ord. 6156, 10-13-15)

Section 2. Amendment. Section 4-06-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Fee is hereby amended and re-enacted to read as follows:

**4-06-08. Permit License Fee.** The fee for a permit license to conduct, operate and maintain a public or semipublic swimming pool is as determined from time to time by the city commission, shall be kept on file with the office of the city administrator and must be paid before the issuance of any permit license.

(Ord. 4865, 08-26-97; Ord. 5316, 05-25-04; Ord. 5642, 11-13-07)

Section 3. Amendment. Section 4-06-09 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Operational Practices is hereby amended and re-enacted to read as follows:

**4-06-09. Operational Practices**. The following are minimum operational practices required at all public and semipublic swimming pools:

\* \* \* \* \*

14. No more than ~~15 percent~~ of three consecutive water samples from the same body of water submitted may exceed the current acceptable bacteriological standards for swimming pools as established by the North Dakota State Department of Health. The failure of three consecutive water samples to meet this standard may result in closure of the pool

\* \* \* \* \*

(Ord. 4865, 08-26-97; Ord. 5316, 05-25-04; Ord. 5642, 11-13-07; Ord. 5963, 05-13-13)  
316, 05-25-04)

Section 4. 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 5. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

# CITY OF BISMARCK

## Ordinance No. 6241

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

AN ORDINANCE TO REPEAL CHAPTER 8-02 OF THE BISMARCK CODE OF ORDINANCES (REV.), RELATING TO FROZEN DESSERTS.

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

Section 1. Repeal. Chapter 8-02 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to the Frozen Desserts is hereby repealed:

### ~~CHAPTER 8-02. FROZEN DESSERTS~~

~~8-02-01. Frozen Dessert -- Definition. For the purposes of this chapter, frozen dessert means any clean frozen or partially frozen combination of two or more of the following: Milk or milk products, eggs or egg products, sugars, water, fruit or fruit juices, candy, nut meats, or other harmless and wholesome food product, flavors, color, or harmless stabilizer, and shall be deemed to include ice cream, frozen custard, ice milk, milk sherbet, ices, and other similar products.~~

~~8-02-02. Enforcement Interpretation. This article shall be enforced by the health officer in accordance with the current dairy standards contained in NDCC Chapter 4 30 and North Dakota Dairy Department Regulation 7 3.2.~~  
~~(Ord. 5714, 04-28-09)~~

~~8-02-03. Adulterated, Misbranded Products Prohibited. A person may not, within the city or its police jurisdiction, manufacture, freeze, sell, offer, or expose for sale, or have in possession with intent to sell, any mix or frozen dessert which is adulterated or misbranded.~~

~~8-02-04. Labeling. All cans, packages, and other containers enclosing mix or frozen desserts or their ingredients derived from~~

~~milk, except those filled from labeled bulk containers in retail dispensing, must be plainly labeled or marked with: a) the name of the contents; b) in the case of the mix, the word "pasteurized" if the contents have been pasteurized and the word "raw" if the contents have not been pasteurized; c) the name and the street address of the plant at which the contents were placed in the container; and, d) the expiration date. A descriptive word or phrase indicating in more detail the composition or flavoring of the mix or frozen dessert, such as strawberry, chocolate, custard, lemon, etc., may be used on the label.~~

~~The label or mark must be in letters of a size, kind, and color approved by the health officer. Trade names and trademarks may be permitted. The label may not contain marks or words which are misleading.~~

~~A person who manufactures, distributes, or dispenses frozen desserts or mix may not display any grade placard, sign, or notice without the approval of the health officer.~~

~~**8-02-05. Examination of Frozen Desserts and Their Ingredients.** During each consecutive six months period at least four samples of frozen desserts and pasteurized mix from each plant must be tested by the health officer. Samples of mix or frozen desserts may be taken by the health officer at any time prior to final delivery. Samples of ingredients may be tested as often as the health officer may require. Samples of frozen desserts from stores, cafes, soda fountains, restaurants, and other places where frozen desserts are sold may be tested as often as the health officer may require. Bacterial plate counts and direct microscopic counts must be made in conformity with the latest edition of standard methods recommended by the American Public Health Association. Examinations may include other chemical and physical determinations as the health officer may deem necessary for the detection of adulteration. Examinations must be made in conformity with the latest edition of standard methods of the American Public Health Association and the Association of Official Agricultural Chemists. All proprietors of plants, stores, cafes, restaurants, soda fountains, and other similar places shall furnish the health officer, upon his request, with the names of all persons from whom their mix or frozen desserts are obtained.~~

~~Whenever the average bacterial count, the average reduction time, or the average cooling temperature falls beyond the limits prescribed in section 8-02-06, the health officer shall send written notice thereof to the plant concerned, and shall take an additional sample, within three days, for determining a new~~

average. If the new average violates section 8-02-06, the health officer shall exclude the product from sale or suspend the permit.

~~**8-02-06. Standards for Frozen Dessert Products and Its Ingredients.**~~ All mix and desserts and its ingredients must be produced, processed, pasteurized to conform to the following chemical, bacteriological, and temperature standards and the sanitation requirements of this section.

1. ~~Miscellaneous protection from contamination. The various plant operations must be so located and conducted as to prevent any contamination of the mix, frozen desserts, their ingredients, cleaned equipment, or containers. All means necessary for the elimination of flies must be used. Separate rooms must be provided for (a) the pasteurizing, processing, cooling, freezing, and packaging operations, and (b) the washing and bactericidal treatment of containers; provided, that requirement (a) may be satisfied, in frozen desserts plants which freeze and sell only at retail on premises, if all mixing, freezing, and packaging processes, but not necessarily the hardening and storage compartments, are enclosed in a tight glass or other sanitary enclosure which is open only on the side farthest from the public, which has a dust-tight top extending over the entire freezer, and which is protected by a fan so installed and of such power as to prevent the entrance of flies. Containers of frozen desserts ingredients may not be loaded directly into the room or rooms used for pasteurization or subsequent processes. Pasteurized mix or frozen desserts, milk or milk products which have been in contact, or with which mix or frozen desserts from a lower grade plant have been in contact, unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment. None of the operations connected with a frozen desserts plant shall be conducted in a room used for domestic purposes.~~

2. ~~Handling of containers and equipment. Between bactericidal treatment and usage and during usage, containers and equipment may not be handled or operated in such manner as to permit contamination of frozen desserts, mix or their ingredients.~~

3. ~~Storage and handling of single-service containers and utensils. Caps, parchment papers, wrappers, can liners, and single service sticks, spoons and containers for frozen~~

~~desserts, mix, or their ingredients may be purchased only in sanitary containers, must be kept therein in a clean dry place, and must be handled in a sanitary manner. 4. Pasteurization of mix. All mix must be pasteurized.~~

~~5.—Cooling and handling. All milk and fluid milk products received at the frozen desserts plant for use in frozen desserts or mix must be immediately cooled in approved equipment at forty-five degrees Fahrenheit or less and maintained at that temperature until pasteurized, unless they are to be pasteurized within two hours after receipt; and all pasteurized mix must immediately be cooled in approved equipment to an average temperature of forty-five degrees Fahrenheit or less and maintained at that temperature until frozen.~~

~~All mix which is not frozen at the plant at which it was pasteurized must be transported to the place of manufacturing or freezing in sealed containers, and the mix must be handled in a sanitary manner. Dipping from containers of pasteurized mix is prohibited.~~

~~6.—Packaging. Packaging, cutting, molding, dipping, and other preparation of mix or frozen desserts or their ingredients must be done in an approved manner. Containers must be adequately covered immediately after filling. Caps or covers must be handled in such manner as to prevent contamination of the package contents.~~

~~7.—Overflow or spillage. Product drip, or overflow, or spilled mix or frozen desserts or their ingredients, may not be sold for human consumption.~~

~~8.—Returns. Mix or frozen desserts in broken or open or out dated containers may be returned to the plant for inspection but may not be used for making mix or frozen desserts.~~

~~9.—Personnel, health. The health officer or a physician authorized by him may examine and take a careful morbidity history of every person connected with a frozen desserts plant, or about to be employed, whose work brings him in contact with the production, handling, or storage of mix or frozen desserts, containers, or equipment. If such examination suggests that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be~~

~~transmitted through frozen desserts, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the state health authorities. If the test results confirm that the person is a carrier of or is infected with any communicable disease likely to be transmitted through frozen desserts, the health officer or other physician may bar the person from such employment.~~

~~The person shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the health officer may require for the purpose of determining freedom from infection.~~

~~10. Bacterial plate count of pasteurized mix or frozen desserts. The average bacterial plate count of the pasteurized mix or frozen desserts may at no time prior to delivery exceed 50,000 per gram and a Coliform Count not to exceed 10 per 1 gram as determined under section 8-02-05.~~

~~11. Ingredients. All mix and frozen desserts ingredients must be clean, have a fresh wholesome flavor and odor and a normal appearance, be of satisfactory quality, and must be handled or processed in an approved manner.~~

~~Milk and milk products used as ingredients in the raw state must have an average bacterial plate count not exceeding 200,000 per cubic centimeter, or an average direct microscopic count not exceeding 200,000 per cubic centimeter or per gram if clumps are counted or 800,000 if individual organisms are counted; and milk and milk products used as ingredients in the pasteurized, condensed, evaporated, or dried state must have an average bacterial plate count not exceeding 50,000 per cubic centimeter or per gram; provided, that these limits are doubled for cream. All milk and milk products used as ingredients must be produced on dairy farms conforming with all of the requirements for Grade A raw milk for pasteurization.~~

~~12. All samples collected will be analyzed by a laboratory certified by the North Dakota Department of Health Public Health Laboratory. Fees for analysis of samples will be determined by the laboratory and charged to the vendor of milk and/or frozen dessert products. All billing and collections for sample analysis will be the~~

~~responsibility of the laboratory conducting the analysis of the samples.~~

~~(Ord. 4956, 12-08-98; Ord. 5714, 04-28-09)~~

~~**8-02-07. Grades of Frozen Desserts Plants Which May Sell Products.** Mix or frozen desserts may not be sold for ultimate consumption within the city or its police jurisdiction unless it has been manufactured and frozen in conformance with the requirements of this article.~~

~~**8-02-08. Transferring and Dispensing Frozen Desserts.** A person may not transfer frozen desserts from one container to another or package the same on the street or in any vehicle or in any place except a sanitary room under approved conditions.~~

~~**8-02-09. Mix and Frozen Desserts from Points Beyond the Limits of Routine Inspection.** Mix and frozen desserts from points beyond the limits of routine inspection of the city may not be sold in the city or its police jurisdiction, unless controlled under provisions equivalent to the requirements of this article; provided that the health officer shall ascertain that the health officer having jurisdiction over the manufacture is properly enforcing such provisions.~~

~~**8-02-10. Notification of Disease.** Notice of any infectious, contagious or communicable disease must be sent, by any frozen desserts manufacturer or distributor among whose employees any infectious, contagious or communicable disease occurs, to the health officer immediately.~~

~~**8-02-11. Procedure When Infection Suspected.** When suspicion arises as to the possibility of transmission of infection from any person involved with the handling of mix, frozen desserts, or their ingredients, the health officer is authorized to require any or all of the following measures:~~

~~1. The immediate exclusion of that person from handling mix, frozen desserts, or their ingredients;~~

~~2. The immediate exclusion of the supply concerned from distribution and use;~~

~~3. Adequate medical and bacteriological examination of the person, or his associates and of his and their body discharges.~~

~~**8-02-12. Frozen Dessert Conveyance Equipment.** All frozen dessert conveyance equipment used for the purpose of vending on~~

~~any street or public way within the City of Bismarck must meet the following requirements:~~

~~1. Compliance with the requirements of Chapter 8-03 pertaining to food service sanitation code and food handling requirements.~~

~~2. The equipment for storage and handling of the frozen dessert product must have proper approval by the public health department, environmental health division.~~

~~3. The equipment must be capable of maintaining a zero degree temperature for the purpose of preventing deterioration of the frozen product.~~

~~4. All products must be from an approved source and shall be prepackaged. No repackaging may be allowed.~~

~~5. The vendor must be at least 14 years of age.~~

~~6. All conveyance equipment is subject to inspection with sampling of product for bacterial analysis.~~

~~7. Daily operating hours are limited to the hours of 9:00 a.m. to 9:00 p.m.~~

~~(Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)~~

~~**8-02-13. Permit Required.** It is unlawful for any person to deliver, directly or indirectly, into, or receive for sale into the city or its police jurisdiction for sale or to produce, sell, or offer for sale therein, or to have in storage where mix or frozen desserts are sold or served any milk products' ingredients, mix or frozen desserts, without a permit.~~

~~**8-02-14. Fees.** The permit fees for this chapter are as determined from time to time by the city commission and a complete schedule of fees for this chapter shall be on file with the office of the city administrator and must be paid before the issuance of any permit.~~

~~(Ord. 4877, 11-25-97; Ord. 5618, 07-24-07)~~

~~**8-02-15. License Expiration.** Permits issued under the provisions of this chapter are valid for the calendar year and expire on December 31st of each year.~~

~~**8-02-16. Suspension and Reissuance.**~~

~~1. A permit issued under the provision of this chapter may be suspended or revoked by the health officer after notice and an opportunity for hearing upon the violation by the holder of any of the provisions of this chapter.~~

~~2. Any frozen desserts plant whose permit has been suspended or revoked by the health officer may at any time make application for reissuing of the permit.~~

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.



## BISMARCK-BURLEIGH PUBLIC HEALTH

**DATE:** November 15, 2016

**FROM:** Anton Sattler, Environmental Health Administrator, Renae Moch, Director *RM*

**ITEM:** US Food & Drug Administration Voluntary National Retail Food Regulatory Program

### REQUEST

Consider request from Bismarck-Burleigh Public Health to enroll in the FDA Voluntary National Retail Food Regulatory Standards program.

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

The FDA Voluntary National Retail Food Regulatory Standards program is the national standard for excellence and continuous improvement for food safety programs. Enrollment in this voluntary program would require the Environmental Health Division staff to complete a self-assessment of current retail food policies and procedures and measure our practices against the FDA's national standards for food safety. The self-assessment identifies areas of improvement within the division to prevent food-borne illness, improve food safety protocols, and enhance the services we provide to the public related to food safety and retail food establishments.

There is no cost to participate and enrollment in this voluntary program would allow us to apply for grant funding in the future to implement quality improvement projects within this division.

### RECOMMENDED CITY COMMISSION ACTION

Recommend approval to enroll in the FDA Voluntary National Retail Food Regulatory Standards program.

### STAFF CONTACT INFORMATION

Renae Moch, Public Health Director, 701-355-1541, [rmoch@bismarcknd.gov](mailto:rmoch@bismarcknd.gov)  
Anton Sattler, Environmental Health Administrator, 701-355-3401, [asattler@bismarcknd.gov](mailto:asattler@bismarcknd.gov)

**SUPPORTING INFORMATION:**

The FDA Voluntary National Retail Food Regulatory Standards program defines what constitutes a highly effective and responsive program for the regulation of foodservice and retail food establishments. These standards provide a foundation and system upon which all regulatory food programs can build and implement a continuous quality improvement process.

These standards encourage regulatory agencies to improve and build upon existing programs. The Retail Program Standards represent an important component of a comprehensive strategic approach to help ensure the safety and security of the food supply at the retail level.

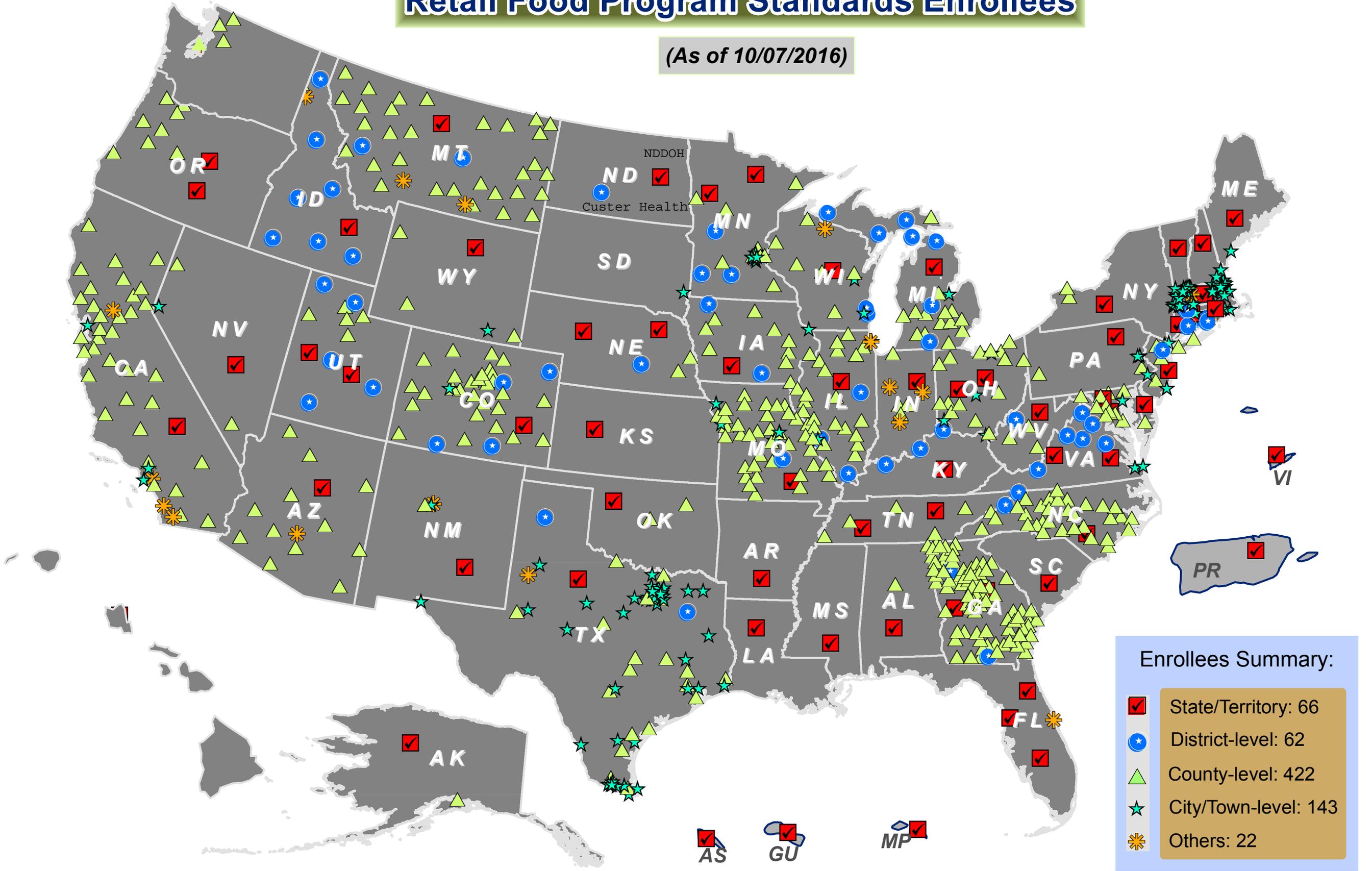
The initial step will be conducting a self-assessment of our food inspection program. Once the self-assessment has been completed gaps in our program will be identified and we will start the process of meeting the individual program standards.

This is a voluntary program and there is no cost associated with the self- other than employee time to complete the assessment.

See the attached national map of the Retail Food Program enrollees. In the state of North Dakota currently enrolled entities are the ND Department of Health and Custer Health District.

# Retail Food Program Standards Enrollees

(As of 10/07/2016)



**Enrollees Summary:**

- State/Territory: 66
- District-level: 62
- County-level: 422
- City/Town-level: 143
- Others: 22



## COMMUNITY DEVELOPMENT DEPARTMENT

**DATE:** November 15, 2016

**FROM:** Carl D. Hokenstad, AICP, Director, Community Development Department

**ITEM:** Harvest Ridge Subdivision First Replat

### REQUEST

It is the opinion of the City Attorney that once the Board of City Commissioners has approved a plat, no material change can be made to the plat without the Board of City Commissioners also approving the Change. Based on this opinion, the Community Development Department has a policy that if any material change is made to an approved plat, the change needs to be presented to the Board of City Commissioners for review and approval prior to the plat being recorded.

The plat of Harvest Ridge Subdivision First Replat was approved by the Board of City Commissioners on November 8, 2016. Since this plat was approved, material changes were made to the plat. In particular, the property line separating Lots 1 and 2, Block 1 was shifted to the north slightly to increase the size of Lot 1 from 1.48 acres to 1.5 acres and decrease the size of Lot 2 from 1.51 acres to 1.50 acres.

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

The plat of Harvest Ridge Subdivision First Replat was approved by the Bismarck Planning and Zoning Commission on October 26, 2016 and approved by the Board of City Commissioners on November 8, 2016.

### RECOMMENDED CITY COMMISSION ACTION

Consider the request for approval of the material changes made to the final plat for Harvest Ridge Subdivision First Replat and take final action on the changes.

### STAFF CONTACT INFORMATION

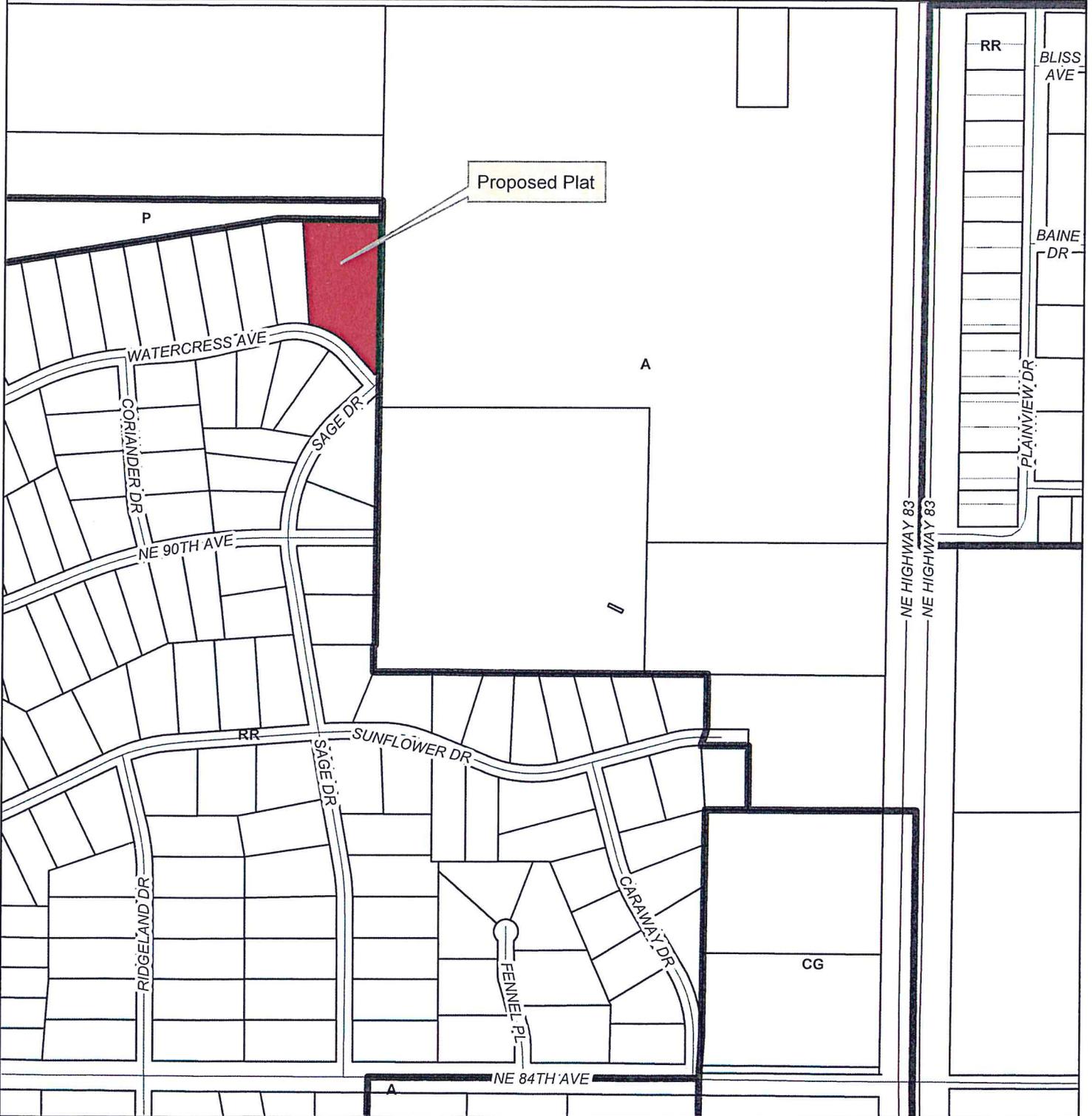
## **STAFF CONTACT INFORMATION**

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Please contact Will Hutchings, the planner in our office assigned to this request, at 355-1850 or [whutchings@bismarcknd.gov](mailto:whutchings@bismarcknd.gov) or Kim L. Lee, AICP, Planning Manager, at 355-1846 or [klee@bismarcknd.gov](mailto:klee@bismarcknd.gov).

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

# Proposed Plat Harvest Ridge Subdivision First Subdivision



Proposed Plat

August 26, 2016 (hlb)

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 herein.



# HARVEST RIDGE SUBDIVISION FIRST REPLAT

Being a replat of Lot 1, Block 1, and adjoining Right of Way, Harvest Ridge Subdivision  
in Northwest Quarter of Section 33, Township 140 North, Range 80 West  
of the Fifth Principal Meridian, Burleigh County, North Dakota

OCT 04 2016

**DESCRIPTION:**

HARVEST RIDGE SUBDIVISION FIRST REPLAT being a replat of Lot 1, Block 1 and adjoining Right of Way, HARVEST RIDGE SUBDIVISION, lying in the northwest quarter of Section 33, Township 140 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, and being more particularly described as follows:

Beginning at the northeast corner of Lot 1, Block 1 of HARVEST RIDGE SUBDIVISION; thence South 03 degrees 12 minutes 23 seconds West along the east line of said lot 789.57 feet to the centerline of Sage Dr.; thence South 87 degrees 59 minutes 56 seconds West along said centerline 12.92 feet to the intersection of Sage Dr. and Watercrest Ave.; thence North 42 degrees 00 minutes 00 seconds West along the centerline of Watercrest Ave. 205.31 feet; thence northwesterly along said centerline 221.48 feet along a tangential curve concave to the south having a radius of 380.00 feet and a central angle of 37 degrees 18 minutes 25 seconds; thence North 10 degrees 40 minutes 31 seconds East 40.00 feet to southwest corner of said Lot 1; thence North 03 degrees 46 minutes 13 seconds West along the west line of said lot 1, a distance of 514.55 feet to the northwest corner of said Lot 1; thence South 89 degrees 48 minutes 12 seconds East along said north line, a distance of 386.46 feet to the Point of Beginning. Containing 5.54 acres, more or less.

**WESTERN AREA POWER ADMINISTRATION  
WAPA TRANSMISSION LINE EASEMENT RESTRICTIONS**

THE UNITED STATES GOVERNMENT (WESTERN AREA POWER ADMINISTRATION) HOLDS A 125 FOOT (62.5') ON EACH SIDE OF THE CENTERLINE EASEMENT FOR THE RIGHT TO OPERATE, MAINTAIN, REPAIR, MAINTAIN, USE, CONSTRUCT, AND RECONSTRUCT AN ELECTRICAL TRANSMISSION LINE.  
THE FOLLOWING ACTIVITIES ARE PROHIBITED WITHIN THE TRANSMISSION LINE EASEMENT, UNLESS REVIEWED AND APPROVED BY WESTERN AREA POWER ADMINISTRATION (IN WRITING).

1. OWNER SHALL NOT ERECT ANY STRUCTURES, INCLUDING BUT NOT LIMITED TO, SHEDS, GARAGES, BARNES, HOMES, SIGNS, STORAGE TANKS, SEPTIC SYSTEMS, SWIMMING POOLS, TENNIS COURTS, OR SIMILAR FACILITIES.
2. OWNER SHALL NOT DRILL WELLS OR CONDUCT MINING OPERATIONS.
3. OWNER SHALL NOT GRANT PERMISSION TO THE PUBLIC FOR THE USE OF THE EASEMENT AREA, SUCH PROHIBITED USE SHALL INCLUDE ROADS, PARKING AREAS, STORAGE FACILITIES AND RECREATION FACILITIES.
4. OWNER SHALL NOT APPRECIABLY CHANGE THE CHARACTER OF EXISTING TOPOGRAPHY. NORMAL GARDENING PRACTICES MAY BE CONDUCTED.
5. OWNER SHALL NOT ERECT OR INSTALL FENCES ON OR ACROSS THE EASEMENT AREA WITHOUT FIRST SUBMITTING THE FENCE PLANS TO WESTERN AND OBTAINING WESTERN'S WRITTEN APPROVAL.
6. NO TREES OR VEGETATION SHALL BE PLANTED WITHIN THE RIGHT-OF-WAY.

REQUEST FOR PERMISSION TO USE THE TRANSMISSION LINE RIGHT-OF-WAY SHOULD BE SUBMITTED TO THE WESTERN AREA POWER ADMINISTRATION, NORTH DAKOTA MAINTENANCE OFFICE, P.O. BOX 1173, BISMARCK, ND 58502-1173.

CURVE	DELTA	RADIUS	ARC LENGTH
C1	022°26'37"	380.00'	148.85'
C2	002°47'43"	380.00'	18.54'
C3	017°06'30"	440.00'	131.38'
C4	006°31'34"	440.00'	50.12'
C5	033°09'17"	60.00'	34.72'
C6	193°40'18"	60.00'	202.81'
C7	060°00'00"	40.00'	41.89'
C8	010°27'39"	360.00'	65.73'

**AREA TABULATIONS:**

LOTS = 4.594 Acres  
STREET R.O.W. = 0.968 Acres  
TOTAL = 5.562 Acres

**BASIS OF BEARING:**

Derived from 2012 Town Plat

**COORDINATE DATUM:**

NORTH DAKOTA STATE PLAT COORDINATE SYSTEM  
NAD 83 South Zone 1302 (Adjusted 66)

**VERTICAL DATUM:**

INTERNATIONAL  
(GAYD 1)

**OWNERS:**

Felton Developing, Inc.  
503 Greenfield Lane  
Bismarck, ND 58503

**SURVEYOR:**

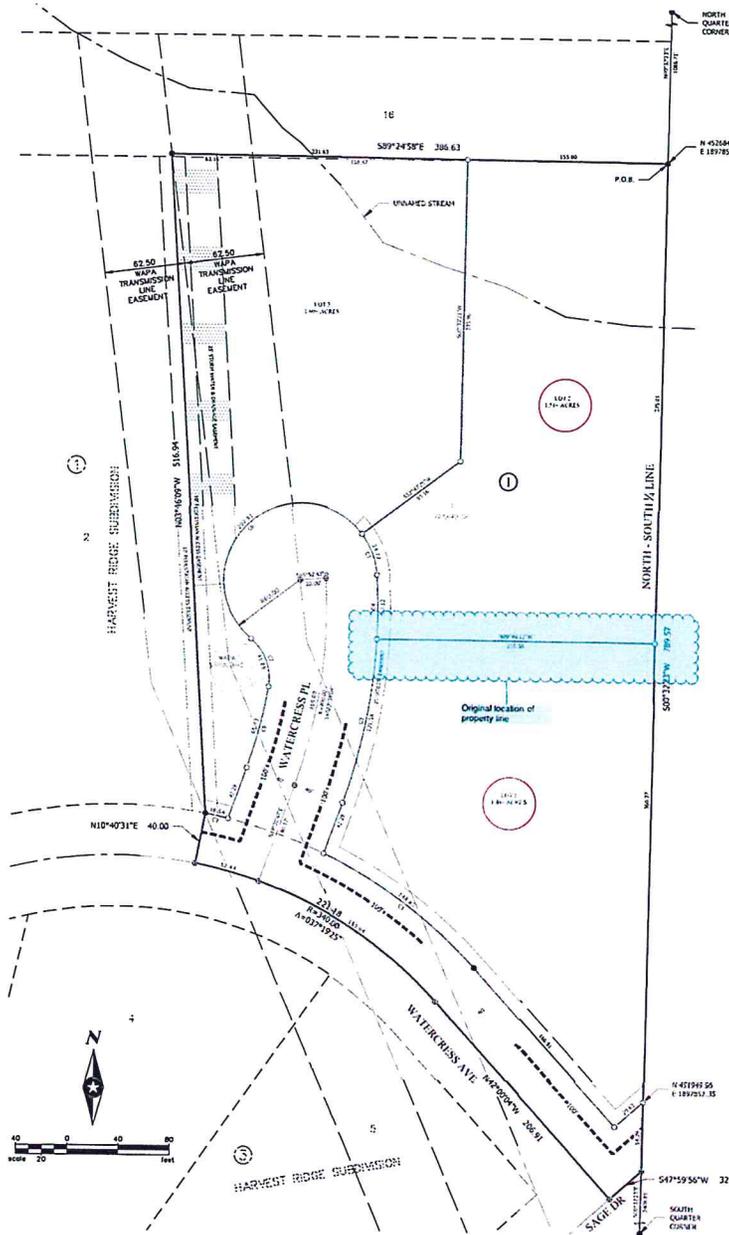
SEI/Robert M. Hig  
4719 Southburne St.  
Bismarck, ND 58503

**SURVEYED:**

August 8, 2016

**LEGEND:**

- FOUND MONUMENT
- REBAR W/ CAP 15-844
- ROADWAY POINT
- PLAT BOUNDARY
- HIGH ACCESS LINE
- UTILITY EASEMENT
- ADJACENT LOT LINE
- SECTION LINE



**SURVEYOR'S CERTIFICATE:**

I, Robert M. Hig, a Registered Land Surveyor in the State of North Dakota, hereby certify that I made the within and foregoing plat which is a correct representation of the survey prepared under my direct supervision and completed on August 8th, 2016, that all distances are correct, that the natural boundary lines are correctly designated hereon, that all dimensional and graphic details shown hereon are true and correct to the best of my knowledge and belief and that all required monuments are placed in the ground as shown.

Robert M. Hig  
Registered Professional Land Surveyor  
License No. 15-8444

STATE OF NORTH DAKOTA }  
COUNTY OF BURLEIGH }  
}

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Notary Public, \_\_\_\_\_ County, North Dakota

My Commission Expires: \_\_\_\_\_

**OWNER'S CERTIFICATE AND DEDICATION**

KNOW ALL PERSONS BY THESE PRESENTS, That Felton Developing, Inc., owner of the following described property:

HARVEST RIDGE SUBDIVISION FIRST REPLAT, AS DESCRIBED AND SHOWN HEREON BEING A REPLAT OF LOT 1, BLOCK 1 AND ADJOINING RIGHT OF WAY, HARVEST RIDGE SUBDIVISION, LYING IN THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 140 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA.

Has caused the same to be surveyed and platted as HARVEST RIDGE SUBDIVISION FIRST REPLAT and does hereby dedicate to the public for public use the public ways, lots and easements as created by this plat.

In witness whereof said Felton Developing, Inc., has caused these presents to be signed by its proper officers this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Wade Felton, President

STATE OF NORTH DAKOTA }  
COUNTY OF BURLEIGH }  
}

Be it known on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me personally appeared Wade Felton, President, and acknowledged the execution and signing of the above Certificate to be his voluntary act and deed.

Notary Public, \_\_\_\_\_ County, North Dakota

My Commission Expires: \_\_\_\_\_

**APPROVAL OF CITY PLANNING COMMISSION**

The subdivision of land as shown on the annexed plat has been approved by the Planning Commission of the City of Bismarck, on the \_\_\_\_\_ day of \_\_\_\_\_, 2016. In accordance with the laws of the State of North Dakota, ordinances of the City of Bismarck and regulations adopted by said Planning Commission. In witness whereof are set the hands and seals of the Chairman and the Secretary of the Planning Commission of the City of Bismarck.

Wynne Lee Yeager  
Chairman

Carl D. Hochmair  
Secretary

**APPROVAL OF BOARD OF CITY COMMISSIONERS**

The Board of City Commissioners of the City of Bismarck, North Dakota, has approved the subdivision of land as shown on the annexed plat and does hereby vacate any previous platting within the boundary of the annexed plat.

Attest  
Keith J. Hunkle, City Administrator

**APPROVAL OF CITY ENGINEER**

Gabriel J. Scheel, City Engineer of the City of Bismarck, North Dakota, hereby approve "HARVEST RIDGE SUBDIVISION FIRST REPLAT" Bismarck, North Dakota, as shown on the annexed plat.

Gabriel J. Scheel - City Engineer

**APPROVAL OF BOARD OF COUNTY COMMISSIONERS**

The Board of County Commissioners of Burleigh County, North Dakota, has approved the subdivision of land as shown on the annexed plat, has accepted the dedication of all streets shown thereon, has approved the plat as shown on the annexed plat as an amendment to the Master Plan of Burleigh County, North Dakota, and does hereby vacate any previous platting within the boundary of the annexed plat.  
The foregoing action of the Board of County Commissioners of Burleigh County, North Dakota, was taken by resolution approved the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Brian Bittner  
Chairman

Attest:  
Kevin J. Gurt - County Auditor



DATE: 10/5/16

# HARVEST RIDGE SUBDIVISION FIRST REPLAT

Being a replat of Lot 1, Block 1, and adjoining Right of Way, Harvest Ridge Subdivision in Northwest Quarter of Section 33, Township 140 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota

NOV 14 2016

**DESCRIPTION:**

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Beginning at the northeast corner of Lot 1, Block 1 of HARVEST RIDGE SUBDIVISION; thence South 02 degrees 32 minutes 23 seconds West along the east line of said Lot 1 and its southerly extension 783.37 feet to the centerline of Sage Drive; thence South 47 degrees 59 minutes 56 seconds West along said centerline 32.92 feet to the intersection of Sage Drive and Watercross Avenue; thence North 42 degrees 00 minutes 04 seconds West along the centerline of Watercross Avenue 205.91 feet; thence continuing northwesterly along said centerline 211.48 feet along a tangential curve concave to the south having a radius of 360.00 feet and a central angle of 37 degrees 19 minutes 23 seconds; thence North 10 degrees 40 minutes 31 seconds East 40.00 feet to the southwest corner of said Lot 1; thence North 03 degrees 46 minutes 09 seconds West along the west line of said Lot 1 a distance of 516.94 feet to the northwest corner of said Lot 2; thence South 85 degrees 24 minutes 58 seconds East along said north line, a distance of 386.63 feet to the Point of Beginning. Containing 5.54 acres, more or less.

**WESTERN AREA POWER ADMINISTRATION  
WAPA TRANSMISSION LINE EASEMENT RESTRICTIONS**

THE UNITED STATES GOVERNMENT WESTERN AREA POWER ADMINISTRATION HOLDS A 125 FOOT (62.5') ON EACH SIDE OF THE CENTERLINE EASEMENT FOR THE RIGHT TO OPERATE, PATROL, REPAIR, MAINTAIN, USE, CONSTRUCT, AND RECONSTRUCT AN ELECTRICAL TRANSMISSION LINE. THE FOLLOWING ACTIVITIES ARE PROHIBITED WITHIN THE TRANSMISSION LINE EASEMENT, UNLESS REVIEWED AND APPROVED BY WESTERN AREA POWER ADMINISTRATION (IN WRITING):

- OWNER SHALL NOT ERECT ANY STRUCTURES, STRUCTURES, BY WAY OF EXAMPLE, NOT BY LIMITATION, SHALL MEAN BUILDINGS, MOBILE HOMES, SIGNS, STORAGE TANKS, SEPTIC SYSTEMS, SWIMMING POOLS, TENNIS COURTS, OR SIMILAR FACILITIES.
- OWNER SHALL NOT DRILL WELLS OR CONDUCT MINING OPERATIONS.
- OWNER SHALL NOT GRANT PERMISSION TO THE PUBLIC FOR THE USE OF THE EASEMENT AREA, SUCH PROHIBITED USE SHALL INCLUDE ROADS, PARKING AREAS, STORAGE FACILITIES AND RECREATION FACILITIES.
- OWNER SHALL NOT APPRECIABLY CHANGE THE CHARACTER OF EXISTING TOPOGRAPHY. NORMAL GARDENING PRACTICES MAY BE CONDUCTED.
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CURVE	DELTA	RADIUS	ARC LENGTH
C1	022°26'37"	380.00	148.85
C2	002°47'43"	380.00	18.54
C3	017°08'30"	449.98	134.36
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C5	033°09'17"	60.00	34.72
C6	193°40'08"	60.00	202.81
C7	060°00'00"	40.00	41.89
C8	010°27'39"	360.00	65.73

**AREA TABULATIONS:**

Lots = 4.59 Acres  
Street ROW = 0.96 Acres  
Total = 5.55 Acres

**BASIS OF BEARING:**

Derived from State Plane Coordinates.

**COORDINATE DATUM:**

NORTH DAKOTA State Plane Coordinate System  
NAD 83 South Zone 3302 (Acquired 86)  
International Units

**VERTICAL DATUM:**

NAVD 83

**OWNERS:**

Fetion Developing, Inc.  
503 Grandfield Lane  
Bismarck, ND 58503

**SURVEYOR:**

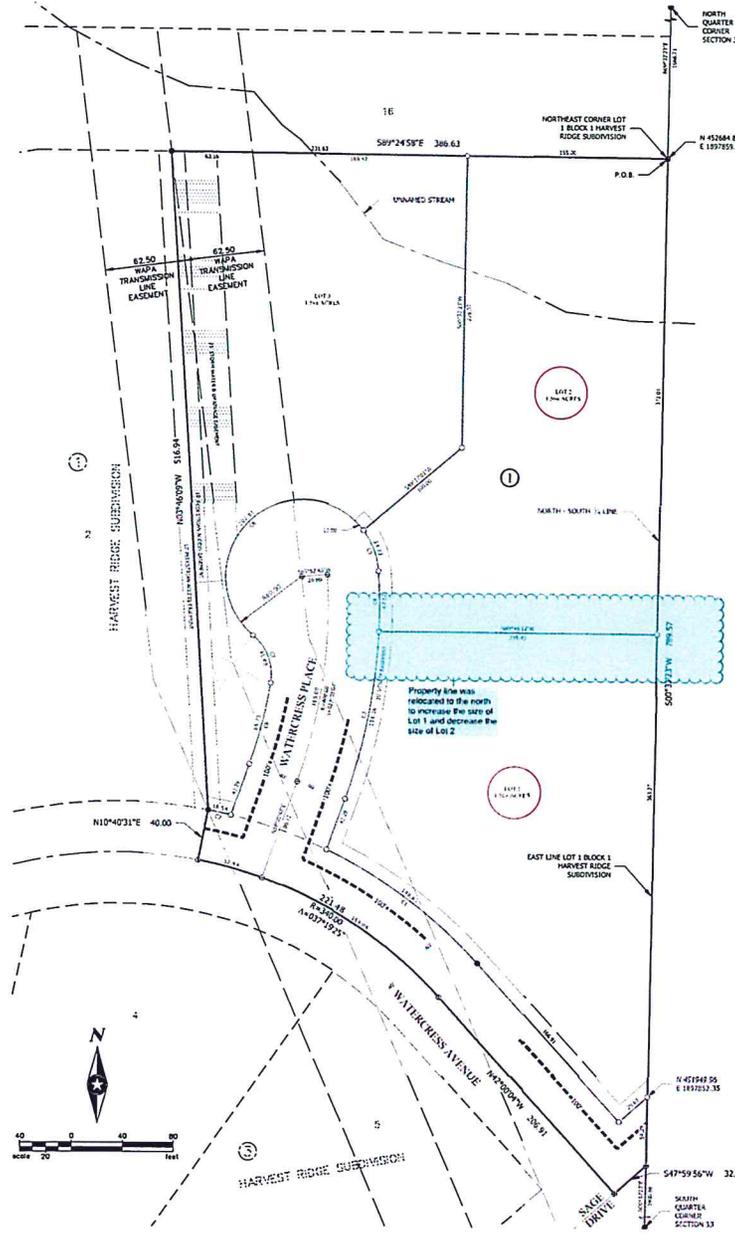
Robert M. Big  
3677 Bismarck Blvd. SLS  
4718 Shelburne St  
Bismarck, ND 58503

**SURVEYED:**

August 8, 2016

**LEGEND:**

- FOUND ACQUISITION
- REBAR W/ CAP IS-844
- ⊙ HIGHWAY POINT
- PLAT BOUNDARY
- NON EASEMENT LINE
- - - - - UTILITY EASEMENT
- - - - - ADJACENT LOT LINE
- SECTION LINE



**SURVEYOR'S CERTIFICATE:**

I, Robert M. Big, a Registered Professional Land Surveyor in the State of North Dakota, hereby certify that I made the within and foregoing plat which is a correct representation of the survey prepared under my direct supervision and completed on August 8th, 2016, that all distances are correct, that the outside boundary lines are correctly designated hereon, that all dimensional and graphic details shown hereon are true and correct to the best of my knowledge and belief and that all required monuments are placed in the ground as shown.



Robert M. Big  
Registered Professional Land Surveyor  
License No. LS 8444

STATE OF NORTH DAKOTA )  
COUNTY OF BURLEIGH )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_, 2016.

Notary Public, Burleigh County, North Dakota

My Commission Expires: \_\_\_\_\_

**OWNERS'S CERTIFICATE AND DEDICATION**

KNOW ALL PERSONS BY THESE PRESENTS, That Fetion Developing, Inc., owner of the following described property:

HARVEST RIDGE SUBDIVISION FIRST REPLAT, AS DESCRIBED AND SHOWN HEREON BEING A REPLAT OF LOT 1, BLOCK 1, AND ADJOINING RIGHT OF WAY, HARVEST RIDGE SUBDIVISION, IN NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 140 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA.

Has caused the same to be surveyed and platted as HARVEST RIDGE SUBDIVISION FIRST REPLAT and does hereby dedicate to the public for public use the public-ways, lots and easements as created by this plat.

In witness whereof said Fetion Developing, Inc., has caused these presents to be signed by its proper officers this \_\_\_ day of \_\_\_, 2016.

Wayne Fetion, President

STATE OF NORTH DAKOTA )  
COUNTY OF BURLEIGH )

Be it known on this \_\_\_ day of \_\_\_, 2016, before me personally appeared Wayne Fetion, President, and acknowledged the execution and signing of the above Certificate to be his voluntary act and deed.

Notary Public, \_\_\_\_\_ County, North Dakota

My Commission Expires: \_\_\_\_\_

**APPROVAL OF CITY PLANNING COMMISSION**

The subdivision of land as shown on the annexed plat has been approved by the Planning Commission of the City of Bismarck, on the \_\_\_ day of \_\_\_, 2016. In accordance with the laws of the State of North Dakota, and the laws of the City of Bismarck and regulations adopted by said Planning Commission. In witness whereof are set the hands and seals of the Chairman and the Secretary of the Planning Commission of the City of Bismarck.

Wayne Lee Yeager, Chairman  
Carl D. Hennesand, Secretary

**APPROVAL OF BOARD OF CITY COMMISSIONERS**

The Board of City Commissioners of the City of Bismarck, North Dakota, has approved the subdivision of land as shown on the annexed plat and does hereby vacate any previous platting within the boundary of the annexed plat.

Attest:  
Keith J. Hunkle, City Administrator

**APPROVAL OF CITY ENGINEER**

I, Gabriel J. Schell, City Engineer of the City of Bismarck, North Dakota, hereby approve "HARVEST RIDGE SUBDIVISION FIRST REPLAT" Bismarck, North Dakota, as shown on the annexed plat.

Gabriel J. Schell - City Engineer

**APPROVAL OF BOARD OF COUNTY COMMISSIONERS**

The Board of County Commissioners of Burleigh County, North Dakota, has approved the subdivision of land as shown on the annexed plat, has accepted the dedication of all streets shown thereon, has approved the grounds as shown on the annexed plat as an amendment to the Master Plan of Burleigh County, North Dakota, and does hereby vacate any previous platting within the boundary of the annexed plat.

The foregoing action of the Board of County Commissioners of Burleigh County, North Dakota, was taken by resolution approved on the \_\_\_ day of \_\_\_, 2016.

Brian Bistner, Chairman  
Allen J. Gatt, County Auditor

DATE: 11/7/16



PHONE: 701.334.7131  
FAX: 701.334.7132  
BISMARCK, ND 58503-3877  
www.sehinc.com



## ENGINEERING DEPARTMENT

**DATE:** November 15, 2016  
**FROM:** Gabe Schell, PE | City Engineer   
**ITEM:** Street Improvement District No. 14-479

### REQUEST

Approval of Contract Change Order No. 3.

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

Street Improvement District No. 14-479 included new pavement, traffic signals, street lighting, turn lanes, storm sewer, ADA ramps, sidewalks, and related items on or around East LaSalle Drive near Hay Creek Commercial Addition.

Change Order No. 3 (C.O. #3) is an additional contract amount due to reconciliation of actual quantities to the estimated quantities as part of the project closeout. This was accounted for in the project budget's contingency and relates to 2.35% of the contracted amount. The total overages for this project (C. O. #1, C.O. #2 and C.O. #3) or 2.94% of the contracted amount.

### RECOMMENDED CITY COMMISSION ACTION

Approve Change Order No. 3 for a change in the contract amount in the amount of \$77,921.81.

### STAFF CONTACT INFORMATION

Gabe Schell, PE, City Engineer, 355-1505, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

# CONTRACT CHANGE ORDER FORM

## DEPARTMENT

Contract between the City of Bismarck and Northern Improvement Company

Contract Number: 14-52 Change Order Number: 3

Project/Subproject: SI14-479 Original Contract Amt: \$3,315,817.51

Project Description: E. LaSalle Dr. extension and improvements, grading, base course hot bituminous pavement, curb & gutter, sidewalk, st. sewer, lighting, signals, signing

Previous Contract Amount: \$3,335,364.07

Change Order Amount: \$77,921.81

Original Contract Date: 10-01-2014 Change in Contract Timeline: -

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: Ottawa Street subcut, fabric and blended base. Project wide blended base and AC mix overage, Extra seed and mulch cost in median.

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



◇ October 28, 2016

Mr. Dan Roberson  
Engineering Department  
City of Bismarck  
PO Box 5503  
Bismarck, ND 58506

Re: Final Pay Estimate - SID #14-479 East LaSalle Drive near Hay Creek Commercial Addition

Dear Mr. Roberson:

Phase B Final Pay Estimate 6 and Phase A Final Pay Estimate 7 for SID #14-479 East LaSalle Drive are attached to this letter. We are requesting your review and approval of the Final Pay Estimates.

The project had an original completion date of August 1, 2015 that was extended to August 15, 2015 as approved by the City of Bismarck. The project was opened to traffic on August 26, 2015, which resulted in 11 days of liquidated damages being applied to the project totaling \$11,000. The project was considered substantially complete on October 1, 2015. Remaining work items including chip sealing, seeding, erosion control and other punch list items were completed in 2016. A final inspection was held with the City of Bismarck and KLJ on September 30, 2016. No corrective action items were noted.

Final Pay Estimates 6 & 7 were submitted to Northern Improvement Company for their review of the quantities and final payment. They have responded they are in agreement with the quantities and final payment.

The project was constructed in general conformance with the governing specifications, plans, and special provisions. The quantities on Final Pay Estimate 6 (Phase B) & 7 (Phase A) are full compensation for the project and we believe there are no outstanding issues in regards to quantities.



Sincerely,

KLJ

A handwritten signature in blue ink, appearing to read 'Patrick Gallagher'.

Patrick Gallagher, PE  
Project Engineer

Enclosure(s): Contractor's Application for Payment No. 6 & 7 - Final Payment  
Project #: 1414111



## FINANCE DEPARTMENT

**DATE:** November 15, 2016  
**FROM:** Sheila Hillman   
**ITEM:** Reallocation of 2016 One-time Building Maintenance Funds

### REQUEST

Consider approval of the reallocation of \$4,086 from 2016 one-time funds for a building maintenance project at the City/County Building.

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

At the September 27, 2016 meeting the Commission authorized the reallocation of one-time funds in Building Maintenance for the purchase and installation of carpet in the hallway of the City/County Building. With the removal of the old carpet, asbestos was found in the tile. The City has the responsibility to abate it and the additional costs are estimated to be \$4,086. The 2016 budget included \$20,000 in one-time building maintenance funds to replace 3 heat pumps as needed at the Public Health Center. No replacements were required so those funds are available for reallocation to fund the associated abatement costs.

### RECOMMENDED CITY COMMISSION ACTION

Approve the reallocation of \$4,086 of one-time funds from the Public Health Center heat pump replacement fund to the City/County Building for the completion of the asbestos abatement costs associated with the carpet replacement.

### STAFF CONTACT INFORMATION

Sheila Hillman: [shillman@bismarcknd.gov](mailto:shillman@bismarcknd.gov) or 355-1600



## **FIRE DEPARTMENT**

**DATE:** November 14, 2016  
**FROM:** Joel Boespflug, Fire Chief  
**ITEM:** Change Order for Fire Burn Building

### **REQUEST**

Placement on consent agenda.

Please place this item on the November 22, 2016 City Commission meeting.

### **BACKGROUND INFORMATION**

Timeline extension provides ability to better coordinate with other contractors and site work.

### **RECOMMENDED CITY COMMISSION ACTION**

Approval of change order G04 with Weisz & Sons Inc.

### **STAFF CONTACT INFORMATION**

Joel Boespflug, Fire Chief; email: [jboespflug@bismarcknd.gov](mailto:jboespflug@bismarcknd.gov); phone 355-1400  
Dean Meyer, Deputy Fire Chief; email: [dmeyer@bismarcknd.gov](mailto:dmeyer@bismarcknd.gov); phone 355-1400

# CONTRACT CHANGE ORDER FORM

## DEPARTMENT

Contract between the City of Bismarck and Weisz & Sons, Inc.

Contract Number: \_\_\_\_\_ Change Order Number: 604

Project/Subproject: \_\_\_\_\_ Original Contract Amt: 438,500

Project Description: FIRE TRAINING TOWER

Previous Contract Amount: 466,050

Change Order Amount: \_\_\_\_\_

Original Contract Date: 8-9-16/9/8/16 Change in Contract Timeline: 11/28/16

Within Project Scope:  / N\*

Within Project Funding:  / 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) \_\_\_\_\_

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

Date

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

Date

## ADMINISTRATION

City Administrator Signature: (<\$50,000) [Signature] 11-10-16

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



**AIA**<sup>®</sup>

# Document G701™ – 2001

## Change Order

<b>PROJECT</b> (Name and address): Firefighting Training Tower - Site Improvements 4103 E Divide Ave. Bismarck, ND	<b>CHANGE ORDER NUMBER:</b> G04 <b>DATE:</b> November 1, 2016	<b>OWNER:</b> <input type="checkbox"/> <b>ARCHITECT:</b> <input type="checkbox"/> <b>CONTRACTOR:</b> <input type="checkbox"/> <b>FIELD:</b> <input type="checkbox"/> <b>OTHER:</b> <input type="checkbox"/>
<b>TO CONTRACTOR</b> (Name and address): Weisz & Sons Inc. 3310 Hamilton Street PO Box 1756 Bismarck, ND 58502	<b>ARCHITECT'S PROJECT NUMBER:</b> 20143722 <b>CONTRACT DATE:</b> 7/12/16 <b>CONTRACT FOR:</b> General Construction	

**THE CONTRACT IS CHANGED AS FOLLOWS:**

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

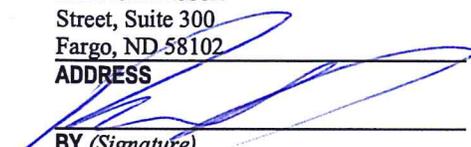
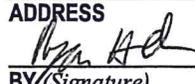
The original Contract Sum was	\$	<u>438,500.00</u>
The net change by previously authorized Change Orders	\$	<u>27,550.00</u>
The Contract Sum prior to this Change Order was	\$	<u>466,050.00</u>
The Contract Sum will be increased by this Change Order in the amount of	\$	<u>0.00</u>
The new Contract Sum including this Change Order will be	\$	<u>466,050.00</u>

The Contract Time will be **One hundred one (101) days.**

The date of Substantial Completion as of the date of this Change Order therefore is November 28, 2016

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

Engineers-Architects, P.C. (herein known as EAPC Architects Engineers)	Weisz & Sons Inc.	City of Bismarck Fire Department
<b>ARCHITECT</b> (Firm name)	<b>CONTRACTOR</b> (Firm name)	<b>OWNER</b> (Firm name)
112 North Robert Street, Suite 300 Fargo, ND 58102	3310 Hamilton Street PO Box 1756 Bismarck, ND 58502	1020 E. Central Ave. Bismarck, ND 58501
<b>ADDRESS</b>	<b>ADDRESS</b>	<b>ADDRESS</b>
		
<b>BY</b> (Signature)	<b>BY</b> (Signature)	<b>BY</b> (Signature)
Brett Donat	Dan Weisz RYAN Tolan	Michael C. Seminary
(Typed name)	(Typed name)	(Typed name)
11-4-16	11-7-16	
<b>DATE</b>	<b>DATE</b>	<b>DATE</b>



## PUBLIC WORKS – UTILITY OPERATIONS

**DATE:** November 15, 2016  
**FROM:** Michelle Klose, Director of Utility Operations *MK*  
**ITEM:** Purchase of Chemicals During Transition

### REQUEST

Permission to purchase corrosion control and hydrogen sulfide chemicals based on quotes as needed through April 30, 2017 to gain better understanding of chemicals and quantities needed.

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

We have two chemical changes that we will be working through the next several months. We plan to exclude corrosion control and hydrogen sulfide chemicals in the annual bids at this point as we need time to evaluate chemical options and have not made a final selection yet. By providing approval through the end of April, we would work to bid in March to have contracts in place by the end of April.

The corrosion control chemical is for the Water Treatment Plant. We will be working to identify a better blend of the polyphosphate and orthophosphate to provide our corrosion control and protection on lead service lines while attempting to reduce precipitate issues that are being seen in some parts of the distribution system. We will need time to work with possibly a couple of different chemical combinations before we will know what works best for our plant. At this point we expect the cost to be generally \$9,000 per month.

The other chemical is being evaluated to be added at a couple of our lift stations to reduce the hydrogen sulfide that is coming into the Wastewater Treatment Plant. This is part of the emergency repair recommendations to better control the corrosion of the piping within the plant. We have rough estimates of \$10,000 per month, however we need to evaluate the benefits seen in relation to the feed rates to be able to provide future recommendations.

### RECOMMENDED CITY COMMISSION ACTION

Grant permission to purchase corrosion control and hydrogen sulfide reducing chemicals based on quotes as needed through April 30, 2017.

### STAFF CONTACT INFORMATION

Michelle Klose, Director of Utility Operations, 355-1700, [mklose@bismarcknd.gov](mailto:mklose@bismarcknd.gov)



## ENGINEERING DEPARTMENT

**DATE:** November 17, 2016  
**FROM:** Gabe Schell, PE | City Engineer   
**ITEM:** Development Agreement – Revised – Memory 1<sup>st</sup> Addition

### REQUEST

Approval of the revised development agreement with RBK Ventures, LLC and Ronald M and Ruth A Knutson for Memory 1<sup>st</sup> Addition.

Please place this item on the November 22, 2016 City Commission meeting

### BACKGROUND INFORMATION

At the October 25, 2016 commission meeting we asked for the commission's approval of an unsigned development agreement with the Developer of Memory 1<sup>st</sup> Addition. Since that time, city staff and the developer have made some revisions and clarifications to that agreement. Below is an outline of these changes, with a full copy of the agreement attached for your review.

- The agreement now recognizes the distinction between the two property owners, where one is the developer, RBK Ventures, LLC and one is the land owner, Ron and Ruth Knutson (Paragraph 1).
- The agreement clarifies that both the land owner and the developer agree to the 3-year timeline on the annexation of the remaining property (Item #1).
- The agreement clarifies that the developer will be the party petitioning for the public improvements (Items #2, #3 and #4) and the land owner will not protest these public improvements (Item #11-added language).
- Removal of the Ridgedale Street connection between Elbowoods Lane and 57<sup>th</sup> Avenue is a response to the street improvements for 57<sup>th</sup> Avenue and N 19<sup>th</sup> Street being completed and will be included as part of the project (Item #5). The previous agreement stated that the developer would remove the Ridgedale connection.
- Petitions for the future improvements along 57<sup>th</sup> Avenue and the remaining N 19<sup>th</sup> Street will be tied to the developer's desire to develop on Blocks 1 and 3. It no longer includes Lot 2 of Block 2, of which the developer will no longer be the owner (Item #4). Should the owner of Lot 2, Block 2 choose to develop prior to the developer, the City would have the ability to request

petitions or improvements from the Lot 2, Block 2 owner to meet the requirements of city policy and ordinance.

The developer and land owner have agreed to sign this agreement and the aforementioned petitions. The signed agreement will be brought to the commission meeting.

### **RECOMMENDED CITY COMMISSION ACTION**

Approval of Developers Agreement with changes listed.

### **STAFF CONTACT INFORMATION**

Gabe Schell, PE, City Engineer, 355-1505 [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

# CONTRACT REVIEW

## ENGINEERING DEPARTMENT

Contract between the City of Bismarck and Ron and Ruth Knutson, RBK Ventures

Purpose of Contract: Development Agreement for Memory 1st

Contract Amount: \$ N/A

Contract Period: N/A thru N/A

Funding Source: N/A

Federal Project Number (if applicable): N/A

City Project Number: N/A

Comments: On commission for approval on Nov 22 agenda. Signed original to replace this scan version once it is delivered. Kristi will hold original.

After Mayor's signature, route to: Kristi Hass for Mayors Signature if commission approves

Department Signature: Hal Schell 11/21/16  
Date

## CITY ATTORNEY

Comments: OK

City Attorney Signature: [Signature] 11-21-16  
Date

## FISCAL

Comments: OK

Director of Finance Signature: [Signature] 11-21-16  
Date

## APPROVAL

City Administrator Signature: [Signature] 11-21-16  
Date

## DEVELOPMENT AGREEMENT

The City of Bismarck (the "**City**"), and RBK Ventures, LLC, their successors and assigns (the "**Developer**") and Ronald M. and Ruth A. Knutson, their successors and assigns (the "**Land Owner**"), make the following Agreement ("**Agreement**") with regard to public and private infrastructure improvements on public right-of-way and through lands owned by the **Land Owner** ("**Land Owner's Property**") and lands owned by the **Developer** ("**Developer's Property**"), as depicted Exhibit "A" (Final plat) attached hereto and incorporated herein by reference, such lands being in and adjacent to land being platted as Memory 1st Addition, located in Section 10, Hay Creek Township, Burleigh County, North Dakota (T139N-R80W).

The **Developer** desires to develop the land known as Memory 1<sup>st</sup> Addition. In exchange for the mutual performance of the parties under this Agreement, the parties hereby agree to the following terms, conditions and obligations:

1. Annexation will occur upon petition by the owner for Lot 1, Block 2, Memory 1st Addition, along with all of the Elbowoods Lane right-of-way adjacent to Lots 1 and 2, Block 1, and Lot 1, Block 2, and that part of the North 19th Street right-of-way from an extension of the southern right-of-way line of Elbowoods Lane north to the northern edge of the plat adjacent to Lots 1 and 2, Block 2 and Lots 3 and 4, Block 3. Contemporaneously with the execution of this Agreement, the **Land Owner and Developer** shall file with the City duly executed petition for annexation for the remaining portion of Memory 1st Addition which shall occur no later than 3 years from the date of execution of this Agreement.
2. The **City** and the **Developer** agrees that, contemporaneously with the execution of this Agreement, the **Developer** shall file with the **City** duly executed petitions for the public improvements within Memory 1st Addition to install public improvements by three-way agreement as follows:

Water. Installed within the right of way along Ridgedale Street from 57<sup>th</sup> Avenue to Elbowoods Lane, Elbowoods Lane from Ridgedale Street to N 19<sup>th</sup> Street and N 19<sup>th</sup> Street from 30' south of Elbowoods Lane to the temporary cul de sac as shown on the plat.

Sewer. Installed within the right of way of Elbowoods Lane from Ridgedale Street to N 19<sup>th</sup> Street and N 19<sup>th</sup> Street from 30' south of Elbowoods Lane to the existing sanitary sewer trunk line north of the plat.

Street. Elbowoods Lane from Ridgedale Street to N 19<sup>th</sup> Street and N 19<sup>th</sup> Street from 25' south of the southern right of way line of Elbowoods Lane to the temporary cul de sac easement as shown on the plat north of Elbowoods Lane.

3. Contemporaneously with the execution of this Agreement, the **Developer** will also duly execute and deliver to the **City** a petition for street lighting along the entire length of the constructed streets which will be completed under a special assessment district. The assessed costs for street lighting for those lots not annexed at the time will be held in abeyance until such time as they are annexed. For streets not yet constructed, street lighting shall be installed in accordance with the City's current policies.
4. The **Developer** will also duly execute and deliver to the **City** petitions for all public improvements related to 57<sup>th</sup> Avenue from US Highway 83 to N 19<sup>th</sup> Street, N 19<sup>th</sup> Street from 57<sup>th</sup> Avenue to Elbowoods Lane and from the temporary cul de sac to the north plat boundary at the time the remaining parcels have been annexed and the **Developer** elects to proceed with improvements to property in Block 1 or Block 3 within the Memory 1<sup>st</sup> Addition. Public improvements shall include all necessary storm water facilities, sanitary sewer, water and roadway improvements. The issuance of building permits on Block 1, Block 3 or Lot 2, Block 2, as it relates to the completion of public improvements, will be in accordance with current city policy and city ordinance.
5. Ridgedale Street from Elbowoods Lane to 57<sup>th</sup> Avenue will be closed and removed at such time as the remaining annexation of Memory 1<sup>st</sup> Addition as described in Paragraph 1 occurs and the public improvements as described in Paragraph 4 have been completed. Work to remove Ridgedale Street shall be included in the project to construct the roadways as described in Paragraph 4.
6. At the time N 19<sup>th</sup> Street is extended to and beyond the north plat boundary, the **Developer** shall remove the cul de sac and shall vacate the temporary cul de sac easement.

7. Prior to developing Lots 2 and 3, Block 3 or the adjacent N 19<sup>th</sup> Street south of Elbowoods Lane, the **Developer** will develop and submit for City approval, a plan for draining Lot 3, Block 3 into the storm water detention area located on Lot 1, Block 3. Prior to developing Lots 1 and 2, Block 1 or the adjacent N 19<sup>th</sup> Street south of Elbowoods Lane, the **Developer** will develop and submit for City approval, a plan for draining Lot 1, Block 1 into the storm water detention area located on Lot 1, Block 3. This is pursuant to the recommendation in the approved Storm Water Management Plan for Memory 1<sup>st</sup> Addition.
8. The **Developer** will provide an off-site easement for the sanitary sewer trunk line as shown on the utility master plan dated July 27, 2016, Exhibit "B". The easement shall be provided prior to the City entering into the three-way agreement to install the trunk line.
9. Engineering fees incurred by the **City** either through a consultant contract or use of **City** engineering staff time associated with the improvements described in this Agreement will be allocated to each improvement pursuant to the City's current policies. If an improvement cost will be special assessed, the allocated engineering fee will be special assessed provided the **City** is party to the contract generating the fee.
10. All improvements within the public right-of-way adjacent to the Memory 1st Addition shall be completed in compliance with the provisions contained in the "Construction Specifications for Municipal Public Works Improvements," Bismarck, North Dakota, dated February 1969 and revised April 2014 or latest revision thereto, unless other documents such as the NDDOT Specifications supersede those requirements. All work shall be done by a contractor who is licensed and bonded to work within the City of Bismarck and the State of North Dakota, in conformance with the requirements of the North Dakota Century Code, and shall proceed only after the necessary permits and approvals have been obtained. Unless otherwise modified by this Agreement, all City development policies regarding public improvements must be followed.
11. The **Land Owner** consents to the development and installation of public improvements as detailed in this **Agreement** and will not file a protest against said public improvements.

12. Successors and Assigns. This Agreement shall apply to, inure to the benefit of, and be binding upon and enforceable against the parties hereto and their respective transferees, successors and assigns

All portions of the public improvements described in this agreement not to be special assessed will be designed, contracted, and constructed according to the City's 3-way agreement process.

The City will issue certificates of occupancy when all building codes and safety requirements have been met.

This Agreement shall bind the parties, their successors, assigns, and heirs.

Dated this 21<sup>st</sup> day of November, 2016.

**Land Owner:**

By: Ronald M. Knutson By: Ruth A. Knutson  
Ronald M. Knutson Ruth A. Knutson

Dated this 21<sup>st</sup> day of November, 2016.

**Developer,** RBK Ventures, LLC.

By: Ronald M. Knutson  
Ronald M. Knutson, Partner

Dated this \_\_\_ day of November, 2016

**City of Bismarck**

\_\_\_\_\_  
Michael C. Seminary, President,  
Board of City Commissioners

Attest: \_\_\_\_\_  
Keith J. Hunke, City  
Administrator







## FINANCE DEPARTMENT

**DATE:** November 15, 2016  
**FROM:** Sheila Hillman *SH*  
**ITEM:** Resolutions authorizing the issuance and award of bids for bonds

### REQUEST

Commission to authorize the issuance and award of bids for \$18,365,000 Refunding Improvement Bonds for 2016, Series L and \$1,970,000 Sidewalk, Curb and Gutter Warrants, Series SCG-2015

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

The City will sell special assessment improvement districts refunding bonds for \$18,365,000 and warrants for \$1,970,000 for the annual sidewalk, curb and gutter on November 22. Mike Manstrom, from Dougherty & Company LLC will provide the bids at the Commission meeting. Attached are the resolutions that will be presented for your approval.

### RECOMMENDED CITY COMMISSION ACTION

Authorize the resolutions for the issuance and award of bids for the special assessment bonds and warrants

### STAFF CONTACT INFORMATION

Sheila Hillman: [shillman@bismarcknd.gov](mailto:shillman@bismarcknd.gov) or 355-1600

Attachments

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RESOLUTION AUTHORIZING THE ISSUANCE OF  
IMPROVEMENT WARRANTS AND EXCHANGING THEM FOR  
\$18,365,000 REFUNDING IMPROVEMENT BONDS OF 2016, SERIES L

CITY OF BISMARCK

Adopted: November 22, 2016

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This instrument was drafted by:

John T. Shockley  
Ohnstad Twichell, P.C.  
P.O. Box 458  
West Fargo, ND 58078-0458

Commissioner \_\_\_\_\_ introduced the following resolution and moved its adoption:

RESOLUTION AUTHORIZING THE ISSUANCE OF IMPROVEMENT WARRANTS  
AND EXCHANGING THEM FOR \$18,365,000  
REFUNDING IMPROVEMENT BONDS OF 2016, SERIES L

WHEREAS, the City of Bismarck, North Dakota (the "Issuer") has previously created one or more improvement districts as set out in this resolution for the purpose of constructing municipal improvements (the "Improvements"); and

WHEREAS, to finance such Improvements, the Issuer will issue one or more improvement warrants and has levied or will levy assessments on the property in the improvement district(s) benefitted thereby to pay for the warrants; and

WHEREAS, pursuant to Chapter 40-27 of the North Dakota Century Code, the Issuer will immediately exchange the warrant(s) for its \$18,365,000 Refunding Improvement Bonds of 2016, Series L (the "Bonds").

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Issuer as follows:

Section 1. Authorization and Sale.

1.01. The actions heretofore taken by the Finance Director and others relating to the sale of the improvement warrant(s) and Refunding Improvement Bonds sold on this date, are approved, ratified and confirmed; that, having considered all bids received for the purchase of the improvement warrant(s), it is hereby found and determined that the most favorable of such bids is that of \_\_\_\_\_, to purchase the warrants at a price of \$\_\_\_\_\_ plus accrued interest, on the condition that the warrant(s) shall be exchanged on a par for par basis for the Bonds described in this resolution, which terms are equivalent to an average annual net interest rate on the Bonds of \_\_\_\_\_% per annum; that the President of the Board of City Commissioners and Finance Director are authorized and directed to make and execute all documents necessary on the part of the Issuer for the sale of the warrant(s) and Bonds in accordance with this resolution.

Section 2. Special Assessments.

2.01. The Issuer covenants and agrees with all holders of each warrant and Bonds that it will do and perform as soon as may be possible, in accordance with law, all acts and things necessary for the final and valid levy of special assessments against properties within each district benefitted by the improvements as set out in

Section 3, in an aggregate amount equal to the total cost of the improvement to the Issuer, except any portion, not exceeding one-fifth of the cost of the improvement and not exceeding any applicable constitutional or statutory debt limit, as the Issuer may determine to pay by the levy of ad valorem taxes upon all taxable property within its corporate limits. In the event that the assessment should at any time be held invalid with respect to any lot or tract of land, due to any error, defect or irregularity in any action or proceeding taken or to be taken by the Issuer or by the governing body or by any officers or employees, either in the making of the assessment or in the performance of any condition precedent thereto, the Issuer covenants and agrees that it will forthwith do all such further acts and take all such further proceedings as may be required by law to make such assessment a valid and binding lien upon such lot or tract. The installments of special assessments from time to time remaining unpaid shall bear interest at the rate of \_\_\_\_\_% per annum and the special assessments shall be levied in equal annual installments of principal as set out in Section 3.

Section 3. The Warrants.

3.01. Each warrant shall bear interest from the date of issue until paid at the rate of \_\_\_\_\_% per annum, payable semi-annually on each May 1 and November 1, commencing May 1, 2017. Each warrant shall be exchanged for the Bonds at closing. The principal of and interest on each warrant shall be payable at the office of the Finance Director. Each warrant shall be in the principal amounts set forth below, and shall be payable on May 1 in the respective years and amounts as follows:

<u>District Designation</u>	<u>Principal Amount</u>	<u>Years Levied</u>	<u>Amounts and Years of Payment</u>
Street Improvement District No. 488	\$2,257,209.67	2016-2030	\$150,480.65 in each of the years 2017 through 2031
Street Improvement District No. 489	\$ 355,238.42	2016-2030	\$ 23,682.57 in each of the years 2017 through 2031
Street Improvement District No. 489, Phase 2	\$1,034,439.20	2016-2022	\$147,777.03 in each of the years 2017 through 2023
Street Improvement District No. 490	\$1,455,834.12	2016-2030	\$ 98,055.61 in each of the years 2017 through 2031

Street Improvement District No. 490, Phase 2	\$ 635,166.05	2016-2022	\$ 90,738.01 in each of the years 2017 through 2023
Street Improvement District No. 491	\$1,877,866.69	2016-2030	\$125,191.12 in each of the years 2017 through 2031
Street Improvement District No. 492	\$1,084,899.45	2016-2025	\$108,489.95 each of the years 2017 through 2026
Street Improvement District No. 493	\$ 972,238.25	2016-2025	\$ 97,223.83 in each of the years 2017 through 2026
Street Improvement District No. 495	\$ 906,816.92	2016-2025	\$ 90,681.70 in each of the years 2017 through 2026
Street Improvement District No. 496	\$1,645,580.85	2016-2030	\$109,705.39 in each of the years 2017 through 2031
Street Improvement District No. 498	\$1,789,658.17	2016-2030	\$119,310.55 in each of the years 2017 through 2031
Street Improvement District No. 501	\$ 361,686.26	2016-2030	\$ 24,112.42 in each of the years 2017 through 2031
Street Improvement District No. 502	\$ 100,853.52	2016-2030	\$ 6,723.57 in each of the years 2017 through 2031
Sewer Improvement District No. 560	\$ 164,511.91	2016-2030	\$ 10,967.46 in each of the years 2017 through 2031
Sewer Improvement District No. 561	\$ 875,435.31	2016-2030	\$ 58,362.36 in each of the years 2017 through 2031
Sewer Improvement District No. 562	\$1,374,239.53	2016-2030	\$ 91,615.97 in each of the years 2017 through 2031

Sewer Improvement District No. 564	\$ 419,995.98	2016-2030	\$ 27,999.74 in each of the years 2017 through 2031
Sewer Improvement District No. 566	\$ 371,460.03	2016-2030	\$ 24,764.01 in each of the years 2017-2031
Sewer Improvement District No. 567	\$ 79,914.51	2016-2030	\$ 5,327.64 in each of the years 2017 through 2031
Water Improvement District No. 326	\$ 229,056.33	2016-2030	\$ 15,270.43 in each of the years 2017 through 2031
Water Improvement District No. 327	\$ 55,645.52	2016-2030	\$ 3,709.71 in each of the years 2017 through 2031
Water Improvement District No. 328	\$ 317,254.00	2016-2030	\$ 21,150.27 in each of the years 2017 through 2031

3.02. Each improvement warrant shall be typewritten and photocopied in substantially the form attached hereto as Attachment 3.

Section 4. Terms of Bonds.

4.01. The Bonds shall initially be dated December 15, 2016. Bonds issued upon exchange or transfer after May 1, 2017, shall be dated as of the interest payment date next preceding their issuance, or if the date of such issuance shall be on an interest payment date as of the date of such issue; provided, however, that if interest on the Bonds shall be in default, the Bonds shall be dated as of the date to which interest has been paid in full on the Bonds being transferred. The Bonds shall be issued in fully registered form in denominations of \$5,000 or any multiple thereof, of single maturities. The Bonds shall be numbered in consecutive numerical order from R-1 upwards as issued and shall mature on May 1 in the years and in the amounts and shall bear interest at the rates set forth in the Schedule of Maturities and Interest Rates attached hereto as Attachment 1.

4.02. Interest on the Bonds and, upon presentation and surrender thereof, the principal thereof shall be payable in lawful money of the United States of America by check or draft by the Starion Bond Services as Paying Agent, or its successor. Interest shall be payable on May 1 and November 1 in each year, commencing

May 1, 2017, to the holder of record on the close of the 15th day (whether or not a business day) of the immediately preceding month. Interest on the Bonds shall cease at maturity or on a date prior thereto on which they have been duly called for redemption unless the holder thereof shall present the same for payment and payment is refused.

Section 5. Redemption.

5.01. The Bonds maturing in the year 2024 and thereafter, may be redeemed prior to their respective maturity dates, at the option of the Issuer, on May 1, 2023, and on any date thereafter, at a price equal to the principal amount plus accrued interest. Redemption may be in whole or in part, and if in part, at the option of the Issuer and in such manner as the Issuer shall determine and within a maturity by lot as selected by the registrar. Not less than thirty (30) days prior to the date specified for redemption and prepayment of any of the Bonds, the Issuer will cause notice of the call thereof to be sent by mail to the Bond Registrar, Paying Agent and registered owner of the Bond to be redeemed in whole or in part at the address shown on the registration books of the Registrar.

Section 6. Execution.

6.01. The Bonds shall be prepared under the supervision and at the direction of the Finance Director, executed by the manual signature of the President of the Board of City Commissioners, and attested to by the manual signature of the Finance Director and delivered to the holder at closing upon receipt of the purchase price plus any accrued interest. The Bonds shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under this Resolution until the Certificate of Authentication thereon shall have been executed by the Bond Registrar by manual signature of one of its authorized representatives.

6.02. The Bonds shall be reproduced in substantially the form attached to this Resolution as Attachment 2.

Section 7. Construction Fund.

7.01. The Issuer shall establish a Construction Fund which shall be established and maintained as a separate fund and used only to pay or reimburse costs and expenses which under accepted accounting practices constitute capital costs necessarily incurred to construct the Improvements, including but not limited to land, easements, buildings, structures, machinery and equipment and the cost of all architectural, engineering, legal and other professional services, printing and publication and other costs reasonable, necessary and incidental thereto. To this fund shall be credited all proceeds of the Bonds, except accrued interest which will be

deposited into the Bond Fund. Only costs and expenses of the Improvements shall be paid from time to time as incurred from the Construction Fund, and the monies in the Construction fund should be used for no other purposes. If upon the completion of the Improvements there shall remain any unexpended balance in the Construction Fund, such balance shall be transferred to the Bond Fund.

Section 8. Bond Fund.

8.01. There shall be and is hereby established a special fund to be maintained by the Finance Director separate and apart from all other funds of the Issuer, to be designated as the Refunding Improvement Bonds of 2016, Series L Bond Fund (the "Bond Fund"). To the Bond Fund shall be credited each improvement warrant issued by this resolution when received by the Finance Director, which warrant(s) shall thereupon become and shall thereafter be held as an asset of the Bond Fund, and the proceeds of all assessments for each improvement warrant so acquired shall be held by the Issuer in trust for the use and benefit of the holders from time to time of the Bonds herein authorized. The assessments levied for each warrant shall be continued and payments shall be made therefrom on each improvement warrant drawn thereon in the same manner as though each improvement warrant had not been exchanged. All payments of principal and interest made on each improvement warrant shall be credited to the Bond Fund and shall be used and applied in payment of the principal of and interest on the Bonds as such principal and interest become due.

8.02. In the event the moneys in the Bond Fund should at any time be insufficient to meet all payments of principal and interest then due on the Bonds, said moneys shall be first used to pay the interest accrued on all outstanding Bonds issued pursuant to this resolution, and the balance shall be applied in payment of the principal of said Bonds in order of their maturity dates, earliest Bonds first, Bonds bearing the same maturity dates being paid pro rata. The Issuer reserves the right and privilege of refunding any of such matured Bonds for the payment of which moneys are not at the time available by issuing new refunding improvement bonds payable from said fund, which refunding improvement bonds shall be on a parity with those theretofore issued as to interest charges thereon, but the maturity thereof shall be subsequent to the maturity of all Bonds payable from said fund and then outstanding, provided that no holder of Bonds herein authorized to be issued shall be obligated to accept any such refunding improvement bond in exchange for any of such matured Bond.

Section 9. Covenants of Issuer.

9.01. The Issuer will use due diligence to collect said improvement warrants and to levy and collect the special assessments appropriated for their payment.

9.02. The Issuer will preserve and enforce for the benefit of the holders from time to time of the Bonds all of the rights, powers and privileges reserved to the holders of each improvement warrant.

9.03. At the time and in the manner prescribed by Section 40-26-08, North Dakota Century Code, as amended, this governing body will levy general taxes on all taxable property in the corporate limits of the Issuer and/or appropriate sums from all other legally available funds for the payment of any deficiency in any of said improvement district funds and will cause the proceeds thereof to be applied in payment of the principal of and interest on the then unpaid improvement warrants drawn on said funds; provided that the Issuer reserves the right to levy taxes in the manner and to the extent permitted by law and/or to appropriate sums from other legally available funds for payment and discharge of any deficiency in said improvement district funds prior to the date upon which it may become obligatory to levy such deficiency taxes, and the amounts thereof shall be credited against the levies which the Issuer might otherwise have been obligated to make.

Section 10. Negative Covenants.

10.01. The Issuer shall not (i) consent or agree to or permit any rescission of or amendment to the Warrants set forth in Section 3 which would reduce the amount of the Warrant or which would in any manner materially impair or materially adversely affect the rights of, or the validity, perfection or priority of the security interest of the Bondholders in and to, the Warrants, and (ii) amend, modify or supplement, nor agree to any amendment or modification of, or supplement to, any of the Related Documents or consent to, or permit or suffer to occur any action, course of dealing or omission which results in, or is equivalent to, an amendment, supplementation, termination or modification of any of the Related Documents, without the prior written consent of the Bondholders and any such amendment, supplementation, termination or modification made or entered into in violation of this subsection shall be deemed a nullity and of no force and effect.

10.02. The Issuer shall not directly or indirectly liquidate, wind up, terminate, reorganize, dissolve, merge or consolidate (or suffer any liquidation, winding up, termination, reorganization or dissolution), except as consented to in writing by the Bondholder in its sole discretion.

10.03. The Issuer will not adopt, permit or consent to any change in accounting practices other than as required by GAAP and will not adopt, permit or consent to any change in its Fiscal Year or take (or permit to be taken) any action that results in (a) a change to its entity classification for Federal or State income tax purposes, or (b) a change to the method of accounting applicable to the Warrants, or the times of commencement or termination of Fiscal Years or other accounting periods relating to Warrants without first disclosing in writing such change to the Bondholders.

10.04. To the extent that ERISA may become applicable to the Issuer, the Issuer will not violate ERISA in any way that could reasonably be expected to have a Material Adverse Effect.

10.05. The Issuer shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest on the Bond from the gross income of the holders thereof for purposes of Federal income taxation under the Code and State income taxation.

#### Section 11. Arbitrage.

11.01. The Issuer covenants and agrees with the holders from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents, any action which would cause the interest on the Bonds to become subject to taxation under the Internal Revenue Code of 1986 (the "Code"), and Regulations, Amended Regulations and Proposed Regulations issued thereunder, as now existing or as hereinafter amended or proposed and in effect at the time of such action.

#### Section 12. Parity Warrants and Bonds.

12.01. The Issuer hereby reserves the right to issue additional improvement warrants and refunding improvement bonds, payable on a parity with the Bonds issued hereunder and the warrants to be exchanged for the Bonds issued hereunder, to the extent required to complete the Improvements, provided that the total amount of special assessments and taxes appropriated for payment of the cost of the Improvements shall not be less than the total amount of warrants issued with respect thereto.

#### Section 13. Discharge.

13.01. When all of the Bonds have been discharged as provided in this paragraph, all pledges, covenants and other rights granted by this resolution shall cease. The Issuer may discharge its obligations with respect to any Bonds which are due on any date by depositing with the paying agent on or before that date a sum sufficient for the payment thereof in full; or if any Bond shall not

be paid when due, the same may nevertheless be discharged by depositing with the paying agent a sum sufficient for the payment thereof in full with interest accrued from the due date to the date of such deposit. The Issuer may also discharge its obligations with respect to any prepayable Bonds according to their terms, by depositing with the paying agent on or before that date an amount equal to the principal, interest and redemption premium, if any, which are then due, provided that notice of such redemption has been duly given as provided herein. The Issuer may also at any time discharge its obligations with respect to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are general obligations of the United States or securities of United States agencies which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required to pay all principal, interest and redemption premium to become due thereon to maturity or said redemption date.

Section 14. Designation of Bond Registrar and Paying Agent.

14.01. The Issuer hereby designates Starion Bond Services as Paying Agent and Bond Registrar for the Bonds.

Section 15. Certificate of Proceedings.

15.01. The officers of the Issuer are hereby authorized and directed to prepare and furnish to said purchaser, and to the attorneys approving the legality of said Bonds, certified copies of such proceedings, ordinances, resolutions and records and all such certificates and affidavits and other instruments as may be required to evidence the legality and marketability of said Bonds, and all certified copies, certificates, affidavits and other instruments so furnished, including any heretofore furnished, shall constitute representations of the Issuer as to the correctness of all facts stated or recited therein.

Section 16. Book Entry System.

16.01. The Bonds shall be initially issued and, so long as they remain in book entry form only (the "Book Entry Only Period"), shall at all times be in the form of a separate single fully registered Bond for each maturity of the Bonds. The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York or any of its successors or successors to its functions hereunder (the "Depository") will act as securities depository for the Bonds.

16.02. Upon initial issuance, ownership of the Bonds shall be registered in a bond register maintained by the Bond Registrar in the name of CEDE & CO., as the nominee (it or any nominee of the existing or a successor Depository, the "Nominee").

16.03. With respect to the Bonds, neither the Issuer nor the Bond Registrar shall have any responsibility or obligation to any broker, dealer, bank, or any other financial institution for which the Depository holds Bonds as securities depository (the "Participant") or the person for which a Participant holds an interest in the Bonds shown on the books and records of the Participant (the "Beneficial Owner"). Without limiting the immediately preceding sentence, neither the Issuer, nor the Bond Registrar, shall have any such responsibility or obligation with respect to (A) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any ownership interest in the Bonds, or (B) the delivery to any Participant, any Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or (C) the payment to any Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the principal of or premium, if any, or interest on the Bonds, or (D) the consent given or other action taken by the Depository as the Registered Holder of any Bonds (the "Holder"). For purposes of securing the vote or consent of any Holder under this Resolution, the Issuer may, however, rely upon an omnibus proxy under which the Depository assigns its consenting or voting rights to certain Participants to whose accounts the Bonds are credited on the record date identified in a listing attached to the omnibus proxy.

16.04. The Issuer and the Bond Registrar may treat as and deem the Depository to be the absolute owner of the Bonds for the purpose of payment of the principal of and premium, if any, and interest on the Bonds, for the purpose of giving notices of redemption and other matters with respect to the Bonds, for the purpose of obtaining any consent or other action to be taken by Holders for the purpose of registering transfers with respect to such Bonds, and for all purpose whatsoever. The Bond Registrar, as paying agent hereunder, shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the Holder or the Holders of the Bonds as shown on the bond register, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid.

16.05. Upon delivery by the Depository to the Bond Registrar of written notice to the effect that the Depository has determined to substitute a new Nominee in place of the existing Nominee, and subject to the transfer provisions in Section 19 (with respect to

registration, transfer, exchange) hereof, references to the Nominee hereunder shall refer to such new Nominee.

16.06. So long as any Bond is registered in the name of a Nominee, all payments with respect to the principal of and premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, by the Bond Registrar or Issuer, as the case may be, to the Depository as provided in the Letter of Representations, to the Depository required by the Depository as a condition to its acting as book-entry Depository for the Bonds (said Letter of Representations, together with any replacement thereof or amendment or substitute thereto, including any standard procedures or policies referenced therein or applicable thereto respecting the procedures and other matters relating to the Depository's role as book-entry Depository for the Bonds, collectively hereinafter referred to as the "Letter of Representations").

16.07. All transfers of beneficial ownership interests in each Bond issued in book-entry form shall be limited in principal amount to Authorized Denominations and shall be effected by procedures by the Depository with the Participants for recording and transferring the ownership of beneficial interests in such Bonds.

16.08. In connection with any notice or other communication to be provided to the Holders pursuant to this Resolution by the Issuer or Bond Registrar with respect to any consent or other action to be taken by Holders, the Depository shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action; provided, that the Issuer or the Bond Registrar may establish a special record date for such consent or other action. The Issuer or the Bond Registrar shall, to the extent possible, give the Depository notice of such special record date not less than 15 calendar days in advance of such special record date to the extent possible.

16.09. Any successor Bond Registrar in its written acceptance of its duties under this Resolution and any paying agency registrar agreement shall agree to take any actions necessary from time to time to comply with the requirements of the Letter of Representations.

16.10. In the case of a partial prepayment of a Bond, the Holder may, in lieu of surrendering the Bonds for a Bond of a lesser denomination as provided in Section 19 hereof, make a notation of the reduction in principal amount on the panel provided on the Bond stating the amount so redeemed.

Section 17. Termination of Book-Entry Only System.

17.01. The Depository may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. The Issuer may terminate the services of the Depository with respect to the Bond if it determines that the Depository is no longer able to carry out its functions as securities depository or the continuation of the system of book-entry transfers through the Depository is not in the best interests of the Issuer or the Beneficial Owners.

17.02. Upon termination of the services of the Depository as provided in the preceding paragraph, and if no substitute securities depository is willing to undertake the functions of the Depository hereunder can be found which, in the opinion of the Issuer, is willing and able to assume such functions upon reasonable or customary terms, or if the Issuer determines that it is in the best interests of the Issuer or the Beneficial Owners of the Bond that the Beneficial Owners be able to obtain certificates for the Bonds, the Bonds shall no longer be registered as being registered in the bond register in the name of the Nominee, but may be registered in whatever name or names the Holder of the Bonds shall designate at that time, in accordance with Section 19 hereof. To the extent that the Beneficial Owners are designated as the transferee by the Holders, in accordance with Section 19 (with respect to registration, transfer, exchange) hereof, the Bonds will be delivered to the Beneficial Owners.

17.03. Nothing in this section shall limit or restrict the provisions of Section 19 (with respect to registration, transfer, exchange) hereof.

Section 18. Letter of Representations.

18.01. The provisions in the Letter of Representations are incorporated herein by reference and made a part of the resolution, and if and to the extent any such provisions are inconsistent with the other provisions of this resolution, the provisions in the Letter of Representations shall control.

Section 19. Transfer.

19.01. Except as provided above, the Bonds are transferable upon the books of the Issuer at the principal office of the Bond Registrar, Bismarck, North Dakota, by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other

authorized denominations. Upon such transfer or exchange the Issuer will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Bonds shall be required to be made during the 15 days next preceding an interest payment date, nor during the 45 days next preceding the date fixed for redemption of such Bonds.

19.02. The Issuer and the Bond Registrar may deem and treat the person in whose name any Bond is registered as the absolute owner thereof, whether the Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Bond Registrar shall be affected by any notice to the contrary.

Section 20. Repealer.

20.01. All prior resolutions and other acts or proceedings of this governing body which are in any way inconsistent with the terms of this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

Nothing herein contained shall be deemed to modify, amend, violate, repudiate or repeal any provision or covenant contained in any Bond, or any resolution pursuant to which any Bond has been issued and is outstanding, to the extent that a modification, amendment, violation, repudiation or repealer would impair the obligation or contract owed to any holders of such Bonds or would otherwise be invalid or ineffective.

Section 21. Bond Insurance.

21.01. *Reserved for future use.*

Section 22. Bonds Not Subject to Acceleration.

22.01. The Bonds are not subject to acceleration in the event of default.

Section 23. Amendment of Resolution.

23.01. This Resolution may be amended without the consent of any Bondholders for one or more of the following purposes:

- (a) To add to the covenants and agreements of the Issuer in this Resolution and any other covenants and agreements thereafter to be observed by the Issuer, or to surrender

any right or power herein reserved to or conferred upon the Issuer.

- (b) To cure any ambiguity or formal defect contained in this Resolution, that cure does not, in the judgment of the Issuer, adversely affects the interests of the Bondholders.

23.02. This Resolution may be amended for any other purpose only upon the consent of not less than 50% of an aggregate principal amount of the Bonds outstanding, provided, however, that no amendment shall be valid which:

- (a) Extends the maturity of any Bond, reduces the rate of interest upon any Bond, extends the time of payment of interest on the Bond, reduces the amount of principal payable on any Bond, or reduces any premium payable on any Bond, without the consent of the affected Bondholder; or
- (b) Reduces the percent of Bondholders required to approve the mandatory resolutions.

Section 24. No Credit Enhancement.

24.01. There is no credit enhancement facility securing the Bonds, nor is there any provision for a credit enhancement facility to be provided to secure the Bonds.

Section 25. Headings.

25.01. Headings in this Resolution are included for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof.

Section 26. North Dakota Law Applies.

26.01. This Resolution shall be controlled by the laws of the State of North Dakota, and as a result, any claim, demand, or cause of action arising under the terms of this Resolution shall be brought in an appropriate venue in the State of North Dakota.

Section 27. Official Statement.

27.01. The Official Statement relating to the Bonds, substantially in the form presented at this meeting, is hereby approved. The officers of the Issuer are hereby authorized and directed to execute such certificates as may be appropriate concerning the accuracy, completeness and sufficiency of the Official Statement.

Section 28. Continuing Disclosure.

28.01. The Finance Director is hereby authorized to execute, on behalf of the Issuer, the Continuing Disclosure Certificate attached as Attachment 4 to this Resolution.

\_\_\_\_\_  
President of the Board of City  
Commissioners

Attest:

\_\_\_\_\_  
Finance Director

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner \_\_\_\_\_, and upon roll call vote, the following voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_. The following were absent and not voting: \_\_\_\_\_, and the following voted against the same: \_\_\_\_\_, whereupon the resolution was declared duly passed and adopted.

CITY OF BISMARCK  
 STATE OF NORTH DAKOTA  
 \$18,365,000

REFUNDING IMPROVEMENT BONDS OF 2016, SERIES L

SCHEDULE OF MATURITIES AND INTEREST

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2017	\$1,140,000		2025	\$1,195,000	
2018	1,660,000		2026	1,175,000	
2019	1,625,000		2027	860,000	
2020	1,590,000		2028	845,000	
2021	1,560,000		2029	835,000	
2022	1,530,000		2030	820,000	
2023	1,495,000		2031	825,000	
2024	1,220,000				

Principal due May 1 in each year

UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA

CITY OF BISMARCK

REFUNDING IMPROVEMENT BONDS OF 2016, SERIES L

Registered  
Number

Registered  
Dollars

<u>INTEREST RATE</u>	<u>MATURITY</u>	<u>DATE OF ORIGINAL ISSUE</u>	<u>CUSIP</u>
		December 15, 2016	

REGISTERED OWNER:

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

KNOW ALL MEN BY THESE PRESENTS that the City of Bismarck, North Dakota, (the "Issuer") acknowledges itself to be specially indebted and for value received promises to pay to the registered owner specified above or registered assigns, the principal amount specified above, but only from its Refunding Improvement Bonds of 2016, Series L Bond Fund (the "Bond Fund") on the maturity date specified above, with interest thereon from the date hereof at the annual rate specified above, payable on May 1 and November 1 in each year, commencing May 1, 2017, to the holder of record on the close of the 15th day (whether or not a business day) of the immediately preceding month, all subject to the provisions referred to herein with respect to the redemption of the principal of this Bond before maturity. The interest hereon and, upon presentation and surrender hereof, the principal hereof are payable in lawful money of the United States of America by check or draft by Starion Bond Services as Paying Agent, or its successor.

This Bond is one of an issue in the aggregate principal amount of \$18,365,000 all of like date and tenor except as to serial number, maturity date, interest rate and redemption privilege, issued, pursuant to the Resolution adopted by the governing body of the Issuer for the purpose of refunding a like principal amount of valid outstanding special improvement warrants drawn on the funds of improvement districts heretofore duly created by the Issuer for the

financing of the cost of local improvements in anticipation of the levy and collection of special assessments with respect to the improvements, all pursuant to and in full conformity with the Constitution and laws of the State of North Dakota.

Bonds of this issue maturing in the year 2024 and thereafter are each subject to redemption and prepayment at the option of the Issuer in inverse order of maturity and by lot within any maturity on May 1, 2023, and on any date thereafter, at a price equal to the principal amount plus accrued interest. Not less than thirty days prior to the date specified for redemption and prepayment of any of the Bonds the Issuer will cause notice of the call thereof to be sent by mail to the Bond Registrar, Paying Agent and registered owner of the Bond to be redeemed in whole or in part at the address shown on the registration books of the Registrar.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Bond Registrar by manual signature of one of its authorized representatives.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the Issuer at the principal office of the Bond Registrar, by the registered owner hereof in person or by its attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange the Issuer will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. The Issuer and the Bond Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Bond Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of this Bond have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that the Issuer has duly created the Bond Fund as a separate and special fund and has appropriated thereto the improvement warrants refunded by the Bonds

of this series, on which improvement warrant payments are required by law to be made as though none of such warrants had been refunded, and will use due diligence to collect said improvement warrants and the special assessments and any taxes appropriated for their payment; the Issuer has reserved the right and privilege of issuing additional improvement warrants on the funds of said improvement districts, if and to the extent necessary to complete payment of the cost of the Improvements, and the right and privilege of refunding such warrants by the issuance of additional series of Refunding Improvement Bonds, payable on a parity with the Bonds of this series from the Bond Fund, provided that the total amount of special assessments and taxes appropriated for payment of the cost of the improvements shall be not less than the total amount of warrants issued with respect thereto; that the governing body is required by law to levy a tax upon all the taxable property in the corporate limits of the Issuer, without limitation as to rate or amount, to meet any deficiency in any of said improvement district funds for the payment of all warrants drawn thereon, with interest; and that all collections of special assessments and taxes appropriated for the payment of said improvement warrants are required by law to be credited to the Bond Fund and applied in payment of the principal of and interest on the Bonds of this series and any other series issued pursuant to the authority hereinbefore reserved; all as more fully stated in the Resolution; and that the issuance of this Bond has not caused the indebtedness of the Issuer to exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF the City of Bismarck, North Dakota, by its governing body, has caused this Bond to be executed in its behalf by the manual signature of the President of the Board of City Commissioners and Finance Director, and has caused the certificate appearing on the following page to be executed by the manual signatures of said officers.

Dated:

CERTIFICATE OF AUTHENTICATION

CITY OF BISMARCK

This is one of the Bonds delivered pursuant to the Resolution mentioned within.

\_\_\_\_\_  
President of the Board of City Commissioners

STARION BOND SERVICES  
1300 Skyline Boulevard Suite 101  
Bismarck, ND 58502-0777

BY: \_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Finance Director

CERTIFICATE AS TO LEGAL OPINION

We certify that attached is the legal opinion rendered by Bond Counsel on the issue of Bonds which includes the within Bond, dated as of the date of delivery of and payment for the Bonds.

\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
President of the Board of  
City Commissioners

The following abbreviations when used in the inscription on the face of this Bond, shall be construed as though they were written in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of survivorship  
and not as tenants in common

UTMA-ACT \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

under Uniform Transfer to Minors Act \_\_\_\_\_ (State)

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: \_\_\_\_\_

Please insert social security  
or other identifying number  
of Assignee:

\_\_\_\_\_  
Signature Guaranteed: NOTICE:  
Signature(s) must be guaranteed  
by a member of the Medallion  
Signature Program.

NOTICE: The signature to this  
Assignment must correspond to  
the name as it appears upon the  
face of the within Bond in every  
particular, without alteration,  
enlargement or any change  
whatsoever.

UNITED STATES OF AMERICA

STATE OF NORTH DAKOTA

CITY OF BISMARCK

IMPROVEMENT WARRANT

Registered  
Number

DATE OF ORIGINAL  
ISSUE

INTEREST RATE

December 15, 2016

REGISTERED OWNER:

PRINCIPAL AMOUNT:

DOLLARS

KNOW ALL MEN BY THESE PRESENTS that the City of Bismarck, North Dakota (the "Issuer") acknowledges itself to be specially indebted and for value received promises to pay to the registered owner specified above or registered assigns, the principal amount of \$\_\_\_\_\_ on May 1 in each of the years \_\_\_\_ through \_\_\_\_, but only from its \_\_\_\_\_ Fund, with interest thereon from the date hereof at the annual rate specified above, such interest payable on May 1 and November 1 in each year, commencing

May 1, 2017, to the holder of record on the close of the 15th day (whether or not a business day) of the immediately preceding month. The interest and principal are payable in lawful money of the United States of America by check or draft by the Finance Director.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen and to be performed preliminary to and in the valid issuance of this warrant have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that this warrant is duly issued to pay costs incurred and to be incurred in the making of a necessary improvement of special benefit to the above-named Improvement District, in anticipation of the collection of special assessments to be duly levied upon properties within said district, and of taxes to the extent determined by the governing



## CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of Bismarck, North Dakota (the "Issuer") in connection with the Issuer's \$18,365,000 Refunding Improvement Bonds of 2016, Series L (the "Bonds"). The Bonds are being issued pursuant to the Authorizing Resolution adopted by the governing body of the Issuer on November 22, 2016 (the "Resolution") and delivered to the Purchaser on the date hereof. The Issuer hereby covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the Issuer for the benefit of the Owners of the Bonds in order to assist the Participating Underwriters within the meaning of SEC Rule 15c2-12(b) (5) (the "Rule") in complying with the Rule. This Disclosure Certificate constitutes the written undertaking required by the Rule.

Section 2. Definitions. In addition to the defined terms set forth in the Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" means any annual report provided by the Issuer pursuant to, and as described in Sections 3 and 4 of this Disclosure Certificate.

"EMMA" means the Electronic Municipal Market Access system operated by the MSRB as the primary portal for complying with the continuing disclosure requirements of the Rule.

"Financial Statements" means audited or, if unavailable, unaudited general purpose financial statements of the Issuer prepared in accordance with generally accepted accounting principles, as in effect from time to time or as required to be modified as a matter of law. If unaudited financial statements are provided, audited financial statements will be provided when and if available.

"Fiscal Year" means the fiscal year of the Issuer.

"Final Official Statement" means the deemed final official statement dated \_\_\_\_\_, 2016, delivered in connection with the Bonds, which is available from the MSRB.

"Issuer" means City of Bismarck, North Dakota, which is the obligated person with respect to the Bonds.

"Material Event" means any of the events listed in Section 5(a) of this Disclosure Certificate.

"MSRB" means the Municipal Securities Rulemaking Board located at 1300 I Street NW, Suite 1000, Washington, D.C.

"Owner" means the person in whose name Bond is registered or a beneficial owner of such a Bond.

"Participating Underwriter" means any of the original underwriter(s) of the Bonds (including the Purchaser) required to comply with the Rule in connection with the offering of the Bonds.

"Repository" means EMMA.

"Rule" means SEC Rule 15c2-12(b)(5) promulgated by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time, and including written interpretations thereof by the SEC.

"SEC" means Securities and Exchange Commission.

### Section 3. Provision of Annual Financial Information and Financial Statements.

- (a) The Issuer shall, not later than 12 months after the end of the Fiscal Year (currently December 31), commencing with the fiscal year ended December 31, 2016 (which is due no later than December 31, 2017), provide the Repository with an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the Financial Statements of the Issuer may be submitted separately from the balance of the Annual Report.
- (b) If the Issuer is unable or fails to provide to the Repository an Annual Report by the date required in subsection (a), the Issuer shall send a notice of that fact to the Repository, and the MSRB.
- (c) The Issuer shall determine each year prior to the date for providing the Annual Report the name and address of each Repository.

Section 4. Content of Annual Reports. The Issuer's Annual Report shall contain or incorporate by reference the annual Financial

Statements and the following sections of the Final Official Statement:

1. Larger Employers.
2. Population.
3. Unemployment.
4. Building Permits.
5. Bonded Debt.
6. Overlapping Debt.
7. Property Values.
8. Trend of Valuations.
9. Larger Taxpayers
10. Tax Levies and Collections.
11. Mill Rates.

In the event that the Issuer has not completed an audit of its annual financial statements by the date required in Section 3, subsection (a), of this Disclosure Certificate, then the Issuer will provide *unaudited* financial statements to the Repository. The Issuer will provide to the Repository its audited Financial Statements as soon as practicable after they are completed. The failure by the Issuer to provide an audited annual financial statement by the date required in Section 3, subsection (a) of this Disclosure Certificate shall not be deemed a violation of the reporting obligations under this Disclosure Certificate.

Section 5. Reporting of Material Events.

(a) This Section 5 shall govern the giving of notice of the occurrence of any of the following events ("Material Events") with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
7. Modification to rights of security holders, if material;

8. Bond Calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the securities, if material;
11. Rating changes.
12. Bankruptcy, insolvency, receivership or similar event of the obligated person;
13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) The Issuer shall file a notice of such occurrence with the Repository or with the MSRB within ten business days of the occurrence of the Material Event.

(c) Unless otherwise required by law and subject to technical and economic feasibility, the Issuer shall employ such methods of information transmission as shall be requested or recommended by the designated recipients of the Issuer's information.

Section 6. Termination of Reporting Obligation. The Issuer's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all the Bonds.

Section 7. Agent. The Issuer may, from time to time, appoint or engage a dissemination agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such agent, with or without appointing a successor dissemination agent.

Section 8. Amendment: Waiver. Notwithstanding any other provision of this Disclosure Certificate, the Issuer may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, if such amendment or waiver is supported by an opinion of nationally recognized bond counsel to the effect that such amendment or waiver would not, in and of itself, cause the undertakings to violate the Rule. This Disclosure Certificate, or any provision hereof, shall be null and void in the event that the Issuer delivers to the Repository an opinion of nationally

recognized bond counsel to the effect that those portions of the Rule which require this Disclosure Certificate are invalid, have been repealed retroactively or otherwise do not apply to the Bonds. The provisions of this Disclosure Certificate may be amended without the consent of the Owners of the Bonds, but only upon the delivery by the Issuer to the Repository of the proposed amendment and an opinion of nationally recognized bond counsel to the effect that such amendment, and giving effect thereto, will not adversely affect the compliance of this Disclosure Certificate and by the Issuer with the Rule.

Section 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Requested Report or notice of occurrence of a Material Event, in addition to that which is required by this Disclosure Certificate. If the Issuer chooses to include any information in any Requested Report or notice of occurrence of a Material Event in addition to that which is specifically required by this Disclosure Certificate, the Issuer shall have no obligation under this Disclosure Certificate to update such information or include it in any future Requested Report or notice of occurrence of a Material Event.

Section 10. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Certificate, any Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default with respect to the Bonds and the sole remedy under this Disclosure Certificate in the event of any failure of the Issuer to comply with this Disclosure Certificate shall be an action to compel performance.

Section 11. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the Issuer, the Participating Underwriters and Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 12. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13. Choice of Law. This Disclosure Certificate shall be governed by and construed in accordance with the laws of the State of North Dakota, provided that to the extent this Disclosure

Certificate addresses matters of federal securities laws, including the Rule, then this Disclosure Certificate shall be construed in accordance with such federal securities laws and official interpretations thereof.

Section 14. Severability. If any portion of this Disclosure Certificate shall be held invalid or inoperative, then, so far as is reasonable and possible (i) the remainder of this Disclosure Certificate shall be considered valid and operative, and (ii) effect shall be given to the intent manifested by the portion held invalid or inoperative.

Section 15. Captions, Titles, and Headings. The captions, titles, and headings used in this Disclosure Certificate are for convenience only and shall not be construed in interpreting this Disclosure Certificate.

IN WITNESS WHEREOF, I have executed this Disclosure Certificate in my official capacity effective December \_\_\_\_, 2016.

CITY OF BISMARCK

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Sheila Hillman  
Finance Director

Commissioner \_\_\_\_\_ introduced and moved the adoption of the following resolution:

RESOLUTION CREATING SIDEWALK, CURB AND GUTTER SPECIAL FUND  
AND DIRECTING ISSUANCE THEREON OF  
\$1,970,000 SIDEWALK, CURB AND GUTTER WARRANTS, SERIES SCG-2015

BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota, as follows:

Section 1. Authorization and Sale.

1.01. The City of Bismarck, North Dakota (the "City") has heretofore advertised for bids for sidewalks, curbs and gutters and awarded a contract for sidewalks, curbs and gutters, given notice to construct sidewalks, curbs and gutters, and has done all acts, conditions and things required by the constitution and laws of the State of North Dakota to be done, to exist, to happen and to be performed preliminary to the issuance and sale of sidewalk, curb and gutter special fund warrants to provide monies to pay for said sidewalks, curbs and gutters.

1.02. The total cost of said improvements is the sum of \$1,970,000, including all contract costs, and all engineering, fiscal and legal expenses, cost of printing, publications, construction interest, and all other expenses. It is determined that it is necessary to raise said sum of \$1,970,000 by the issuance of such sidewalk, curb and gutter special fund warrants as hereinafter set out.

1.03. That all actions heretofore taken by the Finance Director and others relating to the sale of sidewalk, curb and gutter special fund warrants sold on this date are approved, ratified and confirmed; that it is hereby found and determined that it is in the best interest of the City to accept the bid of \_\_\_\_\_, to purchase the warrants at a price of \$ \_\_\_\_\_ plus accrued interest, which terms are equivalent to a net effective rate on the warrants of \_\_\_\_\_; that the President of the Board of City Commissioners and Finance Director are authorized and directed to make and execute all documents necessary on the part of the City for the sale of the warrants in accordance with this proposal.

Section 2. Sidewalk, Curb and Gutter Special Fund.

2.01. That there is hereby created a separate fund of the City to be designated: "2015 Sidewalk, Curb and Gutter Special Fund" which shall be continued and maintained until all warrants issued hereunder and interest thereon shall have been redeemed and paid.

2.02. In said fund there shall be maintained two separate accounts to be designated as "Construction Account" and "Principal and Interest Account," respectively.

a. Construction Account. There shall be credited to the construction account of said fund the proceeds of sale of all improvement warrants drawn on such fund, after deducting accrued interest received upon delivery of each warrant. All costs and expenses of making the improvement within said district shall be paid from said construction account and the monies in said account shall be used for no other purpose; provided that if upon completion of payment for said improvement there shall remain any unexpended balance in said construction account, such balance shall be transferred to the principal and interest account and handled and accounted for in the same manner as other funds in that account.

b. Principal and Interest Account. There shall be credited to the principal and interest account of said fund the entire amount of all taxes, special assessments and interest thereon levied and imposed for said improvement as herein agreed, and also all accrued interest received upon delivery of said warrants, and also all funds remaining in said construction account after completion of payment for the entire cost of such improvement. Monies in said account shall be held and used only for payment of principal and of interest on the improvement warrants drawn on the fund.

### Section 3. Levy of Special Assessments.

3.01. The City hereby covenants and agrees that it will do and perform all acts and things necessary for the final and valid levy of special assessments against property benefitted by the sidewalks, curbs and gutters in the aggregate principal amount of not less than \$1,970,000, and will cause said assessments to be made payable in ten equal installments with interest at the rate of \_\_\_\_\_% per annum on unpaid portions thereof, such installments if not therefor paid, to be duly certified and collected with the general taxes appearing on the tax rolls of the City.

### Section 4. Issuance of Warrants.

4.01. In anticipation of the collection of said special assessments and interest thereon, and for the purpose of borrowing money to pay for the cost of said improvement, the City shall forthwith issue and deliver to the purchaser thereof its Sidewalk, Curb and Gutter Special Fund warrants on said Sidewalk, Curb and Gutter Special Fund in the aggregate principal sum of \$1,970,000; said warrants to be dated December 1, 2016, and shall be numbered consecutively; said warrants shall mature serially on May 1 in the respective years and amounts stated below:

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2017	\$150,000		2022	\$200,000	
2018	205,000		2023	205,000	
2019	205,000		2024	205,000	
2020	200,000		2025	200,000	
2021	200,000		2026	200,000	

Said warrants shall be issued in fully registered form, numbered from 1 upward, in the denominations of \$5,000 or any integral multiple thereof, and payable to the registered owner thereof. Said warrants shall bear interest at the rate set forth above payable May 1, 2017, and semi-annually thereafter on May 1 and November 1 of each year.

Section 5. Redemption.

5.01 Warrants of this issue maturing in the year 2022 and thereafter are each subject to redemption and prepayment at the option of the City in inverse order of maturity, and by lot within any maturity, on May 1, 2021, and any date thereafter at a price equal to the principal amount plus accrued interest. Not less than thirty (30) days prior to the date specified for redemption and prepayment of any of the Warrants, the City will cause notice of the call thereof to be sent by mail to the Bond Registrar, Paying Agent, and registered owner of the Warrant to be redeemed in whole or in part at the address shown on the registration books of the Registrar.

The interest and, upon presentation surrender thereof, the principal are payable in lawful money of the United States of America by check or draft by Starion Bond Services, Bismarck, North Dakota, as Paying Agent, or its successor.

Section 6. Form of Warrants.

6.01. The warrants shall be printed in substantially the following form:



prepayment of any of the Warrants the City will cause notice of the call thereof to be sent by mail to the Bond Registrar, Paying Agent, and the registered owner of the Warrant to be redeemed in whole or in part at the address shown on the registration books of the Registrar.

This Warrant shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Bond Registrar by manual signature of one of its authorized representatives.

As provided in the Resolution and subject to certain limitations set forth therein, this Warrant is transferable upon the books of the City at the principal office of the Bond Registrar, by the registered owner hereof in person or by its attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or attorney; and may also be surrendered in exchange for Warrants of other authorized denominations. Upon such transfer or exchange the City will cause a new Warrant or Warrants to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. The City and the Bond Registrar may deem and treat the person in whose name this Warrant is registered as the absolute owner hereof, whether this Warrant is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of this Warrant have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that the City has duly created the 2015 Sidewalk, Curb and Gutter Special Fund as a separate and special fund and will use due diligence to collect said special assessments and any taxes appropriated for their payment; that if at any time a deficiency is likely to occur within one year or exist in the Sidewalk, Curb and Gutter Special Fund for the payment of principal and interest due on the Warrants, the governing body is permitted by law to, and has covenanted to levy a tax upon all the taxable property in the City, without limitation as to rate or amount, to meet any deficiency in said Sidewalk, Curb and Gutter Special Fund for the payment of all warrants drawn thereon, with interest; and that all collections of special assessments and taxes appropriated for the payment of said improvement warrants are required by law to be credited to the 2013 Sidewalk, Curb and Gutter Special Fund and applied in payment of the principal of and interest on the Warrants of this series and

any other series issued pursuant to the authority hereinbefore reserved; all as more fully stated in the Resolution; and that the issuance of this Warrant does not cause the indebtedness of the City to exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF the City of Bismarck, Burleigh County, North Dakota, by its City Commission, has caused this Warrant to be executed in its behalf by the manual signatures of the President of the Board of City Commissioners and the Finance Director, and has caused the certificate appearing on the following page to be executed by the manual signatures of said officers.

Dated:

CERTIFICATE OF AUTHENTICATION

CITY OF BISMARCK

This is one of the Warrants delivered pursuant to the Resolution mentioned within.

\_\_\_\_\_  
President of the Board of City Commissioners

STARION BOND SERVICES  
1300 Skyline Boulevard, Suite 101  
Bismarck, ND 58502-0777

BY:

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Finance Director

SPECIMEN



Section 7. Execution.

7.01 Said warrants shall be forthwith prepared for execution under the direction of the Finance director and shall be executed on behalf of the City by the manual signature of the President of the Board of City Commissioners, countersigned by the manual signature of the Finance Director. When prepared and executed they shall be delivered by the Finance Director to the purchasers thereof upon receipt of the purchase price plus accrued interest thereon from December 1, 2016, to the date of such delivery for payment.

7.02. Said purchaser shall not be obligated to see the application of said purchase price, but the money so received shall be credited as hereinabove directed, and the City covenants and agrees to cause said improvements to be completed and paid for, free from all liens and encumbrances, with such monies.

Section 8. Covenants.

8.01. The City will use due diligence to collect the special assessments levied for the payment of the Warrants.

8.02. The City covenants that if at any time a deficiency is likely to occur within one year or exist in the Sidewalk, Curb and Gutter Special Fund for the paying of principal and interest due on the Warrants, the governing body shall levy a general tax upon all taxable property in the City for the payment of such deficiency. Pursuant to state law, such levy upon all of the taxable property in the City is without limitation as to rate or amount in order to meet any deficiency in the Sidewalk, Curb and Gutter Special Fund.

Section 9. Arbitrage.

9.01. The City covenants and agrees with the holders from time to time of the Warrants that it will not take or permit to be taken by any of its officers, employees or agents, any action which would cause the interest on the Warrants to become subject to taxation under the Internal Revenue Code of 1986 (the "Code"), and Regulations, Amended Regulations and Proposed Regulations issued thereunder, as now existing or as hereinafter amended or proposed and in effect at the time of such action.

Section 10. Certificate of Proceedings.

10.01. The officers of the City are authorized and directed to prepare and furnish to the attorneys passing on the legality of the Warrants certified copies of all proceedings, ordinances, resolutions, records, and all certificates and affidavits and other instruments as may be required to evidence the legality and marketability of the Warrants, and all certified copies, certificates, affidavits and other instruments so furnished shall

constitute representations of the City as to the correctness of all facts stated or recited therein.

Section 11. Designation of Bond Registrar.

11.01. The City hereby designates Starion Bond Services as Paying Agent and Starion Bond Services, as Bond Registrar for the Warrants.

Section 12. Discharge.

12.01. When all of the Warrants have been discharged as provided in this paragraph, all pledges, covenants and other rights granted by this resolution shall cease. The City may discharge its obligations with respect to any Warrants which are due on any date by depositing with the paying agent on or before that date a sum sufficient for the payment thereof in full; or if any Warrant shall not be paid when due, the same may nevertheless be discharged by depositing with the paying agent a sum sufficient for the payment thereof in full with interest accrued from the due date to the date of such deposit. The City may also discharge its obligations with respect to any prepayable Warrants according to their terms, by depositing with the paying agent on or before that date an amount equal to the principal, interest and redemption premium, if any, which are then due, provided that notice of such redemption has been duly given as provided herein. The City may also at any time discharge its obligations with respect to any Warrants, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are general obligations of the United States or securities of United States agencies which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required to pay all principal, interest and redemption premium to become due thereon to maturity or said redemption date.

Section 13. Book Entry System.

13.01. The Warrants shall be initially issued and, so long as they remain in book entry form only (the "Book Entry Only Period"), shall at all times be in the form of a separate single fully registered Warrant for each maturity of the Warrants. The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York or any of its successors or successors to its functions hereunder (the "Depository") will act as securities depository for the Warrants.

13.02. Upon initial issuance, ownership of the Warrants shall be registered in a bond register maintained by the Bond Registrar in the name of CEDE & CO., as the nominee (it or any nominee of the existing or a successor Depository, the "Nominee").

13.03. With respect to the Warrants, neither the City nor the Bond Registrar shall have any responsibility or obligation to any broker, dealer, bank, or any other financial institution for which the Depository holds Warrants as securities depository (the "Participant") or the person for which a Participant holds an interest in the Warrants shown on the books and records of the Participant (the "Beneficial Owner"). Without limiting the immediately preceding sentence, neither the City, nor the Bond Registrar, shall have any such responsibility or obligation with respect to (A) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any ownership interest in the Warrants, or (B) the delivery to any Participant, any Owner or any other person, other than the Depository, of any notice with respect to the Warrants, including any notice of redemption, or (C) the payment to any Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the principal of or premium, if any, or interest on the Warrants, or (D) the consent given or other action taken by the Depository as the Registered Holder of any Warrants (the "Holder"). For purposes of securing the vote or consent of any Holder under this Resolution, the City may, however, rely upon an omnibus proxy under which the Depository assigns its consenting or voting rights to certain Participants to whose accounts the Warrants are credited on the record date identified in a listing attached to the omnibus proxy.

13.04. The City and the Bond Registrar may treat as and deem the Depository to be the absolute owner of the Warrants for the purpose of payment of the principal of and premium, if any, and interest on the Warrants, for the purpose of giving notices of redemption and other matters with respect to the Warrants, for the purpose of obtaining any consent or other action to be taken by Holders for the purpose of registering transfers with respect to such Warrants, and for all purpose whatsoever. The Bond Registrar, as paying agent hereunder, shall pay all principal of and premium, if any, and interest on the Warrants only to or upon the Holder or the Holders of the Warrants as shown on the bond register, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of and premium, if any, and interest on the Warrants to the extent of the sum or sums so paid.

13.05. Upon delivery by the Depository to the Bond Registrar of written notice to the effect that the Depository has determined to substitute a new Nominee in place of the existing Nominee, and subject to the transfer provisions in Section 16 (with respect to registration, transfer, exchange) hereof, references to the Nominee hereunder shall refer to such new Nominee.

13.06. So long as any Warrant is registered in the name of a Nominee, all payments with respect to the principal of and premium, if any, and interest on such Warrant and all notices with respect to such Warrant shall be made and given, respectively, by the Bond

Registrar or City, as the case may be, to the Depository as provided in the Letter of Representations, to the Depository required by the Depository as a condition to its acting as book-entry Depository for the Warrants (said Letter of Representations, together with any replacement thereof or amendment or substitute thereto, including any standard procedures or policies referenced therein or applicable thereto respecting the procedures and other matters relating to the Depository's role as book-entry Depository for the Warrants, collectively hereinafter referred to as the "Letter of Representations").

13.07. All transfers of beneficial ownership interests in each Warrant issued in book-entry form shall be limited in principal amount to Authorized Denominations and shall be effected by procedures by the Depository with the Participants for recording and transferring the ownership of beneficial interests in such Warrants.

13.08. In connection with any notice or other communication to be provided to the Holders pursuant to this Resolution by the City or Bond Registrar with respect to any consent or other action to be taken by Holders, the Depository shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action; provided, that the City or the Bond Registrar may establish a special record date for such consent or other action. The City or the Bond Registrar shall, to the extent possible, give the Depository notice of such special record date not less than 15 calendar days in advance of such special record date to the extent possible.

13.09. Any successor Bond Registrar in its written acceptance of its duties under this Resolution and any paying agency registrar agreement shall agree to take any actions necessary from time to time to comply with the requirements of the Letter of Representations.

13.10. In the case of a partial prepayment of a Warrant, the Holder may, in lieu of surrendering the Warrants for a Warrant of a lesser denomination as provided in Section 16 hereof, make a notation of the reduction in principal amount on the panel provided on the Warrant stating the amount so redeemed.

#### Section 14. Termination of Book-Entry Only System.

14.01. The Depository may determine to discontinue providing its services with respect to the Warrants at any time by giving written notice to the City and discharging its responsibilities with respect thereto under applicable law. The City may terminate the services of the Depository with respect to the Bond if it determines that the Depository is no longer able to carry out its functions as securities depository or the continuation of the system of book-entry transfers through the Depository is not in the best interests of the City or the Beneficial Owners.

14.02. Upon termination of the services of the Depository as provided in the preceding paragraph, and if no substitute securities depository is willing to undertake the functions of the Depository hereunder can be found which, in the opinion of the City, is willing and able to assume such functions upon reasonable or customary terms, or if the City determines that it is in the best interests of the City or the Beneficial Owners of the Warrants that the Beneficial Owners be able to obtain certificates for the Warrants, the Warrants shall no longer be registered as being registered in the bond register in the name of the Nominee, but may be registered in whatever name or names the Holder of the Warrants shall designate at that time, in accordance with Section 16 hereof. To the extent that the Beneficial Owners are designated as the transferee by the Holders, in accordance with Section 16 (with respect to registration, transfer, exchange) hereof, the Warrants will be delivered to the Beneficial Owners.

14.03. Nothing in this section shall limit or restrict the provisions of Section 16 (with respect to registration, transfer, exchange) hereof.

Section 15. Letter of Representations.

15.01. The provisions in the Letter of Representations are incorporated herein by reference and made a part of the resolution, and if and to the extent any such provisions are inconsistent with the other provisions of this resolution, the provisions in the Letter of Representations shall control.

Section 16. Transfer.

16.01. Except as provided above, the Warrants are transferable upon the books of the City at the principal office of the Bond Registrar, Bismarck, North Dakota, by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Warrants of other authorized denominations. Upon such transfer or exchange the City will cause a new Warrant or Warrants to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Warrants shall be required to be made during the 15 days next preceding an interest payment date, nor during the 45 days next preceding the date fixed for redemption of such Warrants.

16.02. The City and the Bond Registrar may deem and treat the person in whose name any Warrant is registered as the absolute owner thereof, whether the Warrant is overdue or not, for the purpose of receiving payment and for all other purposes, and

neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

Section 17. Continuing Disclosure.

17.01. The Finance Director is hereby authorized to execute, on behalf of the Issuer, the Continuing Disclosure Certificate attached as Attachment 1 to this Resolution.

Section 18. Official Statement.

18.01. The Official Statement relating to the Bonds, substantially in the form presented to this meeting, is hereby approved. The officers of the Issuer are hereby authorized and directed to execute such certificates as may be appropriate concerning the accuracy, completeness and sufficiency of the Official Statement.

Section 19. Headings.

19.01. Headings in this Resolution are included for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof.

Section 20. North Dakota Law Applies.

20.01. This agreement shall be controlled by the laws of the State of North Dakota, and as a result, any claim, demand, or cause of action arising under the terms of this Resolution shall be brought in an appropriate venue in the State of North Dakota.

Section 21. Not Qualified Tax Exempt Under Section 265.

21.01. The Issuer hereby acknowledges that the Bonds are not designated as a qualified tax-exempt obligation within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986.

APPROVED:

\_\_\_\_\_  
President of the Board of City  
Commissioners

ATTEST:

\_\_\_\_\_  
Finance Director

The motion for the adoption of the foregoing Resolution was duly seconded by Commissioner \_\_\_\_\_. On roll call vote, the following Commissioners voted aye: \_\_\_\_\_  
\_\_\_\_\_. The following Commissioners voted nay: \_\_\_\_\_. The following were absent and not voting: \_\_\_\_\_  
\_\_\_\_\_. The majority having voted aye, the motion carried and the Resolution was duly adopted.

## CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of Bismarck, North Dakota (the "Issuer") in connection with the Issuer's \$1,970,000 Sidewalk, Curb and Gutter Warrants, Series SCG-2015 (the "Bonds"). The Bonds are being issued pursuant to the Authorizing Resolution adopted by the governing body of the Issuer on November 22, 2016 (the "Resolution") and delivered to the Purchaser on the date hereof. The Issuer hereby covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the Issuer for the benefit of the Owners of the Bonds in order to assist the Participating Underwriters within the meaning of SEC Rule 15c2-12(b)(5) (the "Rule") in complying with the Rule. This Disclosure Certificate constitutes the written undertaking required by the Rule.

Section 2. Definitions. In addition to the defined terms set forth in the Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" means any annual report provided by the Issuer pursuant to, and as described in Sections 3 and 4 of this Disclosure Certificate.

"EMMA" means the Electronic Municipal Market Access system operated by the MSRB as the primary portal for complying with the continuing disclosure requirements of the Rule.

"Financial Statements" means audited or, if unavailable, unaudited general purpose financial statements of the Issuer prepared in accordance with generally accepted accounting principals, as in effect from time to time or as required to be modified as a matter of law. If unaudited financial statements are provided, audited financial statements will be provided when and if available.

"Fiscal Year" means the fiscal year of the Issuer.

"Final Official Statement" means the deemed final official statement dated \_\_\_\_\_, 2016, delivered in connection with the Bonds, which is available from the MSRB.

"Issuer" means the City of Bismarck, North Dakota, which is the obligated person with respect to the Bonds.

"Material Event" means any of the events listed in Section 5(a) of this Disclosure Certificate.

"MSRB" means the Municipal Securities Rulemaking Board located at 1300 I Street NW, Suite 1000, Washington, D.C.

"Owner" means the person in whose name Bond is registered or a beneficial owner of such a Bond.

"Participating Underwriter" means any of the original underwriter(s) of the Bonds (including the Purchaser) required to comply with the Rule in connection with the offering of the Bonds.

"Repository" means EMMA.

"Rule" means SEC Rule 15c2-12(b) (5) promulgated by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time, and including written interpretations thereof by the SEC.

"SEC" means Securities and Exchange Commission.

### Section 3. Provision of Annual Financial Information and Financial Statements.

- (a) The Issuer shall, not later than 12 months after the end of the Fiscal Year (currently December 31), commencing with the fiscal year ended December 31, 2016 (which is due no later than December 31, 2017), provide the Repository with an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the Financial Statements of the Issuer may be submitted separately from the balance of the Annual Report.
- (b) If the Issuer is unable or fails to provide to the Repository an Annual Report by the date required in subsection (a), the Issuer shall send a notice of that fact to the Repository, and the MSRB.
- (c) The Issuer shall determine each year prior to the date for providing the Annual Report the name and address of each Repository.

Section 4. Content of Annual Reports. The Issuer's Annual Report shall contain or incorporate by reference the annual Financial

Statements and the following sections of the Final Official Statement:

1. Larger Employers.
2. Population.
3. Unemployment.
4. Building Permits.
5. Bonded Debt.
6. Overlapping Debt.
7. Property Values.
8. Trend of Valuations.
9. Larger Taxpayers
10. Tax Levies and Collections.
11. Mill Rates.

In the event that the Issuer has not completed an audit of its annual financial statements by the date required in Section 3, subsection (a), of this Disclosure Certificate, then the Issuer will provide *unaudited* financial statements to the Repository. The Issuer will provide to the Repository its audited Financial Statements as soon as practicable after they are completed. The failure by the Issuer to provide an audited annual financial statement by the date required in Section 3, subsection (a) of this Disclosure Certificate shall not be deemed a violation of the reporting obligations under this Disclosure Certificate.

Section 5. Reporting of Material Events.

- (a) This Section 5 shall govern the giving of notice of the occurrence of any of the following events ("Material Events") with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
7. Modification to rights of security holders, if material;

8. Bond Calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the securities, if material;
11. Rating changes.
12. Bankruptcy, insolvency, receivership or similar event of the obligated person;
13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) The Issuer shall file a notice of such occurrence with the Repository or with the MSRB within ten business days of the occurrence of the Material Event.

(c) Unless otherwise required by law and subject to technical and economic feasibility, the Issuer shall employ such methods of information transmission as shall be requested or recommended by the designated recipients of the Issuer's information.

Section 6. Termination of Reporting Obligation. The Issuer's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all the Bonds.

Section 7. Agent. The Issuer may, from time to time, appoint or engage a dissemination agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such agent, with or without appointing a successor dissemination agent.

Section 8. Amendment: Waiver. Notwithstanding any other provision of this Disclosure Certificate, the Issuer may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, if such amendment or waiver is supported by an opinion of nationally recognized bond counsel to the effect that such amendment or waiver would not, in and of itself, cause the undertakings to violate the Rule. This Disclosure Certificate, or any provision hereof, shall be null and void in the event that the Issuer delivers to the Repository an opinion of nationally

recognized bond counsel to the effect that those portions of the Rule which require this Disclosure Certificate are invalid, have been repealed retroactively or otherwise do not apply to the Bonds. The provisions of this Disclosure Certificate may be amended without the consent of the Owners of the Bonds, but only upon the delivery by the Issuer to the Repository of the proposed amendment and an opinion of nationally recognized bond counsel to the effect that such amendment, and giving effect thereto, will not adversely affect the compliance of this Disclosure Certificate and by the Issuer with the Rule.

Section 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Requested Report or notice of occurrence of a Material Event, in addition to that which is required by this Disclosure Certificate. If the Issuer chooses to include any information in any Requested Report or notice of occurrence of a Material Event in addition to that which is specifically required by this Disclosure Certificate, the Issuer shall have no obligation under this Disclosure Certificate to update such information or include it in any future Requested Report or notice of occurrence of a Material Event.

Section 10. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Certificate, any Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default with respect to the Bonds and the sole remedy under this Disclosure Certificate in the event of any failure of the Issuer to comply with this Disclosure Certificate shall be an action to compel performance.

Section 11. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the Issuer, the Participating Underwriters and Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 12. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13. Choice of Law. This Disclosure Certificate shall be governed by and construed in accordance with the laws of the State of North Dakota, provided that to the extent this Disclosure

Certificate addresses matters of federal securities laws, including the Rule, then this Disclosure Certificate shall be construed in accordance with such federal securities laws and official interpretations thereof.

Section 14. Severability. If any portion of this Disclosure Certificate shall be held invalid or inoperative, then, so far as is reasonable and possible (i) the remainder of this Disclosure Certificate shall be considered valid and operative, and (ii) effect shall be given to the intent manifested by the portion held invalid or inoperative.

Section 15. Captions, Titles, and Headings. The captions, titles, and headings used in this Disclosure Certificate are for convenience only and shall not be construed in interpreting this Disclosure Certificate.

IN WITNESS WHEREOF, I have executed this Disclosure Certificate in my official capacity effective \_\_\_\_\_, 2016.

CITY OF BISMARCK

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Sheila Hillman  
Finance Director

**NOTICE OF PUBLIC HEARING TO CONSIDER A PROPOSAL FOR THE  
ISSUANCE OF A REVENUE NOTE, SERIES 2016  
(LSS HOUSING PROJECTS)**

NOTICE IS HEREBY GIVEN That the City Commission of the City of Bismarck, North Dakota (the "City") will meet in the Tom Baker Room at City Hall, 221 North Fifth Street, Bismarck, North Dakota, at or after 5:15 p.m. on Tuesday, November 22, 2016, to hold a public hearing on the proposal of Lutheran Social Services Housing, Inc., a North Dakota nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Corporation"), that the City of Maddock, North Dakota (the "Issuer") assist in refinancing various projects pursuant to the Municipal Industrial Development Act of 1955, Chapter 40-57, North Dakota Century Code, as amended (the "Act"), by the issuance of a Revenue Note, Series 2016 (LSS Housing Projects), in a total principal amount not to exceed \$7,850,000 (the "Note").

The proceeds of the Note will refinance and prepay indebtedness originally issued to finance the following newly constructed projects (the "Projects"):

- (i) An 8-unit housing facility originally converted from vacant property owned by the U.S. Department of Agriculture located at 205 Central Place in the City of Maddock, North Dakota, and owned by LSS Housing Maddock, LLC;
- (ii) A 51-unit multifamily housing facility and functionally related and subordinated facilities thereto located at 419 Fifth Street Northeast in the City of Jamestown, North Dakota, and owned by LSS Housing Jamestown, LLC;
- (iii) An approximately 23,500-square foot office building used for the Corporation's non-profit business activities, located at 3911 20th Avenue South in the City of Fargo, North Dakota; and
- (iv) An approximately 6,628-square foot office building used for the Corporation's non-profit business activities, located at 1616 Capitol Way in the City, and owned by the Corporation.

The Corporation is the sole member of LSS Housing Maddock, LLC and LSS Housing Jamestown, LLC, each of which, in addition to the Corporation, are referred to as the "Borrowers."

The Note, if and when issued, will not constitute a charge, lien or encumbrance upon any property of the City or the Issuer, and such obligations will not be a charge against the general credit or taxing powers of the City or the Issuer, but will be payable from sums to be paid by the Borrowers to a participating lender or lenders pursuant to one or more revenue agreements. No holder of the Note shall ever have the right to compel any exercise of the taxing power of the City or the Issuer to pay debt service on the Note, nor to enforce payment against any property of the City or the Issuer.

At the time and place fixed for the public hearing, the City Commission of the City will give all persons who appear at the hearing an opportunity to express their views with respect to the proposal. Written comments will be considered if submitted to the City Administrator at City Hall, 221 North Fifth Street, Bismarck, North Dakota, 58501, on or before the date of the public hearing. The Corporation is engaged in supporting the continued vitality of North Dakota communities by owning and operating housing and providing housing-related services, and competitors are notified of that fact pursuant to the Act.

MHC  
Non-Profit Tax-Exempt Finance Specialist  
St. Paul, Minnesota 55105  
(651) 455-8300 [REDACTED]  
Email: [REDACTED]

**EXECUTIVE SUMMARY (Basket 1)**  
**Dated: October 6, 2016**  
**Website: <http://www.lssnd.org>**

MHC has been engaged by Lutheran Social Service of North Dakota (“LSSND”) to arrange a tax-exempt refinancing of a majority of its outstanding long-term indebtedness. LSSND’s objectives for this engagement include a material reduction in its weighted average interest rate, to convert sums now owing under a taxable financing to tax-exempt and to streamline the number of lenders to which it communicates. Please keep this request for refinancing confidential.

**Purpose:** To refinance all eligible existing notes which can become more efficient or improved. This refinancing does not include all existing LSSND long-term indebtedness, some notes have not been included in this refinancing because the rate now in effect is attractive. Further, please be advised that this executive summary represents only a portion of LSS’ notes now being refinanced. These notes have been divided into baskets, much like this one, in order to qualify all tax-exempt refinancing notes as bank-qualified.

**Parties to the Transaction**

**Issuer:** In this overall engagement, we are refinancing notes related to facilities located in approximately 11 cities spread throughout North Dakota. We will choose four cities to serve as the actual issuers in order to achieve bank-qualification in every tax-exempt note. That selection will consider each city’s 2016 bank-qualification status and perceived costs to actually issue the note and based on this review we will strategically choose a sufficient number of cities to issue all tax-exempt notes as tax-exempt and bank-qualified. MHC will travel to each city and attend the requisite public hearings. The Issuer will issue these notes without recourse to the Issuer, the Issuers’ shall have no obligation to repay this refinancing; the Obligor (each operating LLC) and Guarantor will be the exclusive source of repayment.

**Obligor:** A series of LLC organizations, each low income housing facility is owned and operated by a separate LLC, for which LSSND is the sole member. This arrangement allows each LLC to qualify for tax-exempt financing because of the organization of its sole member (LSSND) as a 501c3 nonprofit corporation. In addition, LSSND will be the Obligor for the refinancing of the Fargo and Bismarck notes.

Administrative Offices:

3911 20th Ave. S.  
Fargo, ND 58103

Transaction

Manager: Steve Fenlon  
MHC  
St. Paul, Minnesota  
651 455 8300  
[REDACTED]

Bond

Counsel: Andy Pratt  
Eckberg, Lammers, Briggs, Wolf  
Stillwater, Minnesota  
651) 439-2878  
[REDACTED]

Lender: To be identified by MHC

Obligor's

Counsel: TBA

Lender's

Counsel: TBD

Title

Company: To be selected by the Lender.

Real Estate

Appraiser: To be selected by Lender.

**Transaction Details:**

Basket 1  
Amount:

\$7,600,015

**Sources:**

Bank Loan:

\$7,600,015

**Uses:**

Maddock:

\$137,100

Maddock LSS Note:

40,000

Jamestown:

3,265,000

Jamestown **Taxable** Note:

827,215

Jamestown LSS Note:

708,000

Fargo:

1,500,000

Bismarck:

1,000,000

Issuance Costs:

122,700

Total Uses:

\$7,600,015

Draw  
Period:

It is expected that all note proceeds will be advanced fully on the day of loan closing, or shortly thereafter. The timing of the disbursement of note proceeds will be dictated by the notice of redemption provisions in the existing loan documents. The longest notice of redemption in this collection of bank notes is approximately 45 days, although it's our intention to request that the current holder of that particular bank note waive their respective notice requirements, we may still be required to provide this notice. The exact particulars will be resolved shortly and communicated to the Lender.

Term:

Note A will be repaid over a 240-month term, based a level monthly amortization (subject to interest rate adjustments on each 5<sup>th</sup> anniversary of loan closing) of principal and interest.

Taxable companion Note B bears a higher interest rate to the Obligor, and yet offers no intended additional after tax-return to the Lender than tax-exempt Note A. Given the higher interest rate charged by Note B (in the amount of \$827,215), we will structure tax-exempt Note A to be interest-only for the period of time needed for all principal payments (Note A & B) that would have been due on the tax-exempt Note A & B, is instead directed toward the accelerated repayment of taxable Note B. This approach does not harm or reduce the Lender's presumed rate of return, and drives down the Obligor's weighted average interest rate considerably. The amortization or repayment of Note B during this time approximates the amount of principal reduction that would have been received had we structured both Notes A & B to each have a 20-year loan term. From the Lender's point of view, the loan principal is repaid at precisely the same amounts each year, it's just that all principal repayment is directed at one of the two companion notes held by the Lender. Once Note B is repaid, then Note A will be repaid assuming the approximately same annual debt service. So from a distant point of view, the overall plan is to create a level debt service in an amount to repay both Notes, but direct the principal portion that would have been due under Note A to Note B and thereby repay B as soon as possible, leaving only a tax-exempt note outstanding for the back end of the loan term and thereby optimizing the overall weighted average interest rate and making the term of the taxable note as short as possible.

Interest  
Rate:

The initial interest rate and charges on Notes A will be based on a 365/365-day accrual method. Please bear in mind the Issuer will represent that this transaction is bank-qualified, which allows the lender to deduct 80% of its carrying costs. This interest rate was set based on the following rate adjustment formula: (2.75% over the 5-year US Treasury Constant Maturity) times 67%. Note A's interest rate will be adjusted on each 5<sup>th</sup> year anniversary of loan closing, based on the exact same formula.

Note A

Payments: The initial monthly payments due on Note A will be interest-only while we exercise the notices of redemption and allow for the contractual redemption notice periods to pass on the old notes. Then Note A will be interest only for a yet to be calculated number of months while Note B is accelerated in its principal repayment. Following the repayment of Note B, Note A will then have the entire monthly payment directed at its repayment, all of which will be achieved within the 120-month loan term of Note A.

Note A

Interest Cap/floor:

As mentioned above, the interest rate on Note A will be adjusted on each 5<sup>th</sup> anniversary based on the formula and index described above, but in all events the adjusted rate will not exceed 3.00% over the Initial Interest Rate and will never be less than the Initial Interest Rate.

Note B

Payments: Note B's interest rate will be adjusted on its 5<sup>th</sup> anniversary (and 10<sup>th</sup> if necessary) based on the form of 2.75% in excess of the 5-year US Treasury Constant Maturity. And subject to the same cap and ceiling described above.

Notes A&B (if any)

Security: The Obligors (Individual LLC operating units) will unconditionally promise to repay the Notes A & B's monthly payments out of all of its legally available funds and specifically from project revenues. The Lender will receive a 1<sup>st</sup> mortgage position on the facilities associated with the existing notes that will be included in Notes A&B. LSSND agrees that the loan to appraised value will not exceed 80%.

Recent Appraisal results:

<u>Address:</u>	<u>Last App Date:</u>	<u>Result:</u>	
205 Central Place, Maddock value.	None	\$400,000	est. based on book
419 5 <sup>th</sup> Street NE	1.17.2012	6,000,000	CBRE
3911 20 <sup>TH</sup> Ave S, Fargo	6.16.14	4,750,000	Cushman & Wakefield
161 Capital Way, Bismarck	6.25.15	<u>1,275,000</u>	Cushman & Wakefield
Total App. Or Est:		<u>\$12,425,000</u>	

Property Description:

Maddock: 8 units, each with 2 or 3 bedrooms.

Jamestown: 51 units each with 1 or 2 bedrooms.

Fargo: Office Building 23,500 square feet.

| Bismarck: Office Building (Jessica will you please fill in the number of square feet in this building?)

Prepayment: The Obligor shall have the right to prepay the Notes A &/or B in full or in part, on any payment date, subject to a thirty-day notice. If a prepayment is partial, yet still material (defined as 5% or greater than the then outstanding principal balance) the Obligor shall have the right to request and receive from the Lender a re-amortization of the payment amount to reflect the net amount outstanding after application of the partial prepayment, considering the interest rate then in effect and the remainder of the loan term.

Release of Collateral: There are several facilities included in this refinancing request. From time to time the Obligor may decide to close a program, or decide to build or acquire a replacement facility. To accomplish these and other likely outcomes, we suggest that prior to loan closing, and once all real estate appraisals have been received, that the Lender determine as a percentage, what each facility amounts to in terms of collateral relevance and reliance. As an example, if the total of all real estate has a compiled collateral or appraised value of say \$12.0 million, and one particular property represents say \$1.2 million, then that facility will be determined to be 10% of the collateral reliance the Lender puts on the property. The same will be calculated for each property in this lot of collateral used to support this loan and listed in the loan documents. In the future, if that same facility was is closed, sold, subject to material change or improvement or replaced, then we are asking that this property would be released if the Obligor were to make a partial prepayment in the amount of 10% (or whatever percentage that property is listed as in the loan documents) of what was then at the time or release, owing under this loan agreement.

Additional Terms & Conditions:

- 1) LSSND's right to collect its management fee for managing the subject facilities will be subordinated to the timely payment of debt service to the Lender.
- 2) LSSND and associated LLC's will adequately insure the properties listed as collateral at all times.
- 3) LSSND will provide the following information to the Lender throughout the loan term:
  - a. LSSND's annual financial report audited by an independent CPA firm.
  - b. Quarterly, LSSND prepared financial statements.
  - c. LSSND's budget for operations for next year.

## **LSSND and Affiliates'** **Financial Highlights**

Dates:	P&T Unaudited <u>6/30/16</u>	Audited <u>6/30/15</u>	Audited <u>6/30/14</u>	Audited <u>6/30/13</u>
Current Assets:		\$5,501,064	\$4,051,784	\$4,171,940
Current Liabilities:		<u>6,792,601</u>	<u>5,979,439</u>	<u>3,851,279</u>
Working Capital:	0	-1,291,537	-1,927,655	320,661
Fixed Assets:		67,248,880	59,322,760	47,043,462
Long Term Debt:		<u>33,764,782</u>	<u>27,496,176</u>	<u>21,918,474</u>
Net Worth:	<u>0</u>	<u>\$32,192,561</u>	<u>\$29,898,929</u>	<u>\$25,445,649</u>
Revenues:		\$44,300,940	\$44,754,196	\$42,027,244
Net Income:		\$454,132	\$981,719	\$3,926,590
Contributions for Fixed Assets:		1,839,500	3,357,701	6,936,725
Interest Expense:		1,089,499	703,711	194,159
Non-cash expenses:		<u>1,873,215</u>	<u>1,245,835</u>	<u>563,380</u>
Cash Flow Available:	<u>0</u>	<u>\$5,256,346</u>	<u>\$6,288,966</u>	<u>\$11,620,854</u>

### Comments:

1. Contributions of Long-Lived Assets above is an account LSS created on the advice of their outside CPA to record grants received to support specific developments. These grants have come from mostly Federal sources and these are grants and not loans, thus they do not require repayment.
2. LSSND revenues break out as follows: Fee Income 32%; Charitable Contributions 18% and Government Grants and Contracts 50%.
3. As you will note, Contributions have trended downward during this period due to the final collections under a capital campaign. Revenues in excess of expenses from typical operations have traditionally approximated 2 to 3% of revenues.
4. LSSND 2016 audit was not yet available, auditors have completed their field work and we expect the 2016 audit to be released shortly.

# **Lutheran Social Services of North Dakota's Organizational Profile:**

## **LSSND Mission**

Guided by God's love and grace, LSSND brings healing, help and hope.

## **LSSND's Vision**

Leading through innovation and partnership, Lutheran Social Services of North Dakota strengthens lives and communities with its spirit of service.

- LSSND is a leader in social services through innovation and partnership, fostering innovative thinking and entrepreneurial activity within the agency, seeking partners with similar missions and sustaining deeper relationships with faith communities of all denominations. [L L] [SEP] [SEP]
- LSSND refocuses its programs on strengthening individuals and communities, looking for synergies between the two. [L L] [SEP] [SEP]
- LSSND models its mission as the social ministry of the church by putting faith into action, believing people can grow and change through interaction with the agency and its programs. [L L] [SEP] [SEP]

## **LSSND's Strategic Initiatives**

- 1 Building an organizational culture that develops and supports bold and creative leaders throughout the agency. [L L] [SEP] [SEP]
- 2 Discovering new and better ways to serve people through program innovation, collaboration and technology. [L L] [SEP] [SEP]
- 3 Developing and leveraging internal and external partnerships to provide expanded and enhanced services. [L L] [SEP] [SEP]
- 4 Connecting people to one another and to resources to help them in their times of need. [L L] [SEP] [SEP]
- 5 Engaging Lutheran congregations and other faith communities in active social ministry. [L L] [SEP] [SEP]

## **History:**

A Brief History of Lutheran Social Services of North Dakota and  
Lutheran Social Services Housing

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## **About Lutheran Social Services of North Dakota**

The **Lutheran Children's Home Finding Society**, first predecessor body of LSS/ND, was incorporated Feb. 24, 1919. Its mission was to care for children who had nowhere else to go. Lutheran Inner Mission Society was formed a short time later to provide care to unwed mothers.

The **Lutheran Welfare Society** of North Dakota was incorporated in 1936 and included elements of all its predecessor societies; over the next 30 years it merged its services into a single statewide agency.

In 1948, The Lutheran Welfare Society of North Dakota was one of five state organizations first called upon to serve in the settlement of displaced persons (refugees) from war-torn Europe. The **Lutheran Resettlement Service** of ND was set up under a state committee, with Lutheran Welfare as the sponsoring agency.

In 1969, the Lutheran Welfare Society of North Dakota changed its name to **Lutheran Social Services of North Dakota**. At the request of the North Dakota Department of Human Services, LSS/ND took on the task of developing community **Senior Citizen Centers** across the state. By 1971, more than 90 centers had been established. The **Senior Companion Program** started in 1981 to help seniors maintain themselves in independent living with the help of a volunteer. The Greater Fargo-Moorhead Area **Food Bank** was established by LSS in 1983 to glean surplus food and distribute it through other agencies to hungry folks in the area.

LSS/ND added **Youth Advocacy Services** and ISLA (Independent Supported Living Arrangements) to its growing list of programs in 1988. YAS serves troubled youths in communities throughout the state. ISLA provides supervision to developmentally disabled persons to help them achieve the greatest possible degree of independence. That same year, LSS's **Luther Hall** was licensed as a residential child-care facility for adolescent boys and girls.

The **Daily Bread** program began in May 1992 and exceeded expectations the first year by delivering more than 200,000 meals. The program harvests unused, prepared food from institutional food services (hotels, schools, etc.) and delivers it to programs feeding poor and transients.

In the aftermath of the disastrous winter and spring of 1997, three LSS programs (including **Lutheran Disaster Response**) spent more than \$20 million aiding flood victims in Minnesota, South Dakota and North Dakota.

### **Creation of Lutheran Social Services Housing**

In February 2008, this well-established non-profit organization with a history of adapting to meet changing community and individual needs created Lutheran Social Services Housing, Inc. - a new subsidiary whose mission it is to support continued community vitality in North Dakota's rural towns and smaller cities through the development of housing and housing-related services.

LSS Housing Inc. is poised to unify the delivery of services and housing to create housing opportunities that can truly meet the needs of community residents. This unique positioning comes from the parent company's expertise and experience in statewide service delivery and its demonstrated commitment to working with residents from across the state of North Dakota through grassroots partnerships with Lutheran congregations and community leaders.

Over the course of its 90-year history, LSS/ND has developed and managed several residential programs and properties, but the addition of LSS Housing will create a true faith-based alternative to traditional housing development for communities grappling with housing issues across the state of North Dakota.

## **EXECUTIVE TEAM**



**Jessica Thomasson, President/CEO Lutheran Social Services of North Dakota (LSSND)**

Jessica is the President/CEO of LSSND, an organization committed to helping people thrive at all stages of life. Before becoming CEO, Jessica led the organization's efforts to create an affordable housing subsidiary as the Director of Lutheran Social Services Housing Inc.

Prior to joining Lutheran Social Services, Jessica was the Senior Deputy Director of the Fannie Mae North Dakota Community Business Center where she worked with lenders and community leaders from across the state to address local housing challenges, partnering to find creative solutions.

Jessica served as the Senior Community Development Planner for the City of Fargo for 8 years, where she was involved in creating the city's Neighborhood Revitalization Initiative, developing and implementing the Renaissance Zone, leading the city's effort to draft a strategic plan to end long term homelessness, and managing the CDBG and HOME grants received by the City.

She has volunteered with many organizations over the last 15 years, including Lake Agassiz Habitat for Humanity, CHARISM (a youth-focused organization working in low income neighborhoods), CommunityWorks ND (affordable housing lender), and the Federal Home Loan Bank of Des Moines Advisory Board.

Jessica holds Masters Degrees from the University of Wisconsin Madison and is a graduate of the University of North Dakota.



**Janell Regimbal, Vice President – Children and Family Services**

Janell Regimbal has administered a variety of community-based services for at-risk youth and their families for the past 29 years through her employment with Lutheran Social Services of North Dakota. While there she has served in a variety of capacities including Program Director of Luther Hall, Northeast Regional Director, Program Director of Youth Advocacy Services, Vice President of Youth Services, Interim

President/CEO and most recently as the Vice President of Children's Services. She has designed, implemented and maintained a variety of services in conjunction with others over the course of her career including outreach and services related to disaster mental health recovery, youth diversion, community based services for juvenile justice and foster care youth, child abuse prevention and school based innovations to prevent childhood exposure to violence.

Janell is active in her community and state as it relates to youth issues. She has served as a Technical Assistance Trainer for American Parole and Probation and the Community Action Drug Coalitions of America. She has been a peer reviewer for the Council on Accreditation (COA), providing site visitations to agencies around the country undergoing accreditation.

She is active on a number of statewide and local boards and committees that help further advocacy efforts of children and families.

Janell is a Licensed Professional Clinical Counselor and is a graduate of North Dakota State University (BS Psychology) and the University of North Dakota (MA Counseling).



**Shirley Dykshoorn, Vice President – Senior and Humanitarian Services**

Shirley Dykshoorn serves as the Vice President of Senior Services and Humanitarian Services at Lutheran Social Services of North Dakota. Her responsibilities include oversight of programs of Senior Services, New American Services, Refugee Resettlement, and Disaster Response.

She serves as Director of Lutheran Social Services Disaster Response ND since 2012, helping to oversee the Lutheran efforts related to the 2011 flood in Minot, North Dakota, also serving on the Board of Directors for Hope Village. Prior to serving in this capacity, Shirley was directly involved in the 2007 Northwood, ND, tornado recovery effort leveraging housing resources needed in the community.

Shirley has a wealth of knowledge, skills and experience. Her former positions include: Director of Lake Agassiz for Habitat for Humanity, Lead Director Fannie Mae’s Business Centers in ND, Project Director for Tri-State Rural Collaboration Project, State Supervisor of Volunteer Services and Director of Office of Intergovernmental Assistance. She has collaborated with all of the entities active in the disaster recovery field, from the National Guard to local leaders.

Her leadership abilities brings government and faith-based partners together, leveraging vital resources for the benefit of impacted communities. Currently, Shirley serves as Chair of the North Dakota Voluntary Organizations Active in Disaster (ND VOAD).

**Steve Olson, Vice President - Operations**

As the Vice President of Operations, Steve Olson is responsible for the operations of all LSS entities in North Dakota. As the Vice President of Operations, Steve guides the organization to include human resources, accounting and finance, business development, and information technology.

Prior to becoming the Vice President of Operations at LSS, Steve held positions that include Chief Operating Officer at Great Plains Food Bank, Chief Executive Officer of O-COR Inc., Vice President of Operations at Military Personnel Services Corporation, and Recruiting and Retention Director for the North Dakota Army National Guard.

Throughout his career, Steve has committed his talent as a board member in the Lutheran Church. He led the nation’s Suicide Prevention Program for the Army National Guard, and led a number of national initiatives for the wellness of military members and their families.

Steve holds a Master of Business Administration from the University of Mary and is a graduate of Valley City State University.

**Board of Directors, Officers:**

Board Chair: **Mark Strand**, West Fargo  
Vice Chair: **David Walth**, Halliday  
Secretary: **Rev. Sharon Baker**, Rugby  
Treasurer: **Melanie Stillwell**, Williston

Board Members

**Thomas Eide**, Fargo  
**Rev. Lynn Ronsberg**, Grand Forks  
**Jim Melland**, Grand Forks  
**Bishop Mark Narum**, Bismarck  
**Rev. Clark Jahnke**, West Fargo  
**Bishop Terry Brandt**, Fargo  
**Tom Wade**, Devils Lake  
**Murray Sagsveen**, Bismarck  
**Susan Wefald**, Bismarck

**Administrative Service Centers:**

**Fargo Program Center (Administrative Office)**  
3911 20th Avenue South  
Fargo, ND 58103

**Bismarck Program Center**  
1616 Capitol Way  
Bismarck, ND 58501

**Devils Lake Program Center**  
423 6th Avenue NE  
Devils Lake, ND 58301-1021

**Grand Forks Program Center**  
412 Demers Avenue  
Grand Forks, ND 58201

**Minot Program Center**  
1905 2nd Street SE Suite 1B  
Minot, ND 58701

**Williston Program Center**  
PO Box 163  
603 Main Street  
Williston, ND 58802

Extract of Minutes of a Meeting of the  
City Commission of the City of  
Bismarck, North Dakota

Pursuant to due call and notice thereof, a regular meeting of the City Commission of the City of Bismarck, North Dakota was duly called and held at the Tom Baker Room at City Hall, 221 North Fifth Street, Bismarck, North Dakota, on Tuesday, the 22nd day of November, 2016, at 5:15 p.m. The following members were present:

and the following were absent:

Member \_\_\_\_\_ introduced the following resolution and moved its adoption:

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION GIVING HOST APPROVAL TO THE ISSUANCE OF A REVENUE NOTE,  
SERIES 2016 (LSS HOUSING PROJECTS),  
BY THE CITY OF MADDOCK, NORTH DAKOTA**

BE IT RESOLVED By the City Commission (the "Commission") of the City of Bismarck, North Dakota (the "City"), as follows:

1. The Borrower and the Projects.

(a) Lutheran Social Services, Inc. (the "Corporation"), has represented to the City and the Issuer (hereafter defined) that it is a North Dakota nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

(b) The Corporation is proposing that the City of Maddock, North Dakota (the "Issuer") assist with the refinancing of indebtedness originally incurred to finance various projects, as follows (the "Projects"):

- (i) An 8-unit housing facility originally converted from vacant property owned by the U.S. Department of Agriculture located at 205 Central Place in the City of Maddock, North Dakota, and owned by LSS Housing Maddock, LLC;
- (ii) A 51-unit multifamily housing facility and functionally related and subordinated facilities located at 419 Fifth Street Northeast in the City of Jamestown, North Dakota, and owned by LSS Housing Jamestown, LLC;

- (iii) An approximately 6,628-square foot office building used for the Corporation's non-profit business activities, located at 1616 Capitol Way in the City, and owned by the Corporation; and
  - (iv) An approximately 23,500-square foot office building used for the Corporation's non-profit business activities, located at 3911 20th Avenue South in the City of Fargo, North Dakota.
- (c) To refinance the Projects, the Corporation has proposed that the Issuer issue its Revenue Note, Series 2016 (LSS Housing Projects) (the "Note"), in a principal amount of approximately \$7,850,000.
- (d) The Note, as and when issued, will not constitute a charge, lien or encumbrance upon any property of the City or the Issuer, except the Projects and the revenues to be derived from the Projects. The Note will not be a charge against the general credit or taxing powers of the City or the Issuer, but is solely payable from sums to be paid by the Corporation pursuant to one or more revenue agreements between the Corporation and a participating financial institution.
- (e) The Corporation has represented to the City that no public official of the City has either a direct or indirect financial interest in the refinancing of the Projects nor will any public official either directly or indirectly benefit financially from the refinancing of the Projects.
- (f) The Corporation additionally represents under this Resolution and will represent in the various loan documents supplementing the Note that it will carry property and liability insurance covering the Projects in amounts usual and sufficient to cover similar projects, and that it will keep and maintain books of account and allow for the audit of such bookkeeping information by the Issuer and the City at reasonable times.

Section 2.     Public Hearing.

- (a) As required by Section 147(f) of the Code, a Notice of Public Hearing was published for two consecutive weeks in the *Bismarck Tribune*, a newspaper of general circulation in the City, not less than 14 days nor more than 30 days before the date of the public hearing, related to the consideration of this Commission, as the elected legislative body of the City, giving host approval for the issuance of the Note and the proposal to undertake and finance the Project located within the jurisdictional limits of the City at 1616 Capitol Way.
- (b) As required by Section 147(f) of the Code, this Commission has on this same date held a public hearing on giving "host approval" for the issuance of the Note and the proposal to undertake and finance the Projects, at which all those appearing who desired to speak were heard and written comments, if any, were accepted.

Section 3.     Host Approval. By this Resolution, and pursuant to Section 147(f) of the Code, this Commission consents to the issuance of the Note by the Issuer and the refinancing of the Projects for the purposes mentioned above.

This Resolution is hereby adopted by the City Commission of the City of Bismarck, North Dakota on this 22nd day of November, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Member \_\_\_\_\_, and after full discussion thereof and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

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STATE OF NORTH DAKOTA            )  
COUNTY OF BURLEIGH            )  
CITY OF BISMARCK                )

I, the undersigned, being the duly qualified and acting Auditor of the City of Bismarck, North Dakota, certify that I have compared the attached and foregoing extract of minutes with the original thereof on file in my office, and that the same is a full, true and complete transcript of the minutes of a meeting of the City Commission of the City of Bismarck, North Dakota, duly called and held on the date therein indicated, insofar as such minutes relate to a resolution giving host approval related to the issuance of a Revenue Note, Series 2016 (LSS Housing Projects), by the City of Maddock, North Dakota.

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
City Auditor



## ADMINISTRATION

**DATE:** November 16, 2016

**FROM:** Jason Tomanek, Assistant City Administrator *JT.*

**ITEM:** Fort Abraham Lincoln Foundation | Lease Negotiation

### REQUEST

The request is to allow representatives of the Fort Abraham Lincoln Foundation (FALF) to work with City staff to finalize the lease agreement and proposed development plans.

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

The FALF currently leases the City-owned property at 1700 River Road and utilizes the area as the landing for the Lewis & Clark Riverboat. The FALF has been developing plans to construct a permanent, multi-use facility on the site. The current lease agreement will expire on December 31, 2016. It is the desire of the FALF to continue leasing the site from the City of Bismarck.

### RECOMMENDED CITY COMMISSION ACTION

Consider allowing City staff to work with representatives of the Fort Abraham Lincoln Foundation to finalize the lease agreement and the proposed development with the understanding that the lease and the project would be brought back to the Board of City Commissioners for contemplation of the construction and improvements to the site.

### STAFF CONTACT INFORMATION

Aaron Barth, Executive Director | Fort Abraham Lincoln Foundation  
[aaron@fortlincoln.org](mailto:aaron@fortlincoln.org)  
701.663.4758



## COMMUNITY DEVELOPMENT DEPARTMENT

**DATE:** November 9, 2016  
**FROM:** Carl D. Hokenstad, AICP, Director of Community Development *CDH*  
**ITEM:** Amended Proposed Changes to Bis-Man Transit Service

### REQUEST

Request for Roy Rickert, Director, Bis-Man Transit, to appear before the Bismarck Board of City Commissioners regarding amended proposed changes to service provided by Bis-Man Transit

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

Bis-Man Transit appeared before the Bismarck Board of City Commissioners on July 12, 2016 to present proposed changes to services provided by Bis-Man Transit. The July 12 meeting included a public hearing on the item. Bis-Man Transit conducted three separate listening sessions and one public hearing subsequent to the July 12 meeting to further evaluate and amend the proposed changes. Bis-Man Transit appeared before the Bismarck Board of City Commissioners on November 8 at their regular meeting to present the amended proposed changes and was instructed by the Commission to bring further information back to the Commission on November 22.

### RECOMMENDED CITY COMMISSION ACTION

Continue discussion with Bis-Man Transit to develop acceptable changes to the transit service.

### STAFF CONTACT INFORMATION

Steve Saunders  
Director, Bismarck-Mandan MPO  
701-355-1848  
[ssaunders@bismarcknd.gov](mailto:ssaunders@bismarcknd.gov)



## ADMINISTRATION

**DATE:** November 1, 2016  
**FROM:** Kristi Hass *keh*  
**ITEM:** Request for liquor license transfer

### REQUEST

Consider request from Fotlom Properties, LLC. to request a Class E liquor license transfer.

Please place this item on the November 8, 2016 City Commission meeting.

### BACKGROUND INFORMATION

Fotlom Properties, LLC has requested a transfer of the Class E liquor license that is currently held by Capsco Entertainment, Inc. dba The Pier C-store at 1120 Riverwood Drive. Fotlom Properties requests to transfer the license to the Pony Express Shell located at 1020 South Washington Street.

### RECOMMENDED CITY COMMISSION ACTION

Staff requests the Board introduce the request for a transfer of this Class E liquor license and call for a public hearing to be held at the Board's November 22, 2016 meeting on this request.

### STAFF CONTACT INFORMATION

If you have any questions, please contact:  
Marla Schroeder, 355-1300, [mschroeder@bismarcknd.gov](mailto:mschroeder@bismarcknd.gov)

LIQ2016-00123

10-18-16

*[Signature]*

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

License \_\_\_\_\_  
Class E

- 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 Fathom Properties LLC  
 DATE OF INCORPORATION \_\_\_\_\_ PHONE (701) 223-3816  
 ADDRESS 1020 South Washington Street CITY, STATE, ZIP Bismarck, ND 58504  
 IF OUT OF STATE CORPORATION, IS CORPORATION REGISTERED IN NORTH DAKOTA? \_\_\_\_\_  
 NAME AND ADDRESS OF REGISTERED AGENT \_\_\_\_\_

CERTIFICATE NUMBER \_\_\_\_\_ PHONE \_\_\_\_\_  
 NAME OF BUSINESS FOR WHICH LICENSE IS REQUESTED Pony Express Shell  
 BUSINESS ADDRESS 1020 South Washington St. CITY, STATE, ZIP Bismarck, ND 58504  
 MAILING ADDRESS 1020 South Washington St. CITY, STATE, ZIP Bismarck, ND 58504  
 PRIMARY CONTACT Dave Nagel PHONE (701) 223-3816  
 EMAIL [REDACTED]

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

NAME Dave Nagel ADDRESS/CITY/STATE [REDACTED] Bismarck, ND 58504  
 DATE OF BIRTH [REDACTED] M/F M RACE C DRIVER'S LICENSE # AND STATE ISSUED [REDACTED] ND  
 OCCUPATION Store Owner/Manager TITLE Owner/Manager %OWNERSHIP 50  
 NAME Todd Eckroth ADDRESS/CITY/STATE [REDACTED] Bismarck, ND 58504  
 DATE OF BIRTH [REDACTED] M/F m RACE C DRIVER'S LICENSE # AND STATE ISSUED [REDACTED] ND  
 OCCUPATION Store Owner/Manager TITLE Owner/Manager %OWNERSHIP 50  
 NAME \_\_\_\_\_ ADDRESS/CITY/STATE \_\_\_\_\_  
 DATE OF BIRTH \_\_\_\_\_ M/F \_\_\_\_\_ RACE \_\_\_\_\_ DRIVER'S LICENSE # AND STATE ISSUED \_\_\_\_\_  
 OCCUPATION \_\_\_\_\_ TITLE \_\_\_\_\_ %OWNERSHIP \_\_\_\_\_

MANAGER'S NAME Justin Nagel ADDRESS/CITY/STATE [REDACTED] Bismark, ND 58504

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

OCCUPATION Convenience Store Manager TITLE Manager

LIST NAMES/ADDRESS/PERCENTAGE OF OWNERSHIP OF ANY PERSON OWNING AN INTEREST IN THE BUSINESS Dave Nagel 50% Todd Eckroth 50%

OWNER OF BUILDING OR PREMISES Donald Hastings 1030-N Parkview Drive Bismark

**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.

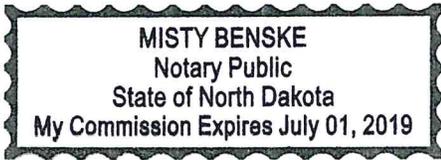
1. Are manager and all partners legal residents of the United States and the State of North Dakota, and are all officers or directors legal residents of the United States? yes If not, explain \_\_\_\_\_
2. Have any of the persons listed above been convicted of any crime within the past five years? If 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? 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 \_\_\_\_\_

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.



[Signature]  
Signature of Applicant

Subscribed and sworn to before me this 6 day of 10, 2016

[Signature]  
Notary Public

\*\*\*\*\*

Recommend application be: APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_

Reasons for negative recommendation \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Chief of Police

Date: \_\_\_\_\_

\_\_\_\_\_  
City Administration

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

Name of Licensee Pony Express

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

Location of licensed premises 1020 S Washington Street Bismarck ND

Name of manager or local contact person Dave Nasol

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 \_\_\_\_\_

The normal term for a Sunday alcoholic beverage license is August 1<sup>st</sup> through July 31<sup>st</sup>. Applications must be submitted by July 1<sup>st</sup> of each year. Any application submitted after July 1<sup>st</sup> 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 2<sup>nd</sup> day of November, 2016

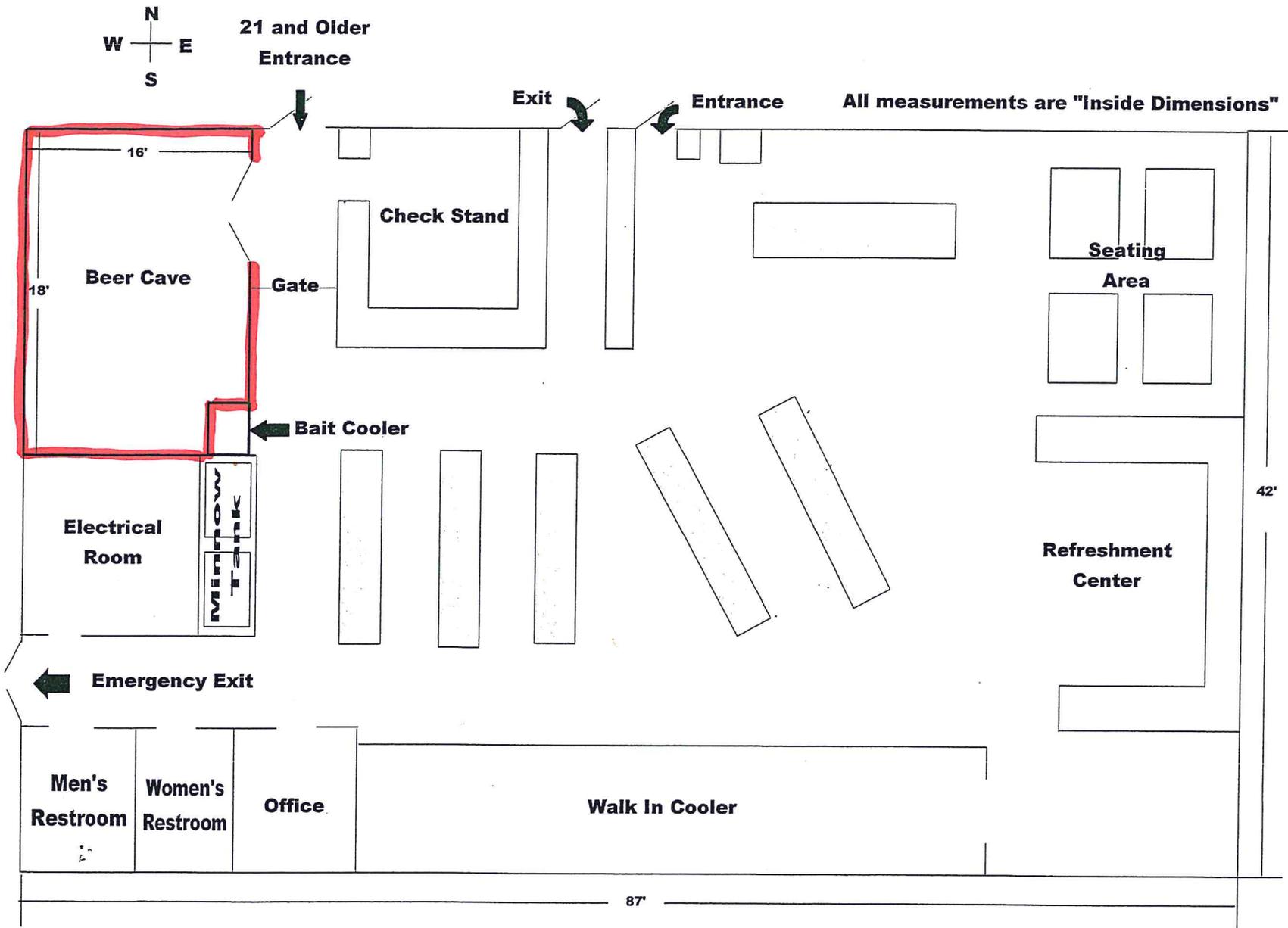
  
Applicant/Licensee

\_\_\_\_\_  
Chief of Police

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Administration

\_\_\_\_\_  
Date





# License Reviews City of Bismarck

License Number: **LIQ2016-00123**

Licensee Name: **PONY EXPRESS SHELL**

Applied: **10/18/2016**

Issued:

Site Address: **1020 S WASHINGTON ST**

Expired:

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

Status: **PENDING**

Applicant: **NAGEL, DAVE & KELLY**

Parent License:

Owner: **HASTINGS DONALD H & MARLENE**

Contractor: **<NONE>**

Details:

**THIS CLASS E LIQUOR LICENSE PREVIOUSLY BELONGED TO THE PIER C STORE AND IS NOW PURCHASED BY PONY EXPRESS SHELL. THIS IS A NEW APPLICATION WITH A SITE TRANSFER.**

## LIST OF REVIEWS

SENT DATE	RETURNED DATE	DUE DATE	TYPE	CONTACT	STATUS	REMARKS
Review Group: ADMIN-POLICE						
10/18/2016	10/19/2016	10/19/2016	COMPLETENESS CHECK POLICE	Tara Axtman	COMPLETE	background complete
Notes:						
10/19/2016	10/19/2016	10/20/2016	LT REVIEW	Gary Malo	COMPLETE	
Notes: Diagram attached. Owners & manager have clear records. Forward to DC.						
Review Group: AUTO						
10/18/2016	10/18/2016	10/19/2016	COMPLETENESS CHECK ADMIN	Marla Schroeder	INCOMPLETE	
Notes: PAYMENT HAS NOT BEEN MADE FOR APPLICATION FEE						
10/19/2016	10/19/2016	10/20/2016	DC REVIEW	Randy Ziegler	COMPLETE	
Notes: Ok, Forward to Chief.						
10/19/2016	10/20/2016	10/20/2016	CHIEF REVIEW	Dan Donlin	APPROVED	
Notes:						
10/20/2016	10/20/2016	10/21/2016	CITY ADMIN	Jason Tomanek	APPROVED W/CONDITIONS	
Notes: Administration approves with the understanding that the application fee will be paid in-full and the Board of City Commissioners approve the request for the license transfer.						



# License Reviews City of Bismarck

10/20/2016	10/20/2016	10/21/2016	COMPLETENESS CHECK FINAL	Marla Schroeder	INCOMPLETE	
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Notes:

DAVE NAGEL CALLED THIS MORNING AND STATED A CHECK FOR \$200 WILL BE PUT IN THE MAIL TODAY TO MY ATTN



## COMMUNITY DEVELOPMENT DEPARTMENT

**DATE:** November 1, 2016

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

**ITEM:** Boulder Ridge Sixth Addition – Annexation, Zoning Change and Final Plat

### REQUEST

Five Guys Investment, LLP and Boulder Ridge Development Inc. are requesting approval of the annexation, the zoning change from the A – Agricultural zoning district to the R5 – Residential and P- Public zoning districts and the final plat for Boulder Ridge Sixth Addition. The action would allow the development of 38 single-family homes and provide a lot for storm water and drainage.

The property is located in northwest Bismarck, east of North Washington Street and north of East LaSalle Drive.

Please place this item on the November 8 City Commission meeting and the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

The Planning & Zoning Commission considered the annexation and held a public hearing on the zoning change and final plat on May 22, 2013.

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 reports, the Planning & Zoning Commission unanimously recommended approval of the annexation, the zoning change from the A – Agricultural zoning district to the R5 – Residential and P – Public zoning districts and the final plat for Boulder Ridge Sixth Addition, with the condition that the request will not be forwarded to the City Commission for final action until a complete application for annexation of the area south of Boulder Ridge 5th Addition is submitted and that any future phase of development include the remaining sanitary sewer easement needed to provide service to the area west of North Washington Street. An excerpt of the minutes of this meeting is attached.

The Board of City Commissioners, at its meeting of June 11, 2013, considered the requests but rejected the recommendation of the Planning and Zoning Commission and did not call for a public hearing on the annexation request or the zoning change request, and indicated that this plat and related actions could not proceed until the sanitary sewer easement needed to provide service to the area west of North Washington Street was dedicated. An excerpt from the minutes of this meeting is attached.

On April 22, 2016, the easement needed to provide sanitary sewer service to the area west of North Washington Street was granted to the City by Five Guys Investments, LLP. On June 8, 2016, Jack Knutson, on behalf of the property owner and developer, requested that the City Commission to reconsider the actions related to Boulder Ridge Sixth Addition. As rainfall and soils data tied to the approved storm water management plan had changed since 2013, City Engineering requested an update to the approved storm water management plan. The revised storm water management plan was approved by the City Engineer on November 1, 2016.

## **RECOMMENDED CITY COMMISSION ACTION**

November 8<sup>th</sup> Meeting of the Board of City Commissioners – reconsider the requests for annexation as outlined in Ordinance 5981 and the zoning change as outlined in Ordinance 5982, and call for a public hearing on these items for the November 22<sup>nd</sup> meeting of the Board of City Commissioners.

November 22<sup>nd</sup> Meeting of the Board of City Commissioners – hold public hearing on the requests for annexation as outlined in Ordinance 5981 and the zoning change as outlined in Ordinance 5982, consider the request for approval of the final plat for Boulder Ridge Sixth Addition, and take final action on all three requests.

## **STAFF CONTACT INFORMATION**

Please contact Kim L. Lee, AICP, the planner in our office assigned to these requests, at 355-1846 or [klee@bismarcknd.gov](mailto:klee@bismarcknd.gov).

Planning Manager Kim Lee will also present these items at the meetings.

**ORDINANCE NO. 5981**

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

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:

Lots 1-11, Block 1; Lot 1, Block 2; Lots 1-11, Block 3; Lots 1-8, Block 4; and Lots 1-8, Block 5; Boulder Ridge Sixth Addition.

The above described tract of land contains 16.06 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.

**ORDINANCE NO. 5982**

<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-Agricultural zoning district and included in the R5-Residential zoning district:

Lots 1-11, Block 1; Lots 1-11, Block 3; Lots 1-8, Block 4; and Lots 1-8, Block 5; Boulder Ridge Sixth Addition.

Section 2. 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-Agricultural zoning district and included in the P-Public zoning district:

Lot 1, Block 2, Boulder Ridge Sixth Addition.

Section 3. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

**BISMARCK-BURLEIGH COUNTY COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

<b>BACKGROUND:</b>		
<b>Title:</b> Boulder Ridge Sixth Addition – Annexation		
<b>Status:</b> Planning Commission – Final Consideration	<b>Date:</b> May 22, 2013	
<b>Owner(s):</b> Five Guys Investment LLP (owner) Boulder Ridge Development Inc. (developer)	<b>Engineer:</b> Swenson, Hagen & Co.	
<b>Reason for Request:</b> Plat, zone and annex zone property for single-family residential development.		
<b>Location:</b> East of North Washington Street between 43 <sup>rd</sup> Avenue NW and 57 <sup>th</sup> Avenue NW (part of the NW¼ of Section 16, T139N-R80W/Hay Creek Township).		
<b>Project Size:</b> 16.06 acres	<b>Number of Lots:</b> 39 lots in 5 blocks	
<b>EXISTING CONDITIONS:</b>		
<b>Land Use:</b> Undeveloped	<b>PROPOSED CONDITIONS:</b>	
<b>Zoning:</b> A – Agricultural	<b>Land Use:</b> Single family residential	
	<b>Zoning:</b> R5 – Residential P- Public	
<b>Uses Allowed:</b> A – Agriculture	<b>Uses Allowed:</b> R5 – Single-family residential P – Public uses, including schools	
<b>Maximum Density Allowed:</b> A – One unit/40 acres	<b>Maximum Density Allowed:</b> R5 – 5 units/acre P – N/A	
<b>PROPERTY HISTORY:</b>		
<b>Zoned:</b> N/A	<b>Platted:</b> N/A	<b>Annexed:</b> N/A
<b>ADDITIONAL INFORMATION:</b>		
<ol style="list-style-type: none"> <li>The applicant was previously asked to provide an off-site storm water and sanitary sewer easement to the north of the Boulder Ridge 5<sup>th</sup> Addition plat to allow for the extension of municipal facilities that will promote the orderly development of the community. The applicant has dedicated all of the required off-site easement for storm water and most of the off-site easement for sanitary sewer, but has been unwilling to provide that portion of the off-site sanitary sewer easement needed to cross North Washington Street and provide that area with sanitary sewer service.</li> </ol>		
<b>FINDINGS:</b>		
<ol style="list-style-type: none"> <li>The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation at the time the property is developed.</li> <li>The proposed annexation would not adversely affect property in the vicinity.</li> <li>The proposed annexation is consistent with the general intent and purpose of Title 14 of the City Code of Ordinances.</li> <li>The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.</li> </ol>		

**RECOMMENDATION:**

Based on the above findings, staff recommends approval of the annexation of Boulder Ridge 6<sup>th</sup> Addition, with the understanding that any future phase of development include the remaining sanitary sewer easement needed to provide service to the area west of North Washington Street.

**BISMARCK-BURLEIGH COUNTY COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

<b>BACKGROUND:</b>		
<b>Title:</b> Boulder Ridge Sixth Addition – Zoning Change (A to R5 & P)		
<b>Status:</b> Planning Commission – Public Hearing	<b>Date:</b> May 22, 2013	
<b>Owner(s):</b> Five Guys Investment LLP (owner) Boulder Ridge Development Inc. (developer)	<b>Engineer:</b> Swenson, Hagen & Co.	
<b>Reason for Request:</b> Plat, zone and annex zone property for single-family residential development.		
<b>Location:</b> East of North Washington Street between 43 <sup>rd</sup> Avenue NW and 57 <sup>th</sup> Avenue NW (part of the NW¼ of Section 16, T139N-R80W/Hay Creek Township).		
<b>Project Size:</b> 16.06 acres	<b>Number of Lots:</b> 39 lots in 5 blocks	
<b>EXISTING CONDITIONS:</b>		
<b>Land Use:</b> Undeveloped	<b>PROPOSED CONDITIONS:</b>	
<b>Zoning:</b> A – Agricultural	<b>Land Use:</b> Single family residential	
<b>Uses Allowed:</b> A – Agriculture	<b>Zoning:</b> R5 – Residential P- Public	
<b>Maximum Density Allowed:</b> A – One unit/40 acres	<b>Uses Allowed:</b> R5 – Single-family residential P – Public uses, including schools	
	<b>Maximum Density Allowed:</b> R5 – 5 units/acre P – N/A	
<b>PROPERTY HISTORY:</b>		
<b>Zoned:</b> N/A	<b>Platted:</b> N/A	<b>Annexed:</b> N/A
<b>ADDITIONAL INFORMATION:</b>		
<ol style="list-style-type: none"> <li>The applicant was previously asked to provide an off-site storm water and sanitary sewer easement to the north of the Boulder Ridge 5<sup>th</sup> Addition plat to allow for the extension of municipal facilities that will promote the orderly development of the community. The applicant has dedicated all of the required off-site easement for storm water and most of the off-site easement for sanitary sewer, but has been unwilling to provide that portion of the off-site sanitary sewer easement needed to cross North Washington Street and provide that area with sanitary sewer service.</li> </ol>		
<b>FINDINGS:</b>		
<ol style="list-style-type: none"> <li>The proposed zoning change is consistent with the Land Use Plan, which identifies the long range use of this area as residential, public and open space (land use component of US Highway 83 Corridor Transportation Study).</li> <li>The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include developing single family residential to the south and west; multi-family residential and publicly owned open space to the east; and undeveloped land to the west; and undeveloped land to the north.</li> </ol>		
<i>(continued)</i>		

3. The subdivision proposed for this property would be annexed prior to development; therefore, the proposed zoning change would not place an undue burden on public services.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

**RECOMMENDATION:**

Based on the above findings, staff recommends approval of the zoning change from the A – Agricultural zoning district to the R5 – Residential zoning district for Lots 1-11, Block 1, Lots 1-11, Block 3, Lots 1-8, Block 4 and Lots 1-8, Block 5; and to the P-Public zoning district for Lot 1, Block 2, Boulder Ridge 6<sup>th</sup> Addition, with the understanding that any future phase of development include the remaining sanitary sewer easement needed to provide service to the area west of North Washington Street.

**BISMARCK-BURLEIGH COUNTY COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

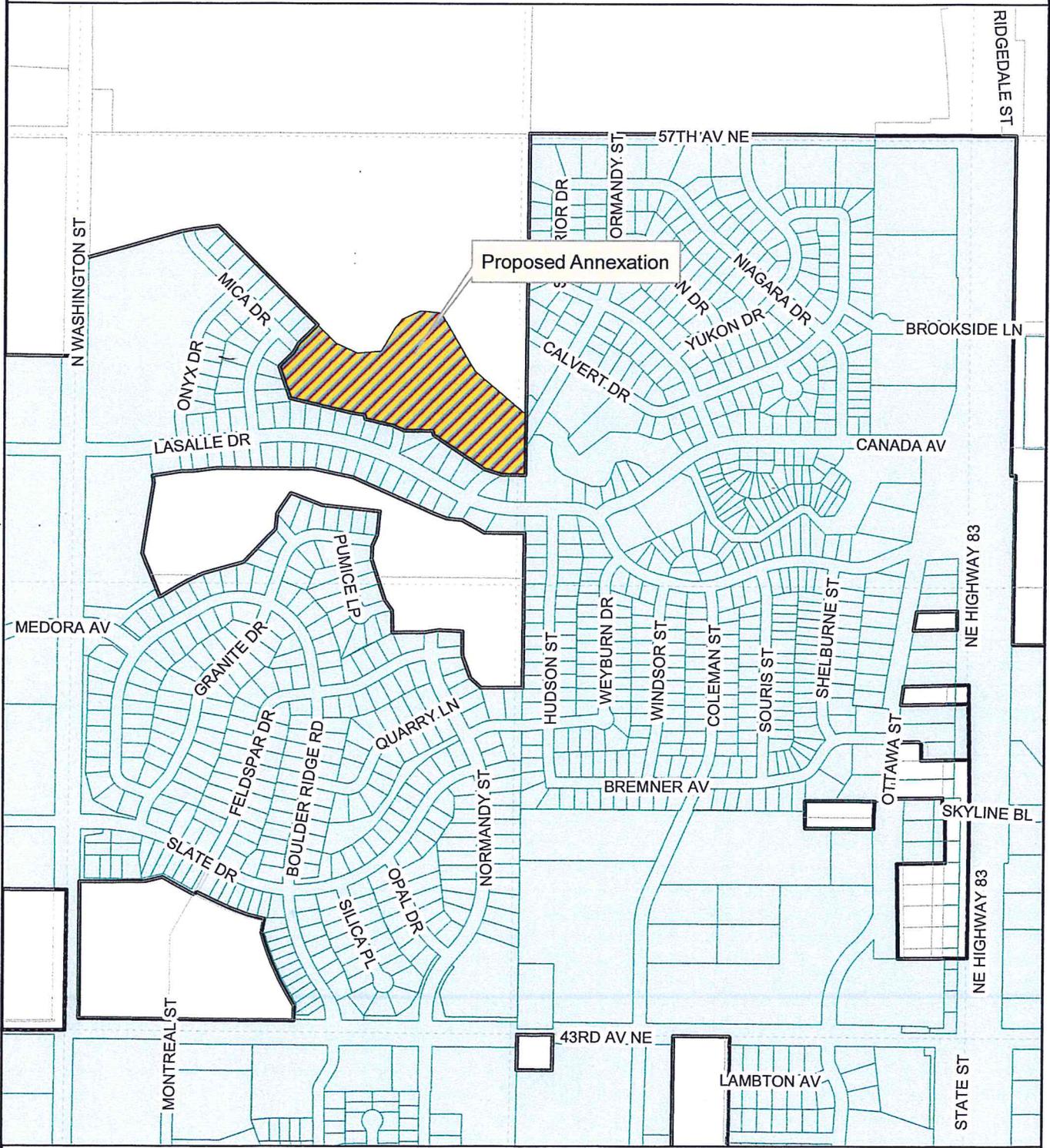
<b>BACKGROUND:</b>		
<b>Title:</b> Boulder Ridge Sixth Addition – Final Plat		
<b>Status:</b> Planning Commission – Public Hearing	<b>Date:</b> May 22, 2013	
<b>Owner(s):</b> Five Guys Investment LLP (owner) Boulder Ridge Development Inc. (developer)	<b>Engineer:</b> Swenson, Hagen & Co.	
<b>Reason for Request:</b> Plat, zone and annex zone property for single-family residential development.		
<b>Location:</b> East of North Washington Street between 43 <sup>rd</sup> Avenue NW and 57 <sup>th</sup> Avenue NW (part of the NW¼ of Section 16, T139N-R80W/Hay Creek Township).		
<b>Project Size:</b> 16.06 acres	<b>Number of Lots:</b> 39 lots in 5 blocks	
<b>EXISTING CONDITIONS:</b>		
<b>Land Use:</b> Undeveloped	<b>PROPOSED CONDITIONS:</b>	
<b>Zoning:</b> A – Agricultural	<b>Land Use:</b> Single family residential	
	<b>Zoning:</b> R5 – Residential P- Public	
<b>Uses Allowed:</b> A – Agriculture	<b>Uses Allowed:</b> R5 – Single-family residential P – Public uses, including schools	
<b>Maximum Density Allowed:</b> A – One unit/40 acres	<b>Maximum Density Allowed:</b> R5 – 5 units/acre P – N/A	
<b>PROPERTY HISTORY:</b>		
<b>Zoned:</b> N/A	<b>Platted:</b> N/A	<b>Annexed:</b> N/A
<b>ADDITIONAL INFORMATION:</b>		
<p>1. There are concerns with the donut hole of unplatted and unannexed property between previous phases of Boulder Ridge and Boulder Ridge 5<sup>th</sup> Addition. When approving the final plat, zoning change and annexation for Boulder Ridge 5<sup>th</sup> Addition, the action of the City Commission included a condition that any future development in this area would involve filling the hole that currently exists within this development. Although that area is not included with this request, the applicant has indicated that a request for annexation of the area south of Boulder Ridge 5<sup>th</sup> Addition would be submitted for the next application cycle.</p>		
<b>FINDINGS:</b>		
<p>1. All technical requirements for approval of the final plat have been met.</p> <p>2. The storm water management plan has been approved by the City Engineer.</p>		
<i>(continued)</i>		

3. The proposed subdivision is consistent with the Fringe Area Road Master Plan for Section 15, T139N-R80W/Hay Creek Township, which identifies Normandy Street as the north-south collector and LaSalle Drive as the east-west collector for this section.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include developing single family residential to the south and west; multi-family residential and publicly owned open space to the east; and undeveloped land to the west; and undeveloped land to the north.
5. The proposed subdivision would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

**RECOMMENDATION:**

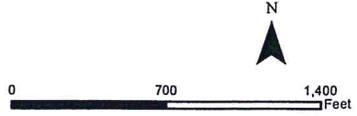
Based on the above findings, staff recommends approval of the final plat of Boulder Ridge 6<sup>th</sup> Addition, with the understanding that any future phase of development include the remaining sanitary sewer easement needed to provide service to the area west of North Washington Street.

# Proposed Annexation Boulder Ridge 6th Addition

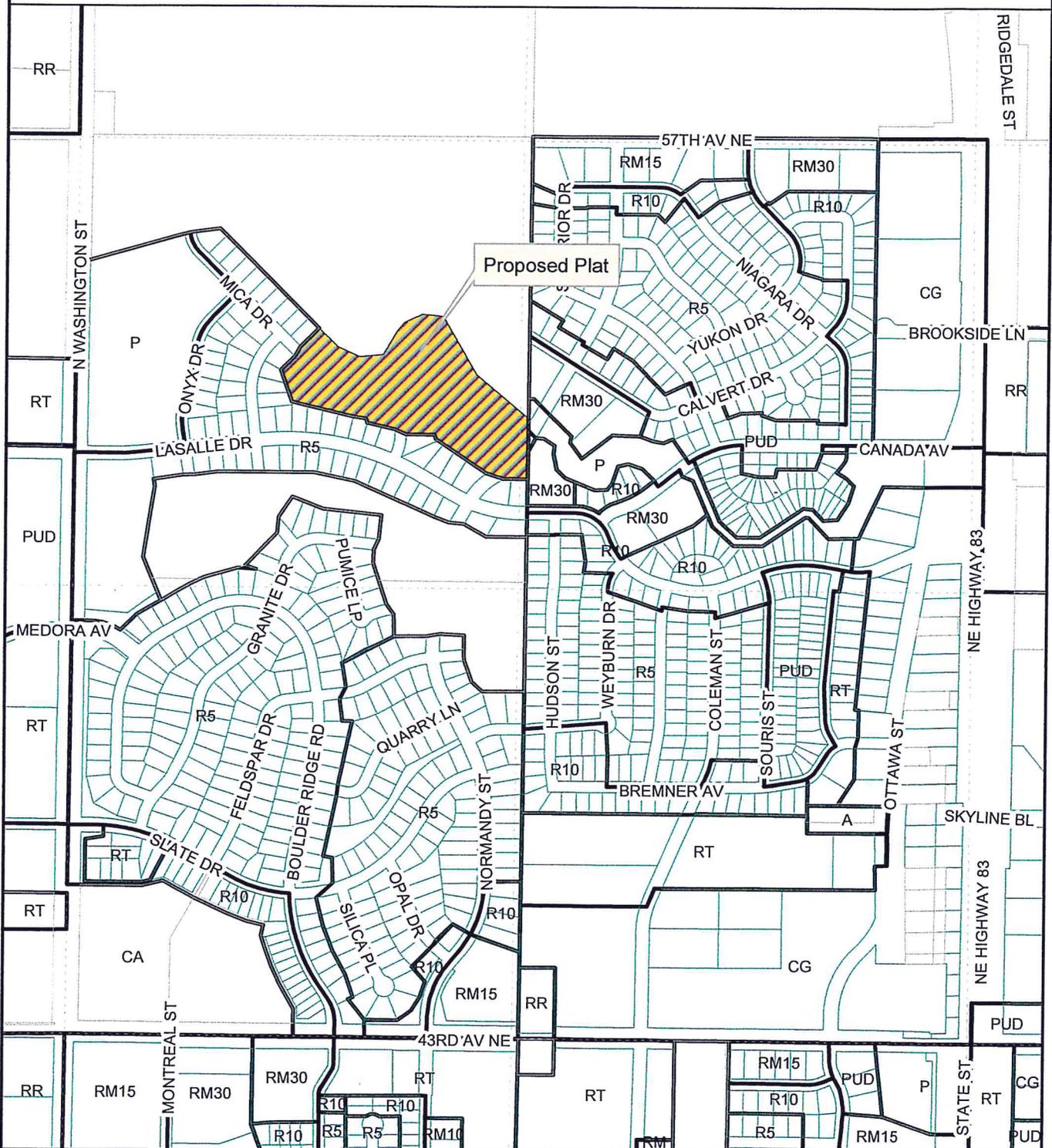


DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.  
Map was Updated/Created: May 8, 2013 (Kee)

Source: City of Bismarck



# Proposed Plat & Zoning Change (A to R5 & P) Boulder Ridge 6th Addition



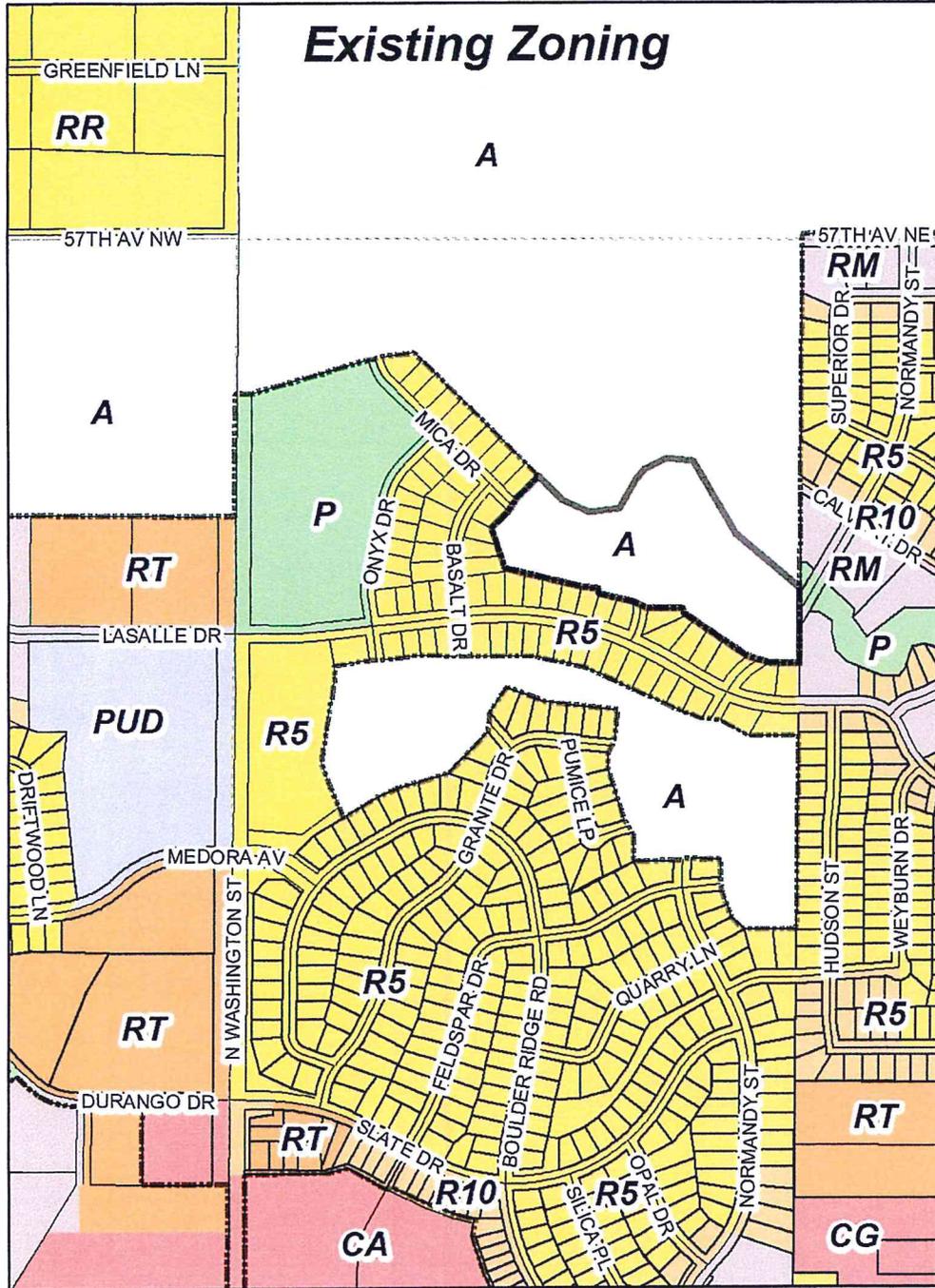
DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.  
Map was Updated/Created: May 8, 2013 (Kee)

Source: City of Bismarck

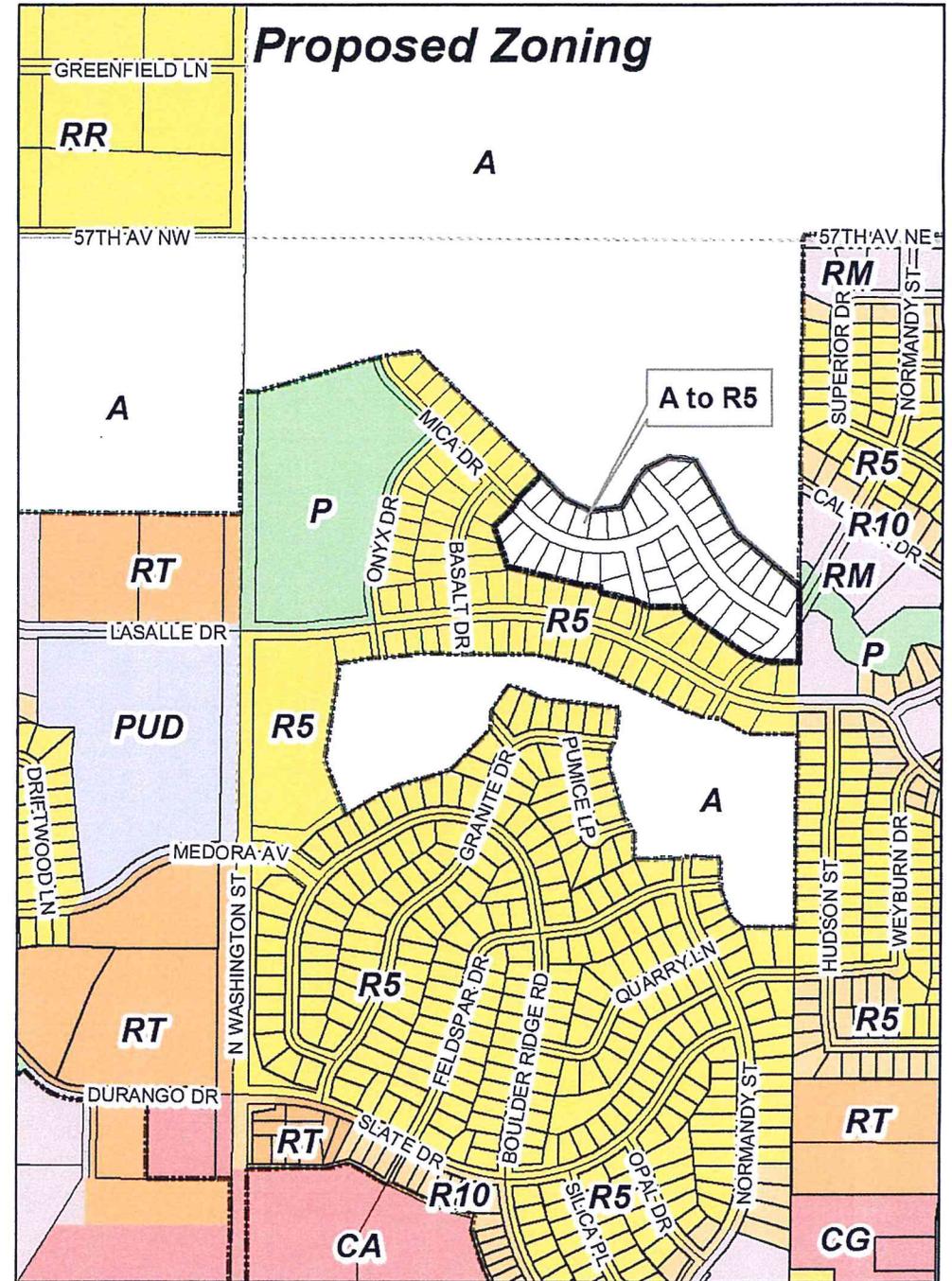


# Boulder Ridge 6th Addition

## Existing Zoning



## Proposed Zoning



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 herein.

May 2013

# BOULDER RIDGE SIXTH ADDITION

PART OF THE NW 1/4 OF SECTION 16, TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE 5TH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, BISMARCK, NORTH DAKOTA



0 30 60 120  
SCALE: 1"=60'  
MAY 10, 2013  
DATUM: NAD 1929

### NOTES

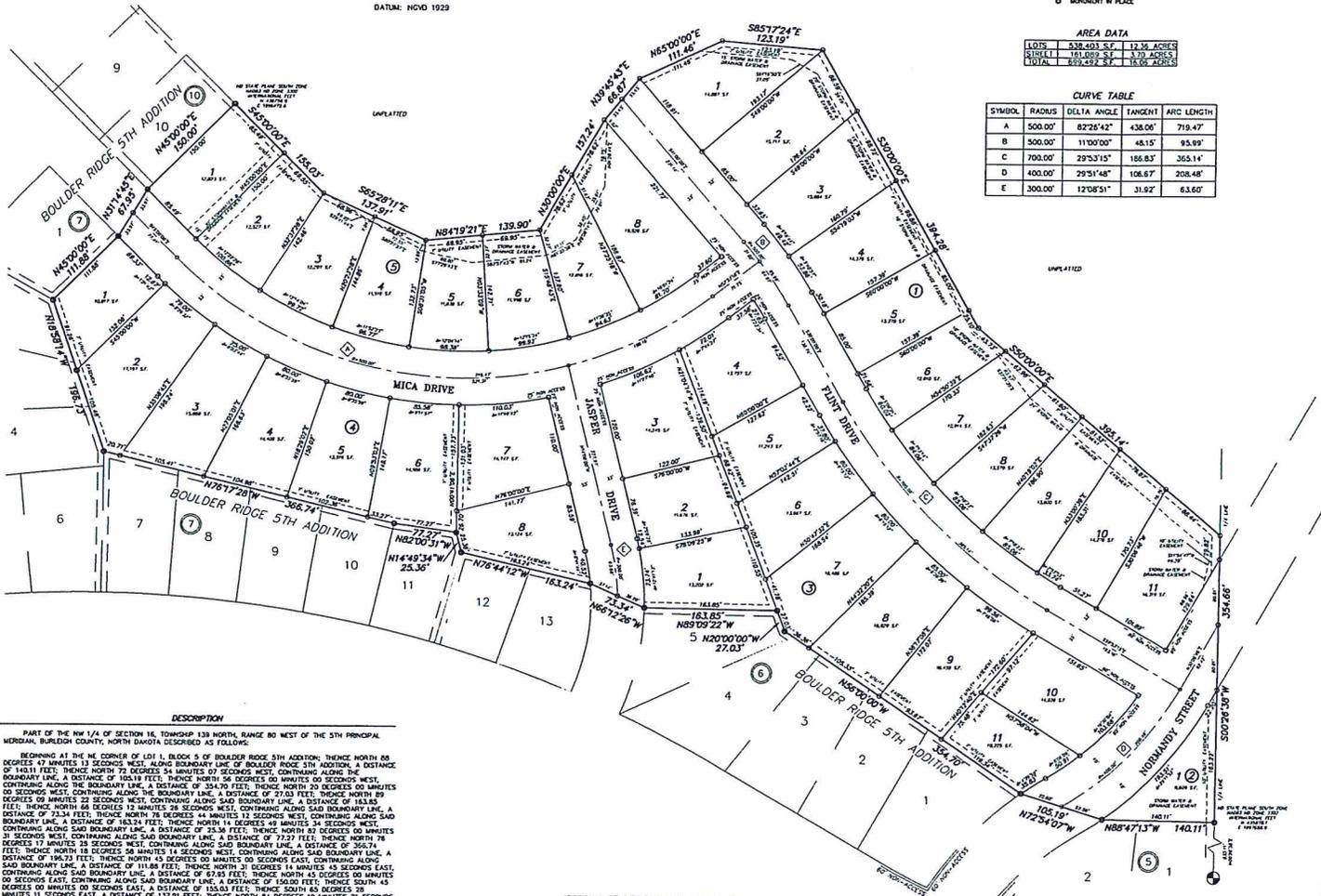
- BASE OF BEARING: NORTH DAKOTA STATE PLANE, SOUTH ZONE BY CITY ORDINANCE
- DEGNOMAS: HIGHWAY 100 BOULDER RIDGE ROAD BETWEEN TELEGRAPH DRIVE AND GARDNER DRIVE ELEV = 1876.74 (GVD 25)
- COORDINATE PLATING: NORTH DAKOTA STATE PLANE, COORDINATE SYSTEM, NAD 83 SOUTH ZONE. ADJUSTMENT OF TIME UNITS ARE INTERNATIONAL FEET
- GENERAL SURVEY: NATIONAL GEODESIC SURVEY SYSTEM OF 1929
- BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS PLATS DUE TO DIFFERENT METHODS OF MEASUREMENTS
- MONUMENT TO BE SET
- MONUMENT IN PLACE

AREA DATA

LOTS	538,403 S.F.	12.36 ACRES
STREETS	10,000 S.F.	0.23 ACRES
TOTAL	548,403 S.F.	12.59 ACRES

CURVE TABLE

SYMBOL	RADIUS	DELTA ANGLE	TANGENT	ARC LENGTH
A	500.00'	82°28'42"	438.00'	719.47'
B	500.00'	11°00'00"	48.15'	95.99'
C	700.00'	29°31'15"	166.83'	365.14'
D	400.00'	29°31'48"	106.67'	208.48'
E	300.00'	12°08'51"	31.92'	63.60'



### DESCRIPTION

PART OF THE NW 1/4 OF SECTION 16, TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE 5TH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA DESCRIBED AS FOLLOWS:

BEGINNING AT THE NW CORNER OF LOT 1, BLOCK 5 OF BOULDER RIDGE 5TH ADDITION; THENCE NORTH 88 DEGREES 47 MINUTES 13 SECONDS WEST, ALONG BOUNDARY LINE OF BOULDER RIDGE 5TH ADDITION, A DISTANCE OF 143.11 FEET; THENCE NORTH 72 DEGREES 54 MINUTES 07 SECONDS WEST, CONTINUING ALONG THE BOUNDARY LINE, A DISTANCE OF 162.19 FEET; THENCE NORTH 54 DEGREES 00 MINUTES 00 SECONDS WEST, CONTINUING ALONG THE BOUNDARY LINE, A DISTANCE OF 354.75 FEET; THENCE NORTH 20 DEGREES 00 MINUTES 00 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 274.33 FEET; THENCE NORTH 09 DEGREES 09 MINUTES 22 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 183.82 FEET; THENCE NORTH 68 DEGREES 12 MINUTES 28 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 23.34 FEET; THENCE NORTH 78 DEGREES 44 MINUTES 12 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 183.34 FEET; THENCE NORTH 14 DEGREES 49 MINUTES 34 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 23.34 FEET; THENCE NORTH 87 DEGREES 00 MINUTES 00 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 72.77 FEET; THENCE NORTH 78 DEGREES 17 MINUTES 28 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 358.74 FEET; THENCE NORTH 18 DEGREES 18 MINUTES 14 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 184.73 FEET; THENCE NORTH 45 DEGREES 00 MINUTES 00 SECONDS EAST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 111.88 FEET; THENCE NORTH 31 DEGREES 14 MINUTES 45 SECONDS EAST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 67.85 FEET; THENCE NORTH 45 DEGREES 00 MINUTES 00 SECONDS EAST, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 150.00 FEET; THENCE SOUTH 45 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 155.03 FEET; THENCE SOUTH 65 DEGREES 29 MINUTES 11 SECONDS EAST, A DISTANCE OF 137.91 FEET; THENCE NORTH 84 DEGREES 19 MINUTES 21 SECONDS EAST, A DISTANCE OF 139.90 FEET; THENCE NORTH 30 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 152.74 FEET; THENCE NORTH 38 DEGREES 43 MINUTES 43 SECONDS EAST, A DISTANCE OF 162.97 FEET; THENCE NORTH 65 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 111.46 FEET; THENCE SOUTH 85 DEGREES 17 MINUTES 14 SECONDS EAST, A DISTANCE OF 123.19 FEET; THENCE SOUTH 30 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 384.28 FEET; THENCE SOUTH 50 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 355.14 FEET TO THE EAST LINE OF THE NORTHWEST 1/4; THENCE SOUTH 00 DEGREES 26 MINUTES 30 SECONDS WEST, ALONG THE SAID EAST LINE, A DISTANCE OF 354.66 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT CONTAINS 18.06 ACRES, MORE OR LESS

### SURVEYOR'S CERTIFICATE

I, TERRY BALTZER, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, HEREBY CERTIFY THAT THE ANNEXED PLAT IS A TRUE COPY OF THE NOTES OF A SURVEY PERFORMED UNDER MY SUPERVISION AND COMPLETED ON NOVEMBER 29th, 2012, THAT ALL INFORMATION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; THAT ALL MONUMENTS SHOWN HEREON ARE CORRECT; THAT ALL REQUIRED MONUMENTS HAVE BEEN SET; AND THAT ALL DIMENSIONAL AND GEODETIC DETAILS ARE CORRECT.

STATE OF NORTH DAKOTA )  
COUNTY OF BURLEIGH ) SS SWENSON, HAGEN & CO. P.C.  
900 BASH AVE. S.E.  
BISMARCK, NORTH DAKOTA

TERRY BALTZER  
PROFESSIONAL LAND SURVEYOR  
N.D. REGISTRATION NO. 3595

ON THIS DAY OF MAY 10, 2013, BEFORE ME PERSONALLY APPEARED TERRY BALTZER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING SURVEYOR'S CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

DAVID PATIENCE, NOTARY PUBLIC  
BURLEIGH COUNTY, NORTH DAKOTA  
MY COMMISSION EXPIRES AUGUST 24, 2016

### APPROVAL OF CITY PLANNING COMMISSION

THE SUBDIVISION OF LAND AS SHOWN ON THE ANNEXED PLAT HAS BEEN APPROVED BY THE PLANNING COMMISSION OF THE CITY OF BISMARCK, ON THE DAY OF MAY 10, 2013, IN ACCORDANCE WITH LAWS OF THE STATE OF NORTH DAKOTA, ORDINANCES OF THE CITY OF BISMARCK, AND REGULATIONS ADOPTED BY THE SAID PLANNING COMMISSION. IN WITNESS WHEREOF ARE SET THE HANDS AND SEALS OF THE CHAIRMAN AND SECRETARY OF THE PLANNING COMMISSION OF THE CITY OF BISMARCK.

DAVE ARDAM - CHAIRMAN

CARL O. HOKSTAD - SECRETARY

### APPROVAL OF BOARD OF CITY COMMISSIONERS

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA, HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THE ANNEXED PLAT, HAS ACCEPTED THE DEDICATION OF ALL STREETS SHOWN THEREON, HAS APPROVED THE EASEMENTS AS SHOWN ON THE ANNEXED PLAT AS AN ADDITION TO THE MASTER PLAN OF THE CITY OF BISMARCK, NORTH DAKOTA, AND DOES HEREBY VACATE ANY PREVIOUS PLATTING WITHIN THE BOUNDARY OF THE ANNEXED PLAT.

THE FOREGOING ACTION OF THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA, WAS TAKEN BY RESOLUTION APPROVED THE DAY OF MAY 10, 2013.

ATTEST

W. C. WOODEN - CITY ADMINISTRATOR

### APPROVAL OF CITY ENGINEER

I, MELVIN J. BULLINGER, CITY ENGINEER OF THE CITY OF BISMARCK, NORTH DAKOTA, HEREBY APPROVE "BOULDER RIDGE SIXTH ADDITION", BISMARCK, NORTH DAKOTA AS SHOWN ON THE ANNEXED PLAT.

MELVIN J. BULLINGER  
CITY ENGINEER

### OWNER'S CERTIFICATE & DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT FIVE CIVIS INVESTMENT, LLP, BEING THE OWNERS AND PROPRIETORS OF THE PROPERTY SHOWN HEREON HAS CAUSED THAT PORTION DESCRIBED HEREON TO BE SURVEYED AND PLATTED AS "BOULDER RIDGE SIXTH ADDITION", BISMARCK, NORTH DAKOTA, AND DO SO DEDICATE STREETS AS SHOWN HEREON INCLUDING ALL SEWER, EASEMENTS, WATER AND OTHER PUBLIC UTILITY LINES WHETHER SHOWN HEREON OR NOT TO THE PUBLIC USE FOREVER.

THEY ALSO DEDICATE EASEMENTS TO THE CITY OF BISMARCK TO RUN WITH THE LAND, FOR GAS, ELECTRIC, TELEPHONE OR OTHER PUBLIC UTILITIES OR SERVICES ON OR UNDER THOSE CERTAIN STRIPS OF LAND DESIGNATED HEREON AS UTILITY, SANITARY SEWER, STORM SEWER & STORM WATER EASEMENTS.

THEY FURTHERMORE DEDICATE UNTO THE CITY OF BISMARCK "STORM WATER AND DRAINAGE EASEMENTS" TO RUN WITH THE LAND FOR THE PURPOSE OF STORM SEWER AND SURFACE WATER DRAINAGE UNDER, OVER, THROUGH AND/OR ACROSS THOSE AREAS DEDICATED HEREON AS "STORM WATER AND DRAINAGE EASEMENTS" FOR THE PURPOSE OF CONSTRUCTION, RECONSTRUCTION, REPAIR, ENLARGING AND MAINTAINING STORM WATER MANAGEMENT FACILITIES TOGETHER WITH NECESSARY APPURTENANCES THEREFOR FOR STORM WATER, STORM SEWER AND SURFACE WATER DRAINAGE AND MANAGEMENT OF SAID STORM WATER FLOW IN A MANNER THAT WILL PERMIT THE FREE AND UNOBSTRUCTED FLOW OF WATER UNDER, OVER AND/OR ACROSS THE EASEMENT AREA.

STATE OF NORTH DAKOTA )  
COUNTY OF BURLEIGH ) SS

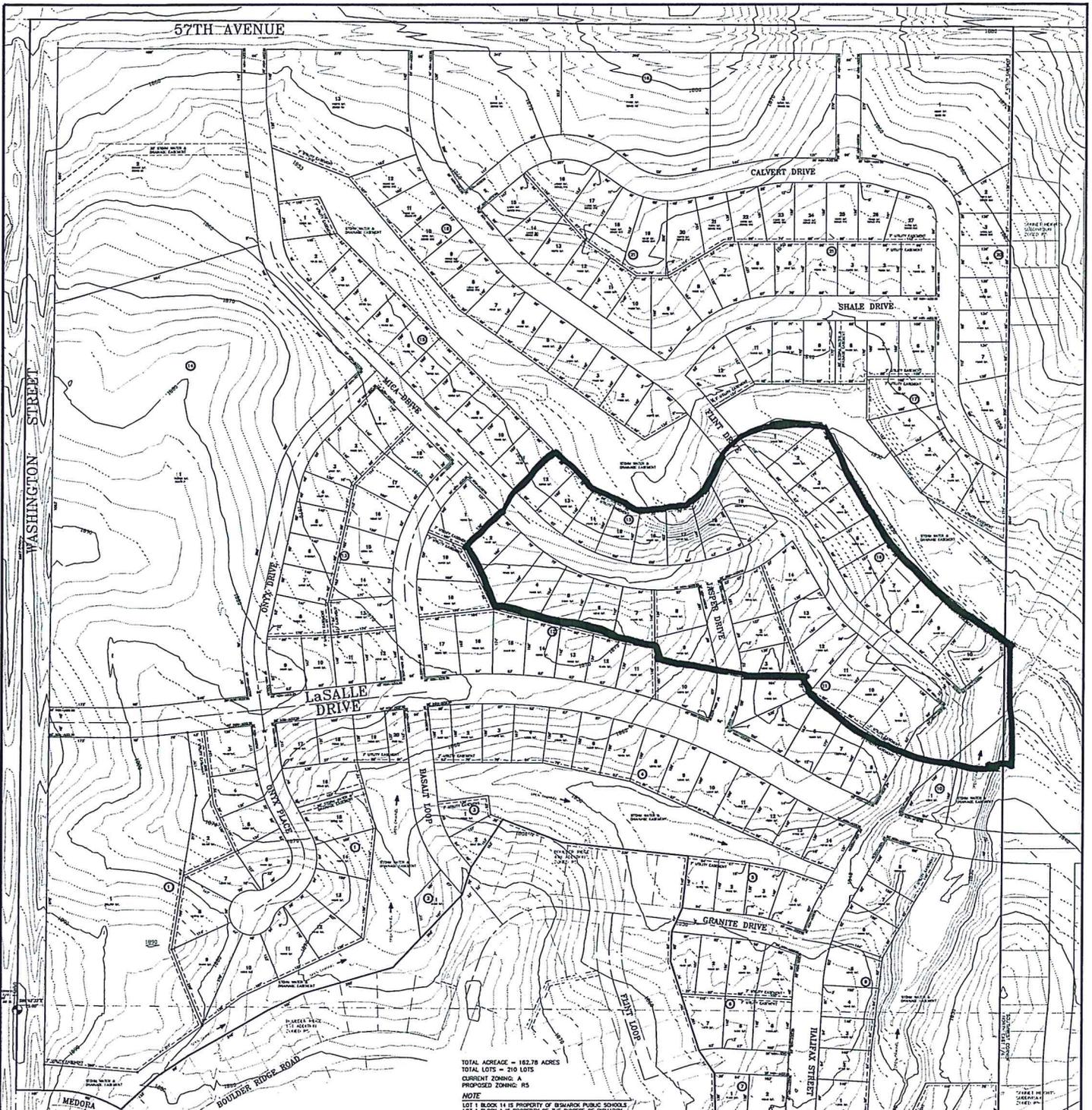
JACK KNUTSON  
FIVE CIVIS INVESTMENT LLP  
2111 EAGLE CREST LOOP  
BISMARCK, N.D. 58503

ON THIS DAY OF MAY 10, 2013, BEFORE ME PERSONALLY APPEARED JACK KNUTSON OF FIVE CIVIS INVESTMENT LLP KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

DAVID PATIENCE, NOTARY PUBLIC  
BURLEIGH COUNTY, NORTH DAKOTA  
MY COMMISSION EXPIRES AUGUST 24, 2016



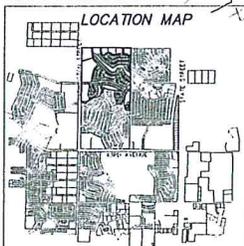
SWENSON, HAGEN & COMPANY P.C.  
900 Bash Avenue, Suite 1100  
Bismarck, North Dakota 58503  
Phone: (701) 251-1000  
Fax: (701) 251-1008  
Services: Surveying, Land Planning, Civil Engineering, Landmark & Land Design, Construction Management



Preliminary Plat  
**Boulder Ridge 5th Addition**  
 PART OF THE NW 1/4 AND SW 1/4 OF SECTION 16, T. 139 N., R. 80 W.  
 BISMARCK NORTH DAKOTA

TOTAL ACREAGE = 162.78 ACRES  
 TOTAL LOTS = 210 LOTS  
 CURRENT ZONING: A  
 PROPOSED ZONING: RS

**NOTE**  
 LOT 1 BLOCK 14 IS PROPERTY OF BISMARCK PUBLIC SCHOOLS  
 LOT 1 BLOCK 15 IS PROPERTY OF THE DIOCESE OF BISMARCK



**ZONING NOTE**  
 LOT 10 TO BE ZONED AS R-1S LOT 1 BLOCK 14.  
 LOT 11 TO BE ZONED AS R-1S LOT 2 BLOCK 14.  
 LOTS 12 TO BE ZONED AS R-1S ARE LOTS 13 BLOCK 18; LOTS 1, 2,  
 AND 3 BLOCK 15; AND LOT 1 BLOCK 20.  
 LOTS TO BE ZONED AS R-1S ARE LOTS 8, 10, 11, AND 12 BLOCK  
 18; LOTS 2 AND 3 BLOCK 20; AND LOTS 14, 15, 16, 17, 18, 19,  
 20, 21, 22, 23, 24, 25, 26, AND 27 BLOCK 21.  
 ALL OTHER LOTS TO BE ZONED AS R-1S.

**OWNER:**  
 BOULDER RIDGE DEVELOPMENT  
 1201 EAGLE CREST LOOP  
 BISMARCK, ND 58503  
 258-3464

**BISMARCK PUBLIC SCHOOLS**  
 806 NORTH WASHINGTON STREET  
 BISMARCK, ND 58501  
 323-4000

**DIOCESE OF BISMARCK**  
 420 RAYMOND STREET  
 BISMARCK, ND 58501  
 223-1348

**SWENSON, HAGEN & COMPANY P.C.**  
 1201 EAGLE CREST LOOP  
 BISMARCK, ND 58503  
 258-3464

BOULDER RIDGE DEVELOPMENT, INC.  
101 SLATE DRIVE #1  
BISMARCK, ND 58503

June 8, 2016

Bismarck City Commission  
221 N 5<sup>th</sup> Street  
Bismarck, ND 58501

RE: Boulder Ridge Sixth Addition

Bismarck City Commissioners:

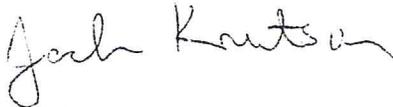
The final plat for Boulder Ridge Sixth Addition was previously denied approval by the City Commission in due to the lack of a sanitary sewer easement from Mica Drive to Washington Street.

Sanitary sewer and grading were completed on Boulder Ridge Sixth Addition as part of the project to provide sewer service to Liberty Elementary School.

The sanitary sewer easement from Mica Drive to Washington Street has now been granted to the City of Bismarck and the developers of Boulder Ridge Sixth Addition wish to continue with the development.

We ask the City Commission to please reconsider the final plat of Boulder Ridge Sixth Addition at your earliest convenience.

Sincerely,



Jack Knutson



*Community Development Department*

June 12, 2013

Five Guys Investment, LLP  
4308 Boulder Ridge Road  
Bismarck, ND 58503

Dear Five Guys Investment, LLP:

Please be advised that the Board of City Commissioners, at its meeting of June 11, 2013, did not call for a public hearing on your annexation request and zoning change request from the A-Agricultural zoning district to the R5-Residential and P-Public zoning districts on Boulder Ridge 6<sup>th</sup> Addition, and indicated that this plat and related actions could not proceed until the sanitary sewer easement needed to provide service to the area west of the North Washington Street is dedicated.

If you have any questions or need any additional information on this request, please contact me, the planner in our office assigned to this request, at 355-1846.

Sincerely,

Kim L. Lee, AICP  
Planning Manager

KLL/hlb

cc: Dave Patience – Swenson, Hagen & Co.



4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include developing single family residential and rural residential to the south, developing single-family residential to the east and southeast, and agricultural land to the north, west and northeast.
5. The proposed subdivision would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities.

Ms. Lee said based on these findings and approval of the stormwater management plan by the City Engineer since the packets were distributed, staff recommends approval of the annexation, zoning change and final plat of Country West Heights Addition.

Chairman Yeager opened the public hearing on the zoning change and final plat of Country West Heights Addition.

With there being no public comment on this item, Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff reports, Commissioner Laning made a motion to approve the annexation, zoning change and final plat of Country West Heights Addition. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

#### **FINAL CONSIDERATION AND PUBLIC HEARING – ANNEXATION, ZONING CHANGE AND FINAL PLAT – BOULDER RIDGE 6<sup>TH</sup> ADDITION**

Chairman Yeager called for the final consideration of the annexation, and the public hearing on the zoning change from the A-Agricultural zoning district to the R5-Residential zoning district and final plat of Boulder Ridge 6th Addition. The proposed plat is 39 lots in five blocks on 16.06 acres and is located east of North Washington Street between 43<sup>rd</sup> Avenue NW and 57<sup>th</sup> Avenue NW (part of the NW¼ of Section 16, T139N-R80W/Hay Creek Township).

Ms. Lee provided an overview of the requests, including the following findings for the annexation:

1. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation at the time the property is developed.
2. The proposed annexation would not adversely affect property in the vicinity.
3. The proposed annexation is consistent with the general intent and purpose of Title 14 of the City Code of Ordinances.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Ms. Lee then provided the following findings for the zoning change:

1. The proposed zoning change is consistent with the Land Use Plan, which identifies the long range use of this area as residential, public and open space (land use component of US Highway 83 Corridor Transportation Study).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include developing single family residential to the south and west; multi-family residential and publicly owned open space to the east; and undeveloped land to the west; and undeveloped land to the north.
3. The subdivision proposed for this property would be annexed prior to development; therefore, the proposed zoning change would not place an undue burden on public services.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee then gave the following findings for the final plat:

1. All technical requirements for consideration of a final plat have been met.
2. The storm water management plan has been approved by the City Engineer.
3. The proposed subdivision is consistent with the Fringe Area Road Master Plan for Section 15, T139N-R80W/Hay Creek Township, which identifies Normandy Street as the north-south collector and LaSalle Drive as the east-west collector for this section.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include developing single family residential to the south and west; multi-family residential and publicly owned open space to the east; and undeveloped land to the west; and undeveloped land to the north.
5. The proposed subdivision would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said since the time the staff report was prepared, the City Engineer has approved the stormwater management plan; therefore, based on these findings, staff recommends approval of the annexation, zoning change from the A-Agricultural zoning district to the R5-Residential zoning district and final plat of Boulder Ridge 6<sup>th</sup> Addition with the understanding that the request will not be forwarded to the City Commission for final action until a complete application for annexation of the area south of Boulder Ridge 5<sup>th</sup> Addition is submitted. Staff further recommends that any future phase of development include the remaining sanitary sewer easement needed to provide service to the area west of North Washington Street.

Chairman Yeager opened the public hearing on the zoning change and final plat for Boulder Ridge 6<sup>th</sup> Addition.

Dave Patience said that he has an annexation application signed by the developers of the property for the unannexed area south of Boulder Ridge 5<sup>th</sup> Addition.

With there being no further comments, Chairman Yeager closed the public hearing.

**MOTION:** Commissioner Lee made a motion to approve the annexation, zoning change from the A-Agricultural zoning district to the R5-Residential zoning district and the final plat of Boulder Ridge 6<sup>th</sup> Addition, with the staff's condition that the request will not be forwarded to the City Commission for final action until a complete application for annexation of the area south of Boulder Ridge 5<sup>th</sup> Addition is submitted and further recommendation that any future phase of development include the remaining sanitary sewer easement needed to provide service to the area west of North Washington Street. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

#### **PUBLIC HEARING – RURAL RESIDENTIAL LOT SPLIT – LOT 1, BLOCK 1, BLOTSKE SUBDIVISION**

Chairman Yeager called for the public hearing on the rural residential lot split for Lot 1, Block 1, Blotske Subdivision. The property is located west of England Street between Burleigh Avenue and 48<sup>th</sup> Avenue SW (4110 England Street).

Ms. Wollmuth provided an overview of the request, stating that this request previously approved in 2007, however the owners were unable to comply with the conditions in the approval, specifically the requirement to improve the access to their parcels, then the adjacent property was platted and an access easement was provided to the applicant and adjacent landowners, including the following findings for the lot split:

1. All technical requirements for approval of a rural residential lot split have been met.
2. The resulting parcels will meet the minimum lot width (150 feet), depth (200 feet) and area requirements (65,000 square feet) for the RR – Residential zoning district.
3. The proposed rural residential lot split will not be detrimental to the use or development of adjacent properties.

Clairmont Revocable Living Trust, Clairmont Development Company and Mitzel Builders Inc.

ORDINANCE NO. 5980

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-Agricultural and R5-Residential zoning districts and included in the R5-Residential zoning district:

Country West Heights 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.

- Ordinance 5981 relating to annexation of Boulder Ridge 6<sup>th</sup> Addition, requested by Five Guys Investment, LLP and Boulder Ridge Development Inc.

ORDINANCE NO. 5981

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:

Lots 1-11, Block 1; Lot 1, Block 2; Lots 1-11, Block 3; Lots 1-8, Block 4; and Lots 1-8, Block 5; Boulder Ridge Sixth Addition.

The above described tract of land contains 16.06 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.

- o Ordinance 5982 relating to zoning change from the A-Agricultural zoning district to the R5-Residential and P-Public zoning districts on Boulder Ridge 6<sup>th</sup> Addition, requested by Five Guys Investment, LLP and Boulder Ridge Development, Inc.

#### ORDINANCE NO. 5982

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-Agricultural zoning district and included in the R5-Residential zoning district:

Lots 1-11, Block 1; Lots 1-11, Block 3; Lots 1-8, Block 4; and Lots 1-8, Block 5; Boulder Ridge Sixth Addition.

Section 2. 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-Agricultural zoning district and included in the P-Public zoning district:

Lot 1, Block 2, Boulder Ridge 6<sup>th</sup> Addition.

Section 3. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

Tract 3: Lot 21, Block 4, Casey Industries, Inc. First Addition to the City of Bismarck, Burleigh County, North Dakota;

AND

Tract 4: Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 40, all in Block 5, Casey Industries, Inc. First Addition to the City of Bismarck, Burleigh County, North Dakota, and all that part of vacated Michigan Avenue lying southerly of the North 30 feet of vacated Michigan Avenue and Adjacent to Lots 6 through 18, inclusive, Block 5, Casey Industries, Inc. First Addition to the City of Bismarck, Burleigh County, North Dakota.

- The Board of City Commissioners considered the contract change order with Tand Construction for Water Utility Project 83 (miscellaneous valve and hydrant replacement project) for a time extension due to the city adding more work to be completed in 2013.
- The Board of City Commissioners considered the contract change order with Northern Improvement Company for Commercial Service Apron Phase 3 for \$38,088.67 for relocation of existing airport security fence for waste excavation area.

Commissioner Grossman requested to pull the third bullet under agenda item O (Ordinance 5981), Commissioner Seminary asked to pull Item L and Commissioner Smith asked to pull Item F. Commissioner Grossman made a motion to approve the remaining items on the consent agenda. Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

Consent Agenda, Item F: The Board of City Commissioners considered the adoption of a new policy to deal with interim improvements for roads impacted by development.

Commissioner Smith asked that the following language be added under #2 on the Development Related Interim Roadway Improvements Policy: With approval, the owners may contract for the study and pay for it themselves. The city must be allowed to review and approve the study results for the study to be valid.

Commissioner Smith made a motion to approve the request. Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

Consent Agenda, Item L: The Board of City Commissioners considered the request for proposed "Use of Electronic Device While Driving Policy".

Commissioner Seminary asked if the Board were to accept and approve this policy tonight, it just becomes policy and doesn't come back for further discussion, correct. He

Commissioner Seminary made a motion to review the policy, add some more to it and bring it back before the Board. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

Consent Agenda, Item O, 3<sup>rd</sup> Bullet: Introduction and call for public hearing on Ordinance 5981 relating to annexation of Boulder Ridge 6<sup>th</sup> Addition, requested by Five Guys Investment, LLP and Boulder Ridge Development Inc. Bismarck Planning & Zoning Commission recommends approval.

Commissioner Grossman doesn't support moving ahead with this approval at this time. He appreciates the risk that developers take. The city needs to manage growth in a manner that benefits all of the citizens and not just developers or certain developers. When developers are unreasonable, it's the city's role to steer them on a course that not only benefits those developers but also all citizens and our community. He wants to be clear that there is plenty of blame to go around with developers not wanting to make concessions that will benefit other developers without usually receiving something in return. Tonight he's asking the commission to act on this one item but this goes across the board to all developers.

In this particular instance the developer has refused to grant a sewer easement that will open up development on the entire west side of Washington Street which would open development to at least three, if not four, developers including Benchmark Development (approximately 151 acres), developer who could buy the Bismarck Public Schools 20 acres, it could affect Clairmont Development Company (although Mr. Clairmont has made some arrangements for his development to be serviced by Horizon Heights), and possibly Randy Bakke's development. This is impacting a large number of developers in north Bismarck and these lots create more availability for citizens and consumers. Ultimately a lot shortage will drive up the cost of both the lots and the homes in Bismarck, which could make them unaffordable in some cases.

In this case he feels there are enough good reasons to require that developer to grant that easement so we can move forward. Northwest Bismarck SubArea Study recommended extending 57<sup>th</sup> Avenue North as a principal arterial roadway from Washington Street, past River Road to Burnt Creek Loop. He thinks Burleigh County is planning on extending 57<sup>th</sup> Avenue to River Road by 2016. If the developers on the west side don't get this easement and can't proceed with it, they will have to consider putting in a lift station, which is going to be more expensive and translate into higher lots costs and he assumes that ultimately the city would have to assume control or responsibility of that lift station and maintain it throughout the years. In this case, he is disappointed that the developers reached a point where they agreed to easements right up to the very point where they would have to give this easement that would allow this development on the other side of Washington. He feels this is designed to do nothing more than thwart the other developments. The easement is located in a drainage area so there is no other development use that could be made for that property. He thinks it is time to require this developer to sit down and do something. This discussion started

at the time of the approval of the land for the new elementary school, they also suggested that as Boulder Ridge developments moved forward in the future it would be the time to release this particular easement and he thinks it is time to do that. He thinks the city and the Board have to decide how they are going to drive development and routinely make these kinds of decisions when we require developers to set aside easements for roads, storm water, and public utilities. He doesn't think that this is out of the norm for the city to do.

Commissioner Askvig said he agrees with Commissioner Grossman. He's afraid if we don't do something now, they could bottleneck the housing needs for the community. Having that easement is not only in the public's interest but it is in the interest of the community as a whole making sure the city is able to keep up yet grow in a responsible manner on the north end of town. Commissioner Seminary said he was in a meeting yesterday with a civic leader concerned about the Business Development Director for the city and was wondering why that is so important when there are far more important things going on in the community. This person listed off bottlenecks when it comes to residential development, cost of lots being so high, etc. This is a step in the right direction without robbing people of their fair share of profit making. Commissioner Smith says as a real estate agent, she sees this all the time. There is definitely a shortage of lots right now and we have such a short season for new home construction so it is important that we make as many lots available as we have a need for in our community.

President Warford said he met with other various developers then spoke with Carl Hokenstad, Director of Community Development. He asked Mr. Hokenstad if the problem will be resolved with Boulder Ridge 7<sup>th</sup> Addition or not. Mr. Hokenstad said they have been discussing this issue with the last couple versions of Boulder Ridge subdivisions. With the plat for Boulder Ridge 6<sup>th</sup> Addition, staff did note in the staff report that was recommended by the Planning Commission that any further phases of development, they assume Boulder Ridge 7<sup>th</sup> will be directly north of Boulder Ridge 6<sup>th</sup>, would finish up the platting of that section and that the easement that is discussed tonight would absolutely have to be provided as part of the approval of the next plat. He understands the Board would rather attach that condition to this plat which the staff is happy to abide by that. He just wanted to let the Board know the staff's recommendation was to deal with it in Boulder Ridge 7<sup>th</sup> since the necessary easement would be physically located there.

President Warford asked the status of Boulder Ridge 7<sup>th</sup> Addition. Mr. Hokenstad said that Boulder Ridge 7<sup>th</sup> has not been submitted yet. The 6<sup>th</sup> Addition is the one that is pending and they have not been told when the 7<sup>th</sup> Addition will be coming in. Commissioner Grossman's concern is that Boulder Ridge 7<sup>th</sup> Addition could likely be a year or more away and they could decide that they don't want to develop the lots in the 7<sup>th</sup> Addition because it may open 300+ lots to the west.

Commissioner Grossman made a motion to deny moving Ordinance 5981 & 5982 forward for public hearing and require the developer to meet with Community

Development and come up with some solution that addresses this particular issue and opens up other developments. Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

## REGULAR AGENDA

3. The President of the Board of City Commissioners announced the hour had arrived for the PUBLIC HEARING and second reading on the following relating to Eagle Crest 6<sup>th</sup> Addition. The Bismarck Planning and Zoning Commission recommends approval.
  - Ordinance 5965 relating to annexation.
  - Ordinance 5966 relating to zoning change.
  - Approval of final plat.

Kim Lee, Community Development Planning Manager, said Boulder Ridge Development, Five Guys Investments, LLP, and RBK Ventures, LLP are requesting approval of Eagle Crest 6<sup>th</sup> Addition. This property is located in northwest Bismarck, south of an extension of Ash Coulee Drive approximately one mile west of North Washington Street. The proposal includes 130 lots in 13 plots on 55.75 acres. The request would plat, zone and annex property for single-family residential development. Although they are platting 130 lots in this plat, only 96 lots in 8 blocks are being proposed for annexation.

The Bismarck Planning & Zoning Commission considered the annexation request and held public hearings on the zoning change and final plat at the meeting on April 24, 2013, and based on the findings contained in the staff reports, recommended approval of the annexation of a portion of the plat, as outlined in Ordinance 5965, the zoning change to R5-Residential as outlined in Ordinance 5966 and the final plat for Eagle Crest 6<sup>th</sup> Addition. The recommended approval of the final plat is with the understanding that the extension of Ash Coulee Drive and Kites Lane to the existing Ash Coulee Drive are constructed in conjunction with the development of the proposed subdivision for secondary access.

There were no written or oral protests.

Commissioner Seminary made a motion to adopt Ordinance 5965, Ordinance 5966 and approval of the final plat for Eagle Crest 6<sup>th</sup> Addition. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

4. The President of the Board of City Commissioners announced the hour had arrived for the PUBLIC HEARING and second reading on the following relating to North Hills 17<sup>th</sup> Addition. The Bismarck Planning and Zoning Commission recommends approval.



## COMMUNITY DEVELOPMENT DEPARTMENT

**DATE:** November 1, 2016

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

**ITEM:** Sonnet Heights Subdivision Seventh Replat – Zoning Change and Minor Subdivision Final Plat

### REQUEST

Calvert Creek Condos, LLC is requesting approval of a zoning change from the RM30 – Residential zoning district to the R10 – Residential zoning district and a minor subdivision final plat for Sonnet Heights Subdivision Seventh Replat. These actions would allow the construction of three one- or two-family dwellings on the property. If developed under the current zoning, up to 52 units of multi-family residential could be constructed on the 1.75 acre lot.

The property is located in north central Bismarck, between US Highway 83 and Normandy Street along the south side of Calvert Drive.

Please place this item on the November 8 City Commission meeting and the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

The Planning & Zoning Commission held a public hearing on the zoning change and minor subdivision final plat requests on October 26, 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 RM30 – Residential zoning district to the R10 – Residential zoning district and approval of the minor subdivision final plat.

## **RECOMMENDED CITY COMMISSION ACTION**

November 8<sup>th</sup> Meeting of the Board of City Commissioners – consider the request for the zoning change as outlined in Ordinance 6238, and call for a public hearing on this item for the November 22<sup>nd</sup> meeting of the Board of City Commissioners.

November 22<sup>nd</sup> Meeting of the Board of City Commissioners – hold a public hearing on the request for the zoning change as outlined in Ordinance 6238, consider the request for approval of the minor subdivision final plat for Sonnet Heights Subdivision Seventh Replat, 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](mailto:jwollmuth@bismarcknd.gov) or Kim L. Lee, AICP, Planning Manager, at 355-1846 or [klee@bismarcknd.gov](mailto:klee@bismarcknd.gov).

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

**ORDINANCE NO. 6238**

<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 RM30-Residential zoning district and included in the R10-Residential zoning district:

Sonnet Heights Subdivision Seventh Replat.

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

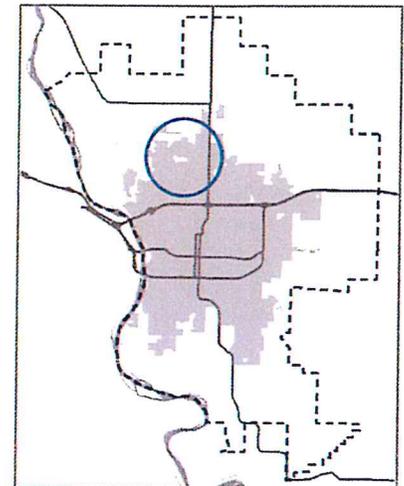
October 26, 2016

**Application for: Zoning Change**  
**Minor Subdivision Final Plat**

TRAKiT Project ID: ZC2016-018  
 MPLT2016-008

## Project Summary

<b>Title:</b>	Sonnet Heights Subdivision Seventh Replat
<b>Status:</b>	Planning & Zoning Commission – Public Hearing
<b>Owner(s):</b>	Calvert Creek Condos LLC
<b>Project Contact:</b>	Ken Nysether, PE, SEH
<b>Location:</b>	In north central Bismarck, north of Canada Avenue, east of Normandy Street, along the south side of Calvert Drive.
<b>Project Size:</b>	1.75 acres
<b>Request:</b>	Rezone and replat property to allow the construction of three single-family dwellings.



## Site Information

Existing Conditions		Proposed Conditions	
<b>Number of Lots:</b>	1 lot in 1 block	<b>Number of Lots:</b>	4 lots in 1 block
<b>Land Use:</b>	Undeveloped	<b>Land Use:</b>	Single-Family Residential
<b>Designated GMP Future Land Use:</b>	Already zoned. Not in Future Land Use Plan	<b>Designated GMP Future Land Use:</b>	Already zoned. Not in Future Land Use Plan
<b>Zoning:</b>	RM30 – Residential	<b>Zoning:</b>	R10 – Residential
<b>Uses Allowed:</b>	RM30 – Multi-family residential	<b>Uses Allowed:</b>	R10 – Single and two-family residential
<b>Max Density Allowed:</b>	RM30 – 30 units / acre	<b>Max Density Allowed:</b>	RM10 – 10 units / acre

## Property History

<b>Zoned:</b>	Sonnet Heights 2/1980 Sonnet Heights First Replat 05/2007	<b>Platted:</b>	Sonnet Heights 12/1980 Sonnet Heights First Replat 05/2007	<b>Annexed:</b>	02/2007
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(continued)

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**Staff Analysis**

The Planning and Zoning Commission, at their meeting of September 28, 2016, called for a public hearing for the proposed zoning change.

Approval of the proposed zoning change and minor subdivision final plat would allow for the development of three single and two-family dwellings on Lots 1-3 of the proposed subdivision. The applicant has indicated that three single-family dwellings would be constructed on the proposed subdivision.

**Required Findings of Fact***Zoning Change*

1. The proposed zoning change is outside the area of 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.

*Minor Plat*

1. All technical requirements for approval of a minor subdivision final plat have been met;
2. The requirement to provide a storm water management plan has been waived by the City Engineer;
3. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
4. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
5. The proposed subdivision would not adversely affect the public health, safety and general welfare.

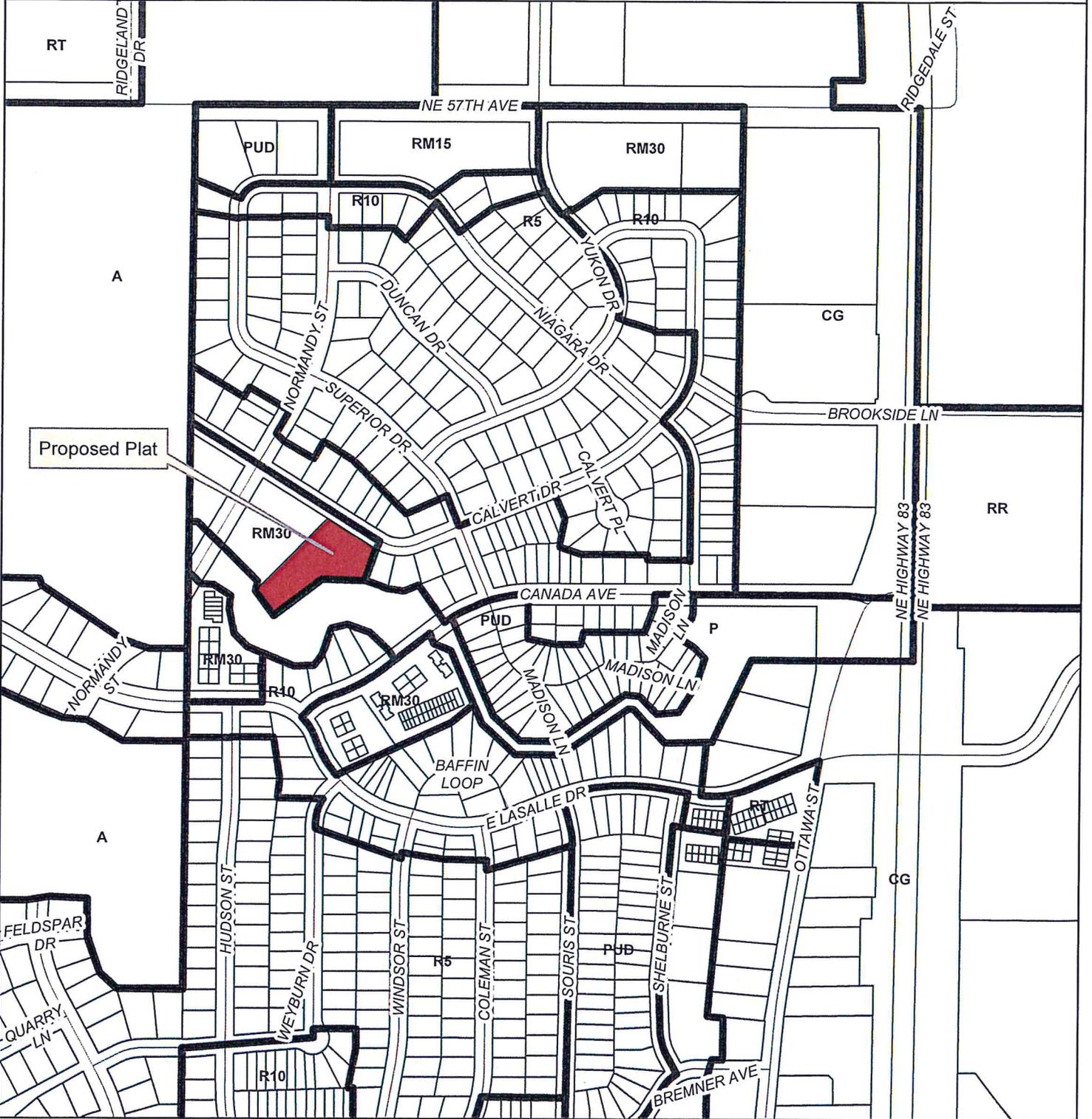
**Staff Recommendation**

Based on the above findings, staff recommends approval of the proposed zoning change from the RM30 – Residential zoning district to the R10 – Residential zoning district and the minor subdivision final plat for Sonnet Heights Subdivision Seventh Replat.

**Attachments**

1. Location Map
2. Zoning Map
3. Reduction of Minor Subdivision Final Plat

# Proposed Plat and Zoning Change (RM30 to R10) Sonnet Heights Subdivision Seventh Replat

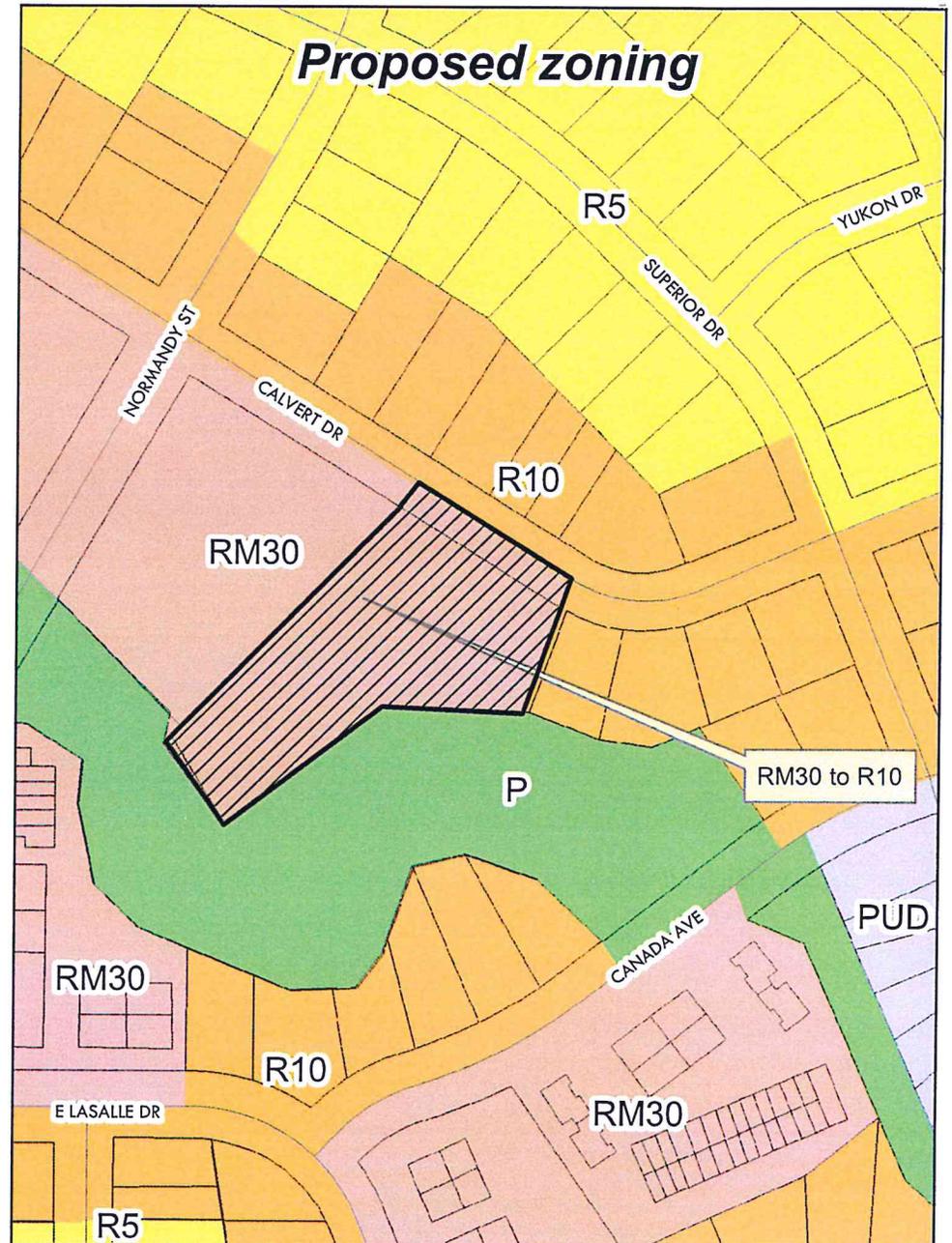
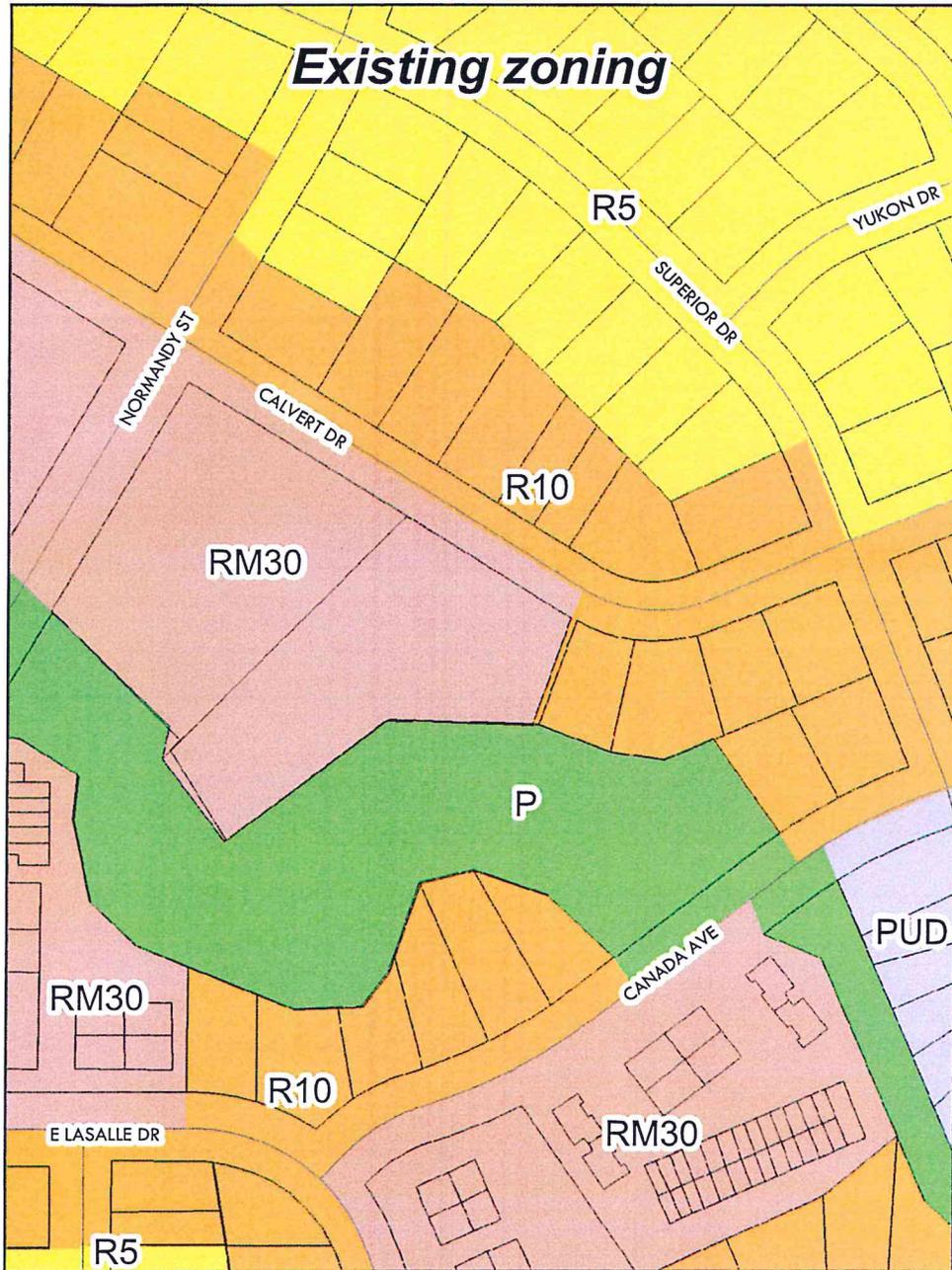


August 26, 2016 (h1b)

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 herein.



Lots 1-4, Block 1, Sonnet Heights Subdivision Seventh Replat



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.

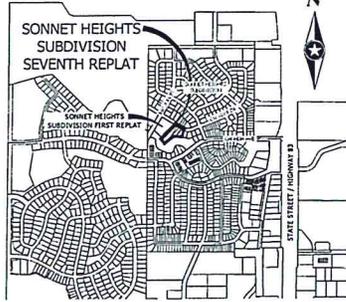
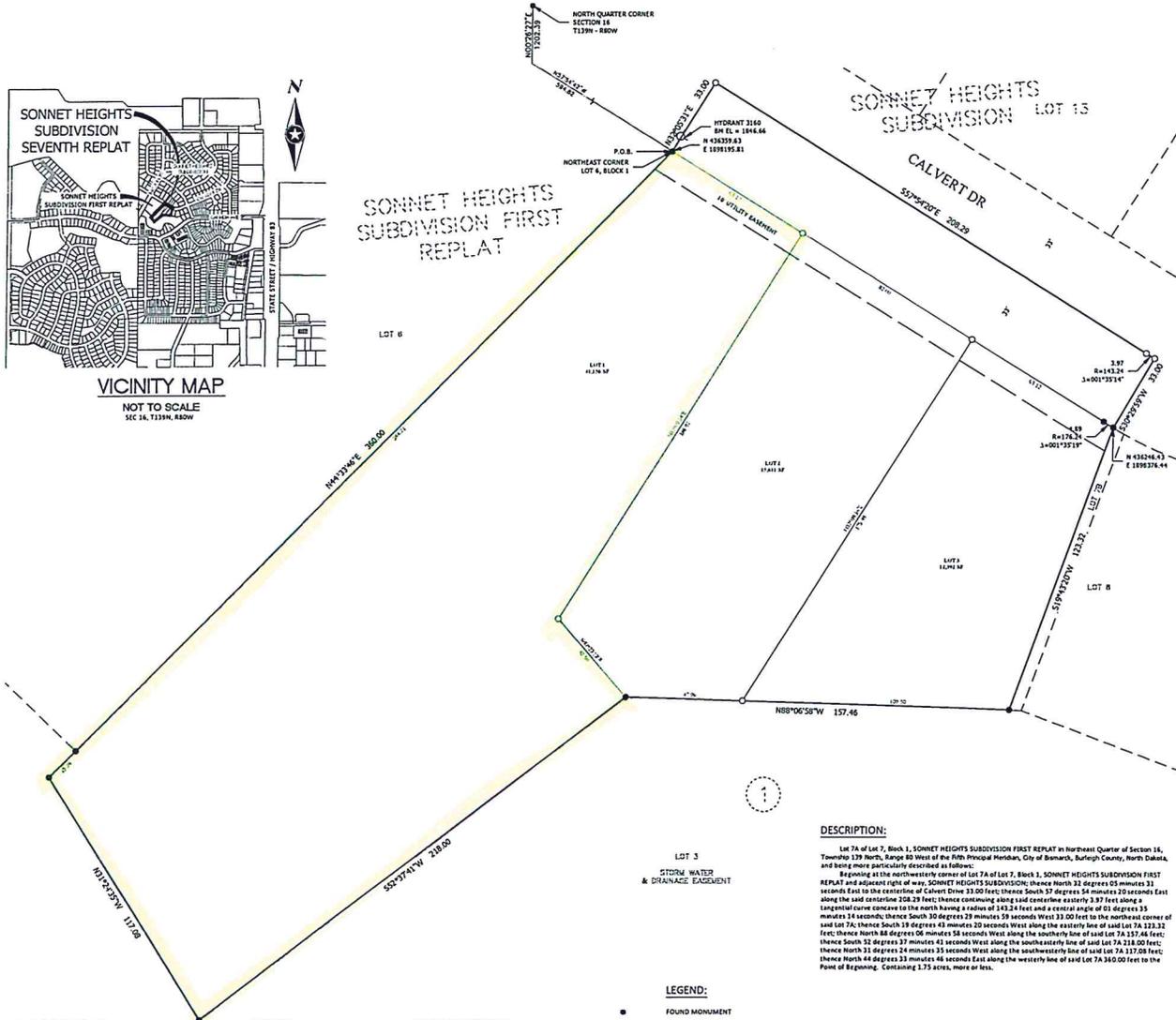


September, 2016



# SONNET HEIGHTS SUBDIVISION SEVENTH REPLAT

Being a replat of Lot 7A of Lot 7, Block 1, Sonnet Heights Subdivision First Replat and adjoining Right of Way, Sonnet Heights Subdivision in Northeast Quarter of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, City of Bismarck, Burleigh County, North Dakota



**VICINITY MAP**  
NOT TO SCALE  
SEC 16, T139N, R80W

**AREA TABULATIONS:**

Lot 1	=	41,154 SF
Lot 2	=	15,811 SF
Lot 8	=	12,392 SF
Right of Way	=	7,021 SF
<b>Total</b>	=	<b>76,380 SF</b>

- LEGEND:**
- FOUND MONUMENT
  - REBAR W/ CAP 15-8444
  - ROADWAY POINT
  - PLAT BOUNDARY
  - - - UTILITY EASEMENT
  - - - ADJACENT LOT LINE
  - SECTION LINE

**BASIS OF BEARING:**  
Derived from State Plane coordinates.

**COORDINATE DATUM:**  
North Dakota State Plane Coordinate System  
NAD 83 South Zone 1302 (Adjusted 84)  
International Units

**VERTICAL DATUM:**  
NAVD 88

**OWNERS:**  
Calvert Creek Condos, LLC  
503 Grandview Lane  
Bismarck, ND 58503

**SURVEYOR:**  
SEP  
4718 Sheburne St.  
Bismarck, ND 58503

**SURVEYED:**  
June 10, 2015

**DESCRIPTION:**

Lot 7A of Lot 7, Block 1, SONNET HEIGHTS SUBDIVISION FIRST REPLAT in Northeast Quarter of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, City of Bismarck, Burleigh County, North Dakota, and being more particularly described as follows:  
Beginning at the northwesterly corner of Lot 7A of Lot 7, Block 1, SONNET HEIGHTS SUBDIVISION FIRST REPLAT and adjacent right of way, SONNET HEIGHTS SUBDIVISION; thence North 32 degrees 05 minutes 33 seconds East to the centerline of Calvert Drive 33.00 feet; thence South 57 degrees 54 minutes 20 seconds East along the said centerline 108.29 feet; thence continuing along said centerline easterly 9.97 feet along a longitudinal curve concave to the north having a radius of 143.24 feet and a central angle of 63 degrees 15 minutes 34 seconds; thence South 20 degrees 29 minutes 59 seconds West 33.00 feet to the northeast corner of said lot 7A; thence South 19 degrees 43 minutes 20 seconds West along the southerly line of said lot 7A 122.32 feet; thence North 88 degrees 06 minutes 58 seconds West along the southerly line of said lot 7A 137.46 feet; thence South 52 degrees 27 minutes 41 seconds West along the south easterly line of said lot 7A 218.00 feet; thence North 31 degrees 24 minutes 35 seconds West along the southwestwesterly line of said lot 7A 137.00 feet; thence North 44 degrees 33 minutes 46 seconds East along the westerly line of said lot 7A 340.00 feet to the Point of Beginning. Containing 1.75 acres, more or less.

**SURVEYOR'S CERTIFICATE:**

I, Robert M. Heg, a Registered Land Surveyor in the State of North Dakota, hereby certify that I made the within and foregoing plat which is a correct representation of the survey prepared under my direct supervision and completed on June 10th, 2015, that all distances are correct, that the outside boundary lines are correctly designated hereon, that all dimensional and geodetic details shown hereon are true and correct to the best of my knowledge and belief and that all required monuments are placed in the ground as shown.

ROBERT M. HEG  
Registered Professional Land Surveyor  
License No. 15-8444  
STATE OF NORTH DAKOTA | 55  
COUNTY OF BURLEIGH | 1



The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Notary Public, \_\_\_\_\_ County, North Dakota  
My Commission Expires: \_\_\_\_\_

**OWNER'S CERTIFICATE AND DEDICATION**

KNOW ALL PERSONS BY THESE PRESENTS: That Calvert Creek Condos, LLC, owner of the

following described property:  
SONNET HEIGHTS SUBDIVISION SEVENTH REPLAT, AS DESCRIBED AND SHOWN HEREON, BEING A REPLAT OF LOT 7A OF LOT 7, BLOCK 1, SONNET HEIGHTS SUBDIVISION FIRST REPLAT AND ADJOINING RIGHT OF WAY, SONNET HEIGHTS SUBDIVISION, IN THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA.

Has caused the same to be surveyed and platted as SONNET HEIGHTS SUBDIVISION SEVENTH REPLAT and does hereby dedicate to the public for public use the public ways, lots and easements as created by the plat.

In witness whereof said Calvert Creek Condos, LLC, has caused these presents to be signed by its proper officers this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Wade Felton, President

STATE OF NORTH DAKOTA | 55  
COUNTY OF BURLEIGH | 1

Be it known on this \_\_\_\_\_ Day of \_\_\_\_\_, 2016, before me personally appeared Wade Felton, President, and acknowledged the execution and signing of the above Certificate to be their voluntary act and deed.

Notary Public, \_\_\_\_\_ County, North Dakota  
My Commission Expires: \_\_\_\_\_

**APPROVAL OF CITY PLANNING COMMISSION**

The subdivision of land as shown on the annexed plat has been approved by the Planning Commission of the City of Bismarck, on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, in accordance with the laws of the State of North Dakota, ordinances of the City of Bismarck and regulations adopted by said Planning Commission. In witness whereof are set the hands and seals of the Chairman and the Secretary of the Planning Commission of the City of Bismarck.

Wayne Lee Yeager, Chairman  
Cynthia Holmsted, Secretary

**APPROVAL OF BOARD OF CITY COMMISSIONERS**

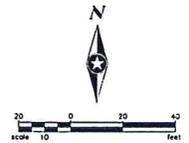
The Board of City Commissioners of the City of Bismarck, North Dakota, has approved the subdivision of land as shown on the annexed plat and does hereby vacate any previous platting within the boundary of the annexed plat.

Attest:  
Kath J. Munkle, City Administrator

**APPROVAL OF CITY ENGINEER**

I, Gabriel J. Schell, City Engineer of the City of Bismarck, North Dakota, hereby approve "SONNET HEIGHTS SUBDIVISION SEVENTH REPLAT" Bismarck, North Dakota, as shown on the annexed plat.

Gabriel J. Schell, City Engineer



SEH  
PHONE: 701.254.7121  
4718 SHEBURN ST., SUITE 6  
BISMARCK, ND 58503-0677  
www.sehnc.com



## **PUBLIC WORKS – SERVICE OPERATIONS**

**DATE:** November 7, 2016  
**FROM:** Jeff Heintz, Director of Service Operations   
**ITEM:** Approval and Award of Bids for Janitorial Services

### **REQUEST**

Approve bids for Janitorial Services and award contract to the low bidder.

Please place this item on the November 22, 2016 City Commission meeting.

### **BACKGROUND INFORMATION**

The current janitorial services contract for the City/County Building and the Public Health Center first and second floors will expire on December 31, 2016. No option years remain from the previous bidding. Bids for option years 2018 and 2019 were received as well. Award of those options can be done prior to the end of the initial year of the contract or can be awarded at any time previous, including the 2017 contract. Since the future of the Public Health Center is uncertain at this time, we recommend awarding the 2017 contract only at this time. Option years can be exercised later, prior to the end of the contract in place at the time. Bid tabulation is attached.

### **RECOMMENDED CITY COMMISSION ACTION**

Approve bids and award contract to the low bidder.

### **STAFF CONTACT INFORMATION**

Jeff Heintz, Director of Service Operations, 355-1700, [jheintz@bismarcknd.gov](mailto:jheintz@bismarcknd.gov)

**BID TABULATION - Janitorial Services 2017 + Options**  
 CITY OF BISMARCK PUBLIC WORKS DEPARTMENT  
 BIDS OPENED OCTOBER 31, 2016



Bidders	Bonds and License	Addendum #1	Site A-1 2017	Site A-1 2018	Site A-1 2019	Site B-1 2017	Site B-1 2018	Site B-1 2019	Site B-2 2017	Site B-2 2018	Site B-2 2019
Bader Maids	x		\$3,975	\$4,299	\$4,490	\$2,010	\$2,200	\$2,200	\$1,790	\$1,940	\$1,940
Lovebird Janitorial Service	x		Non-responsive due to incomplete bid. Not all sites were bid as was a requirement.								

Notes: Highlighted bids are low bids for 2017.

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## ENGINEERING DEPARTMENT

**DATE:** November 15, 2016  
**FROM:** Gabe Schell, PE | City Engineer   
**ITEM:** Sewer Utility Project No. 16-66

### REQUEST

Authorization to Receive Bids and Award Contract.

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

Sewer Utility Project No. 16-66 is a four-unit sanitary sewer re-line project in south Bismarck and related items. This project deploys a trenchless construction process where the existing sewer pipe serves as a host conduit and a resin-impregnated flexible tube is inserted into the original pipe, expanded to fit against the host pipe and cured in place. The end product is referred to as a cured in place pipe or CIPP.

A bid summary and project budget will be provided prior to the commission meeting.

#### Project Schedule

Receipt and Opening of Bids:	November 21, 2016
Award:	November 22, 2016
Construction Completion:	November 1, 2017

### RECOMMENDED CITY COMMISSION ACTION

Authorize receipt of bids and award contract.

### STAFF CONTACT INFORMATION

Linda Oster, PE, Design and Construction Engineer, 355-1505, [loster@bismarcknd.gov](mailto:loster@bismarcknd.gov)



## ENGINEERING DEPARTMENT

**DATE:** November 15, 2016  
**FROM:** Gabe Schell, PE | City Engineer   
**ITEM:** Development Agreement - CK Auto - Chris Krein

### REQUEST

Approval of Development Agreement with CK Auto / Chris Krein .

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

Chris Krein desires to develop a commercial lot south of Divide Avenue along Channel Drive. The city would normally require improvement of Channel Drive adjacent to the parcel prior to or in conjunction with the parcel development. However, staff is in agreement that the improvement of Channel Drive for the entire length is not necessary at this time to avoid impacts to the existing floodway. The improvements through the floodway can be delayed until such time as the City receives petitions for improvements to Channel Drive from any parcel south of Mr. Krein's parcel. The attached Development Agreement details how this will occur including petition for the future improvements of Channel Drive.

We have received the required petitions. Currently, 634 feet of Channel Drive will be improved in conjunction with Mr. Krein's development and the approximate remaining 51 feet will be improved at some point in the future when development to the south requires this connection.

### RECOMMENDED CITY COMMISSION ACTION

Approval of Development Agreement, attached.

**STAFF CONTACT INFORMATION**

Gabe Schell, PE, City Engineer, 355-1505, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

## DEVELOPMENT AGREEMENT

The City of Bismarck (the "City") and Chris Krein (the "Developer") make this Development Agreement with regard to the development of a parcel (the Parcel) located in Bismarck, North Dakota and described as follows:

Lot 2 Less Easterly 820' & Less N 40' OF W 405' Taken For St R/W Miriam Industrial Park 2<sup>nd</sup> Addition

Chris Krein desires to develop the Parcel as a commercial lot. The Parcel is located on the southeast corner of East Divide Avenue and Channel Drive. The City would normally require the improvement of Channel Drive adjacent to the Parcel at the time of the development of the Parcel. The parties are in agreement that the improvement of Channel Drive for the entire length of the Parcel is not necessary for the development of the Parcel at this time to avoid impacts to the existing floodway. The improvements through the floodway can be delayed until such time as the City receives a petition to improve Channel Drive from any parcel located on Channel Drive south of said parcel.

In exchange for the City's agreement to delay the requirement of the improvement of Channel Drive through the entire length of the Parcel, Chris Krein agrees as follows:

1. The Developer will execute and deliver a petition for the street improvements of Channel Drive from Divide Avenue to 634 feet south of Divide Avenue.

2. The **City** will enter into a 3-way contract for the construction of Channel Drive as prepared by the Developer and as attached for construction of the roadway to be completed including chip seal prior to August 1, 2017.

3. The Developer will execute and deliver a petition for the improvement of Channel Drive from 634 feet south of Divide Avenue to the south property line of Lot 2, Miriam Industrial Park 2<sup>nd</sup> Addition and thus completing the installation to of roadway to the south property line. The petition will be conditioned that it will be deemed to be submitted upon the receipt of another valid petition for improvement of any portion of Channel Drive south of said parcel and will be subject to the current Development Costs Policy. By entering into this Agreement, the Developer also agrees to waive their right to protest a special assessment district formed to improve Channel Drive that includes the roadway from 634 feet south of Divide Avenue to the south property line of Lot 2,

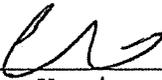
Miriam Industrial Park 2<sup>nd</sup> Addition to be constructed under the 3-way contract.

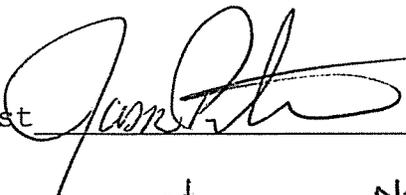
4. By petitioning for street improvements, the Developer agrees that the petitions also include street lighting. Street lighting shall be installed as part of the City's annual street lighting improvement district. Work is planned to be completed in 2017. By entering into this Agreement, the Developer agrees to waive their right to protest a special assessment district formed to install street lighting adjacent to the improvements for Channel Drive that will be installed in 2017.

5. It is the intention of the parties that this Agreement will run with the land as to the Parcel and that Chris Krein will have the obligation to inform any successor in interest of the terms of this agreement and the successor's obligation to abide by this Agreement.

This Agreement shall bind the parties, their successors, assigns and heirs.

Dated this 24 day of October, 2016.

  
\_\_\_\_\_  
Chris Krein

Attest   
\_\_\_\_\_ 9P

Dated this 2<sup>nd</sup> day of November, 2016.

\_\_\_\_\_  
President Michael C. Seminary,  
Bismarck City Commission

Attest \_\_\_\_\_  
Keith J. Hunke  
City Administrator



## ENGINEERING DEPARTMENT

**DATE:** November 15, 2016  
**FROM:** Gabe Schell, PE | City Engineer   
**ITEM:** Main Avenue 4-Lane to 3-Lane Conversion After Study

### REQUEST

Receive the Main Avenue 4-Lane to 3-Lane Conversion After Study

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

A Downtown Sub Area Study was completed in December 2013. As a result of the study, it was recommended to convert Main Avenue from a 4-lane roadway configuration to a 3-lane roadway with a center left turn lane. At the May 24, 2016 meeting of this Board a contract was awarded for installing of pavement marking and signing for this demonstration project. The 3-lane conversion was implemented at the end of June, 2016 for a 3-month trial period ending September 30<sup>th</sup>. SRF who was hired to prepare design plans for this project was to also prepare an after study report to evaluate various elements of the conversion, including traffic volumes, crash history, public feedback and potential enhancements. The after study has been attached for your review.

In addition to the after study conducted by SRF, the Downtown Business Association surveyed their members for their input. Kate Herzog will present the results of their survey.

Ultimately, no decisions need to be made at this time by the Board. Options for consideration of additional action could include but would not be limited to

- Return to a 4-lane roadway
- Accept the 3-lane as is
- Accept the 3-lane with additional modifications
- Continue demonstration and make a permanent decision at a later date

Please keep in mind that if the decision is to return to a 4-lane, we would not be able to install pavement markings this year and the earliest the roadway could be converted back to 4 lanes is in the spring of 2017.

**RECOMMENDED CITY COMMISSION ACTION**

Receive the Main Avenue 4-Lane to 3-Lane Conversion After Study

**STAFF CONTACT INFORMATION**

Gabe Schell, PE, City Engineer, 355-1505, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

## Main Avenue 4-Lane to 3-Lane Conversion After Study

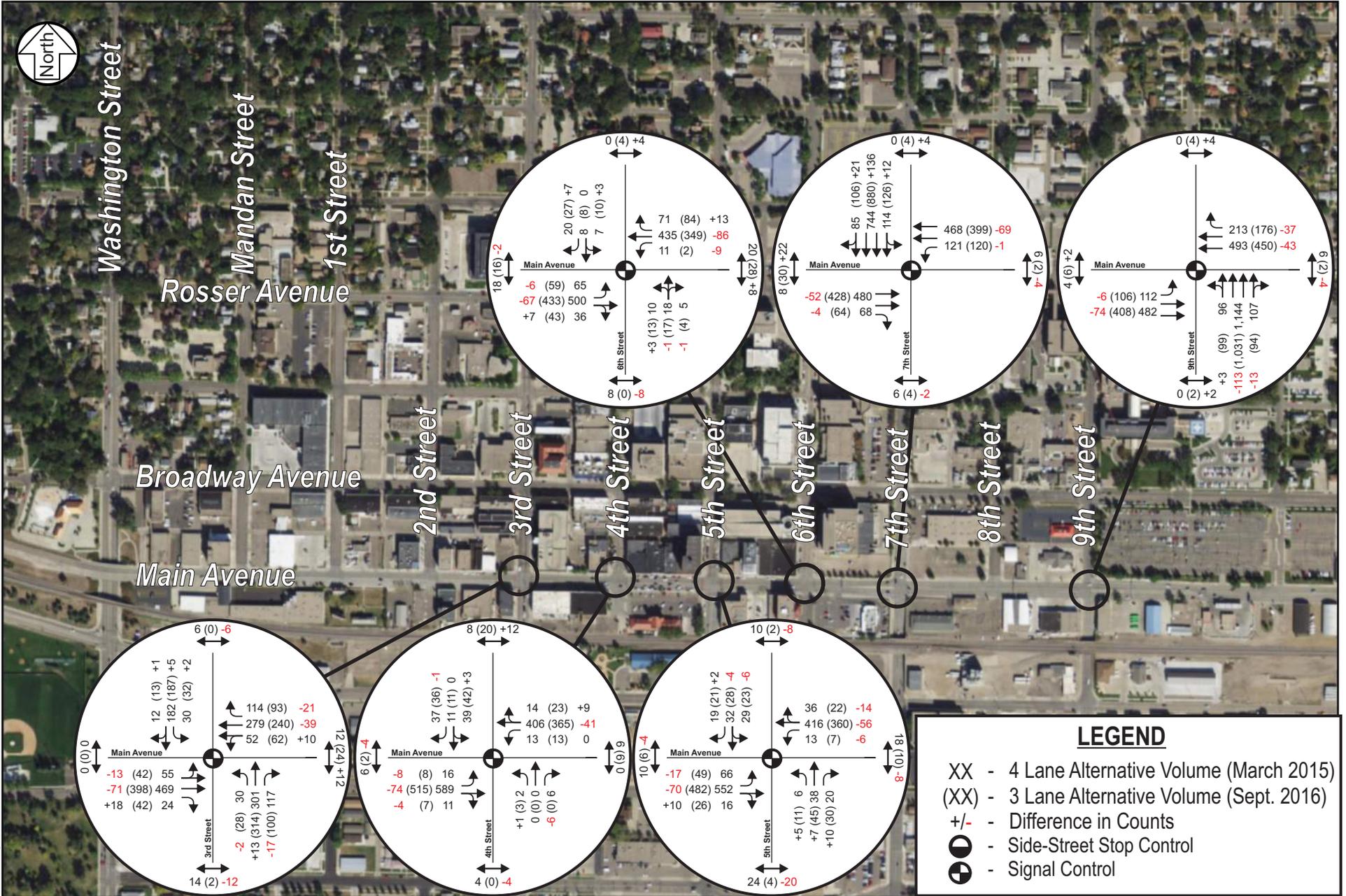
### Introduction

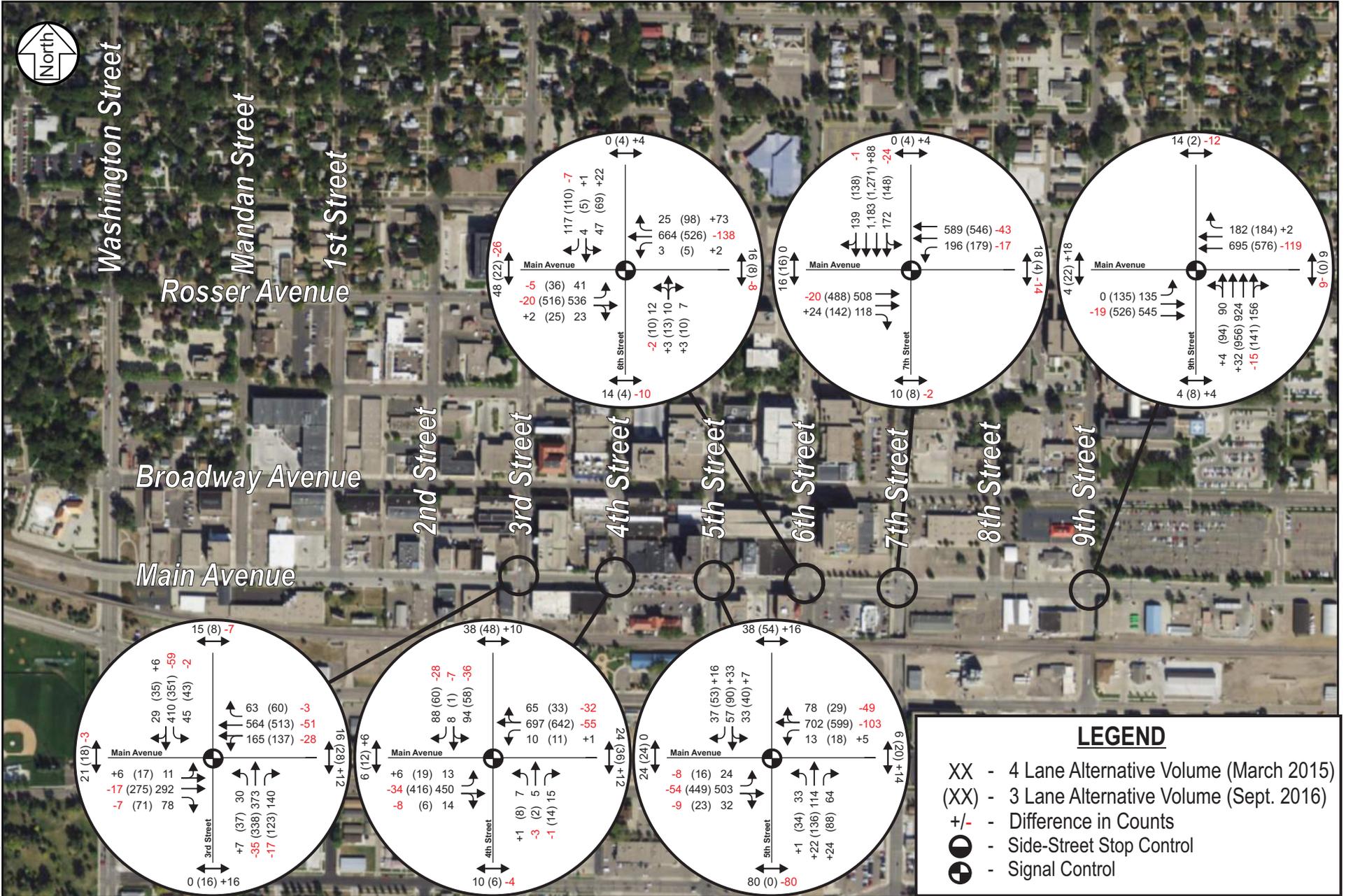
SRF completed the *Main Avenue 4-Lane to 3-Lane Traffic Operations Study*, dated June 25, 2015 to identify traffic operations and specific design decisions associated with the four-lane to three-lane conversion of Main Avenue in Downtown Bismarck. Since completion of the study, the City decided to conduct a test implementation beginning in late June 2016. The limits of the Main Avenue 4-lane to 3-lane conversion are from approximately Anderson Avenue to 7th Street. As part of the test, the City has requested this follow-up study to evaluate various elements of the conversion, including traffic volumes, crash history, intersection capacity, public feedback, and potential enhancements. Therefore, the following information provides the findings and recommendations offered for consideration.

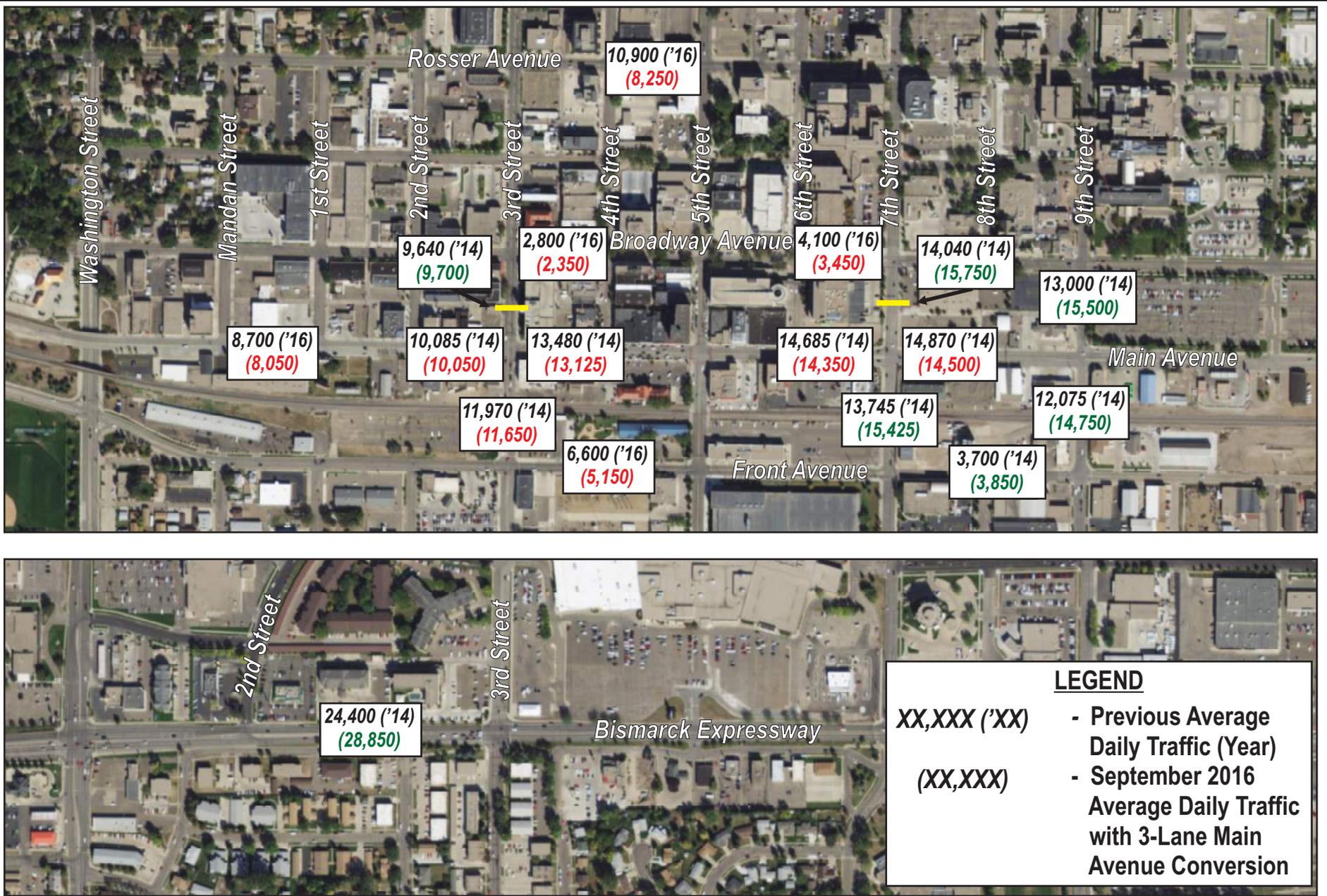
### Traffic Volumes

A combination of historical and newly collected post-conversion traffic volume data was collected and reviewed to understand how the conversion has influenced traffic volumes within the area. This data included peak hour and daily traffic volumes. The following information provides a summary of the traffic volume comparisons.

- Historical 2014 and 2015 intersection turning movement and pedestrian counts were provided by the City and/or NDDOT along Main Avenue between 2nd Street and 7th Street. It should be noted that the NDDOT collected multiple intersection turning movement counts in 2016 (pre-conversion), but the data was not available for review at the time of this study.
- Post-conversion intersection turning movement and pedestrian counts were collected by SRF along Main Avenue at 3rd Street, 4th Street, 5th Street, 6th Street, 7th Street, and 9th Street during the week of September 19, 2016.
- Intersection turning movement counts from September 2016 are approximately 10 to 15 percent lower during the a.m. peak hour and are approximately five (5) to 15 percent lower during the p.m. peak hour as compared to the 2014/2015 volumes. An a.m. and p.m. peak hour traffic and pedestrian volume comparison is shown in Figures 1A and 1B, respectively.
- Pedestrian volumes crossing Main Avenue increased by approximately five (5) to 15 percent when compared to the 2015 a.m. and p.m. peak hour volumes.
- Historical Average Daily Traffic (ADT) volumes were provided at several locations along Main Avenue, as well as Rosser Avenue, Broadway Avenue, Front Street, and Bismarck Expressway. The historical data ranges from 2014 to 2016 (pre-conversion) conditions.
- Post-conversion ADT volumes were collected by SRF during the week of September 19, 2016 at multiple similar locations to the historical ADT volumes. An illustration of the historical and post-conversion ADT volumes within the study area is shown in Figure 2.
- ADT volumes along Main Avenue have decreased by approximately two (2) to seven (7) percent when compared to the historical ADT volumes. Post-conversion ADT volumes along Main Avenue between Mandan Street and 7th Street range from 8,050 to 14,500 vehicles per day.







- ADT volumes along Rosser Avenue have decreased by 24 percent, Broadway Avenue decreased by 16 percent, and Bismarck Expressway increased by 18 percent. It should be noted that pre-conversion ADT volumes on Bismarck Expressway are from 2014, which is the most recent available. A summary of the historical and post-conversion ADT volumes within the study area are shown in Table 1.

**Table 1 ADT Volume Comparison**

Intersection	Pre-Conversion Conditions (Four-Lane)	Post-Conversion Conditions (Three-Lane)	Change
<b>Main Avenue</b>			
Mandan Street and 1st Street	8,700	8,050	(-650) -7%
2nd Street and 3rd Street	10,085	10,050	(-35) 0%
3rd Street and 4th Street	13,480	13,125	(-355) -3%
6th Street and 7th Street	14,685	14,350	(-335) -2%
7th Street and 8th Street	14,870	14,500	(-370) -2%
<b>Rosser Avenue</b>			
4th and 5th Street	10,900	8,250	(-2,650) -24%
<b>Broadway Avenue</b>			
3rd Street and 4th Street	2,800	2,350	(-450) -16%
6th Street and 7th Street	4,100	3,450	(-650) -16%
<b>Front Avenue</b>			
3rd Street and 5th Street	6,600	5,150	(-1,450) -22%
7th Street and 9th Street	3,700	3,850	(+150) +4%
<b>Bismarck Expressway</b>			
2nd Street and 3rd Street	24,400	28,850	(+4,350) +18%

From a planning level perspective, hourly traffic volumes along Main Avenue were reviewed to determine where and how often the directional volumes would be expected to exceed the guidance thresholds identified in *FHWA's Road Diet Informational Guide*, which state:

- Probably feasible at or below 750 vehicles per hour per direction (vphpd) during the peak hour
- Consider cautiously between 750 and 875 vphpd during the peak hour
- Feasibility less likely above 875 vphpd during the peak hour

Based on the post-conversion hourly traffic volumes collected along Main Avenue, the hourly volumes in both the eastbound and westbound directions remain under the 750 vehicle per hour per direction threshold throughout the day. The hourly traffic volumes profiles by direction (eastbound and westbound) along Main Avenue for both pre- and post-conversion conditions are shown in Figures 3A and 3B, respectively.

Figure 3A – Hourly Volume Profiles (Eastbound)

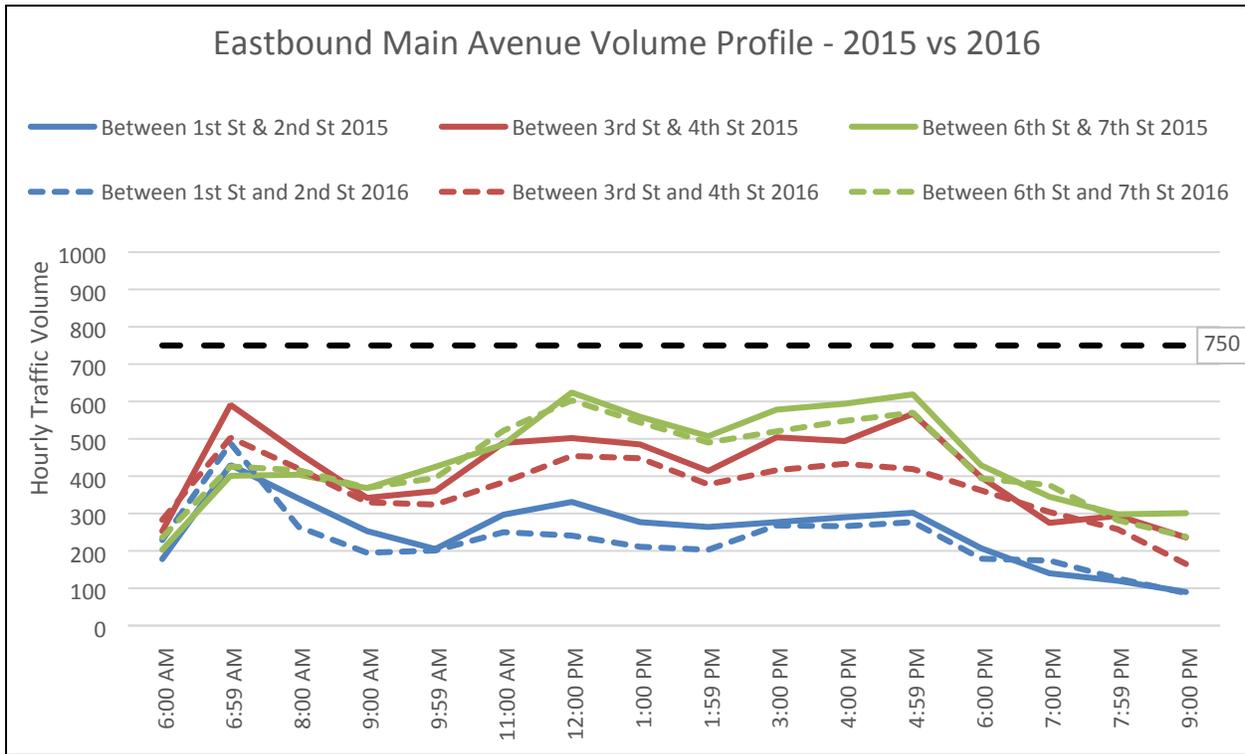
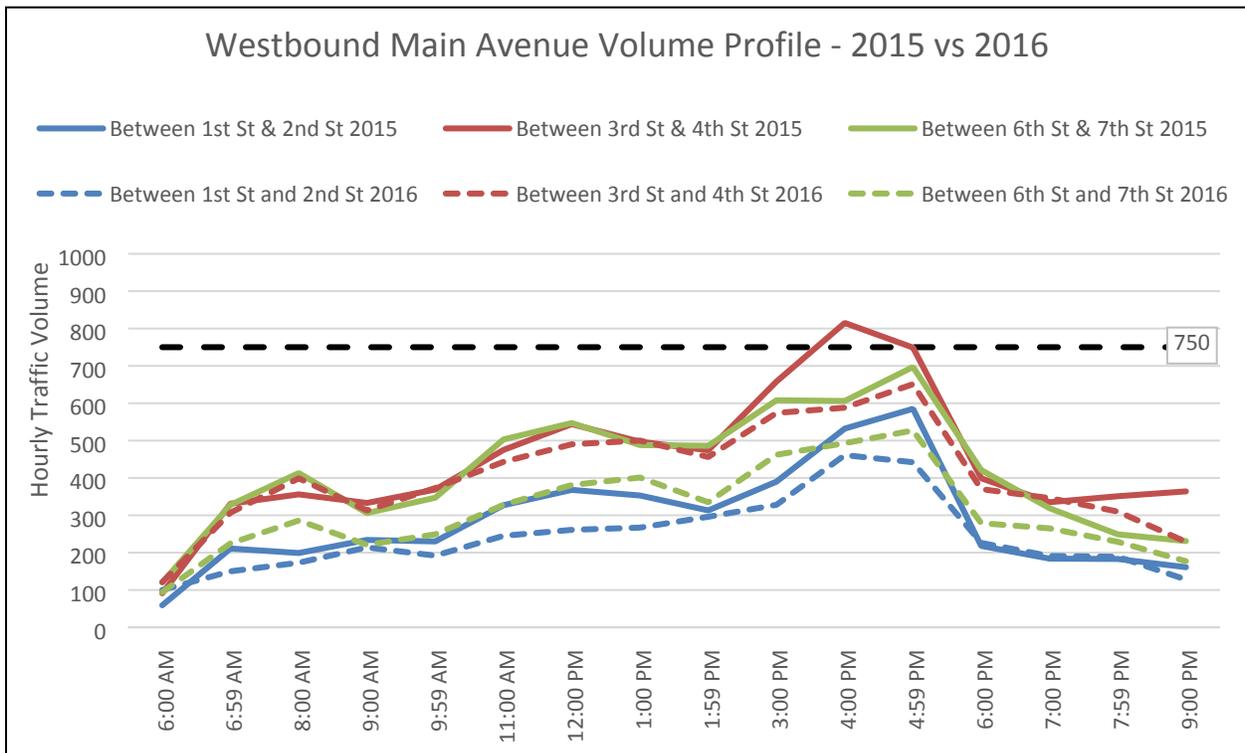


Figure 3B – Hourly Volume Profiles (Westbound)

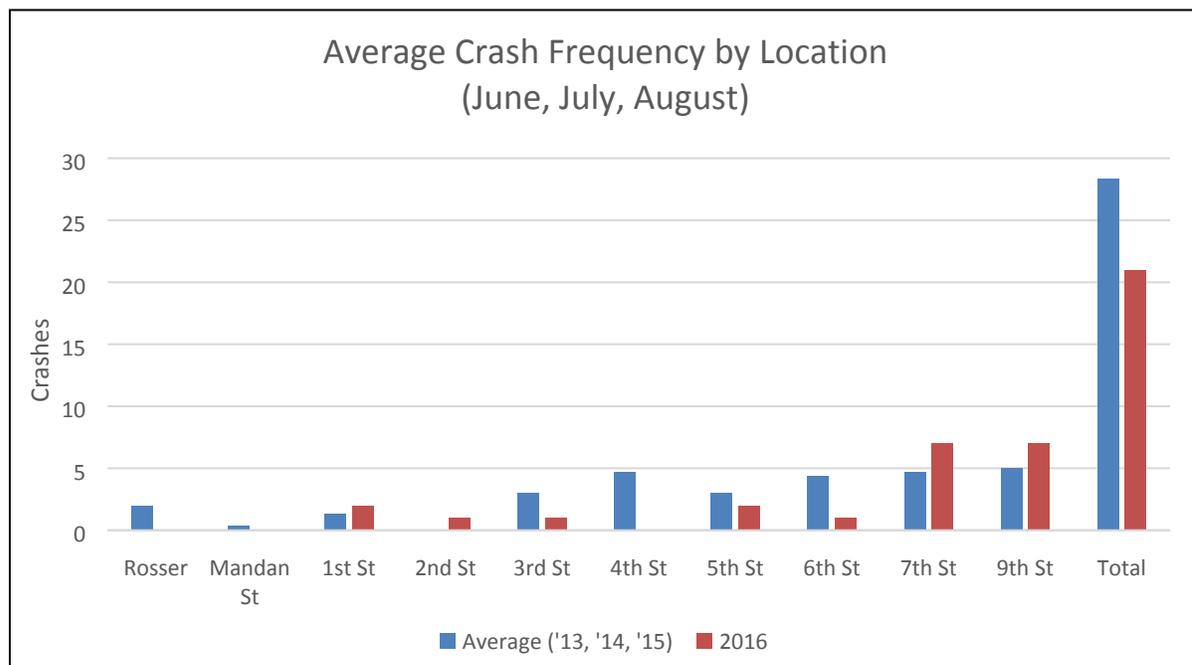


## Crash History

Historical and post-conversion crash data was collected and reviewed to understand how the conversion has influenced safety with respect to vehicle crashes within the area. To provide a comparable evaluation, the three months post-conversion (July, August, and September) were compared with the previous three-year average for the same months for Main Avenue between Rosser Avenue and 9th Street. The following information provides a summary of the crash history.

- There were an average of 28 reported crashes per three-month period (July, August, and September) along the Main Avenue study segment during the past three years (2013, 2014, and 2015) before the conversion.
- There were 21 reported crashes during the three-month period (July, August, and September) along the Main Avenue study segment after the conversion. A detailed summary of the crash comparison by location is provided in Chart 1.

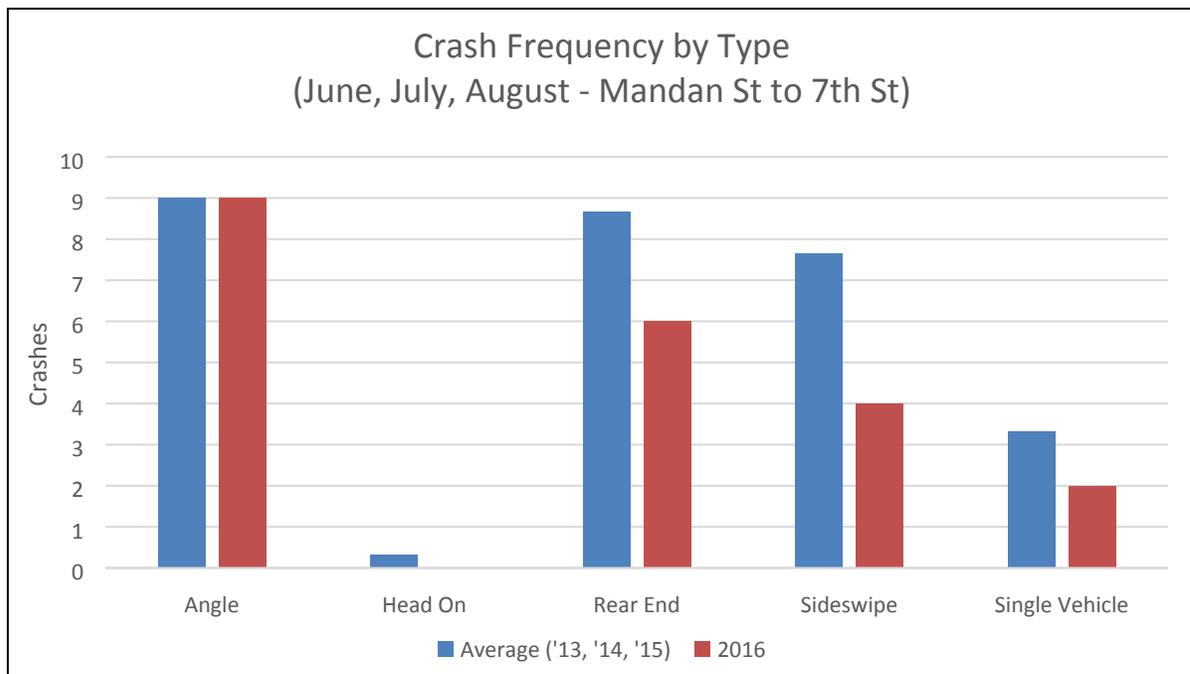
**Chart 1** Average Crash Frequency by Location



- A 25 percent reduction in crashes during the comparable three-month period occurred, which is consistent with the estimated 19 to 47 percent reduction in overall crashes when a “Road Diet” is installed on a previously four-lane undivided facility (per *FHWA’s Road Diet Information Guide*).
- Crashes increased at 1st Street, 2nd Street, 7th Street, and 9th Street. However, the number of crashes that occurred is within the three-year range of crashes. It should be noted that there were no changes at 9th Street included as part of the conversion.
- Citation data was requested to understand if the level of enforcement along the corridor changed, which could influence crash frequency. However due to current changes in reporting technology, this information was not available at the time of this study.

- There were an average of approximately nine (9) angle, one (1) head-on, eight (8) rear-end, seven (7) sideswipe, and three (3) non-collision with a motor vehicle type reported crashes per three-month period (July, August, and September) along the Main Avenue study segment during the past three years (2013, 2014, and 2015) before the conversion.
- There were nine (9) angle, zero (0) head-on, six (6) rear-end, four (4) sideswipe, and two (2) non-collision with a motor vehicle reported crashes during the three-month period (July, August, and September) along the Main Avenue study segment after the conversion. A detailed summary of the crash comparison by type is provided in Chart 2.

**Chart 2** Crash Frequency by Type



- The amount of angle type crashes did not change since the conversion, however there has been a reduction in rear-end, sideswipe, and non-collision with motor vehicle type crashes since the conversion.
- A lack of change in angle-type crashes could be attributed to a reduction in overall gaps along Main Avenue as motorists turn left-left from Main Avenue or from the cross-street onto Main Avenue. The addition of left-turn signal phasing has the potential to provide additional gaps along Main Avenue.

## Traffic Operations

Based on the post-conversion data, SRF conducted an intersection capacity analysis for the intersections along Main Avenue between Mandan Street and 7th Street to understand how intersection and corridor operations have changed since the conversion. Pre-conversion data from the *Main Avenue 4-Lane to 3-Lane Traffic Operations Study*, dated June 25, 2015 was utilized for comparison purposes. All intersection capacity analysis results are based on Synchro/SimTraffic software. The following information provides a summary of the intersection capacity analysis.

- All study intersections along Main Avenue between Mandan Street and 7th Street continue to operate at an acceptable overall LOS C or better during the a.m. and p.m. peak hours post-conversion. The intersection capacity analysis comparison is summarized in Table 2.
- Intersection and side-street delays are generally consistent when comparing the four-lane and three-lane conditions, with average increases less than five (5) seconds per vehicle.
- Queues during the peak hours generally stay within the dedicated turn-lane storage and do not impact adjacent intersections along Main Avenue, except for the westbound left-turn at the Main Avenue/3rd Street intersection during the p.m. peak hour.
  - Westbound left-turn queues at this intersection extend beyond the turn lane storage by approximately 50 to 75 feet during the p.m. peak hour. This movement would benefit from having a dedicated westbound left-turn phase, which is expected to improve queues so that they are maintained within the post-conversion striping.

**Table 2 Intersection Capacity Analysis Comparison**

Scenario	Level of Service (Delay) <sup>(1)</sup>							
	Mandan Street	1st Street	2nd Street	3rd Street	4th Street	5th Street	6th Street	7th Street
A.M. Peak Hour								
Four-Lane	A/A (7 sec)	A/A (7 sec)	A (7 sec)	B (13 sec)	B (10 sec)	A (6 sec)	A (4 sec)	B (14 sec)
Three-Lane	A/A (7 sec)	A/A (9 sec)	A (8 sec)	B (14 sec)	B (12 sec)	A (7 sec)	A (5 sec)	B (16 sec)
P.M. Peak Hour								
Four-Lane	A/A (9 sec)	A/A (9 sec)	A (6 sec)	B (17 sec)	B (10 sec)	A (9 sec)	A (5 sec)	B (17 sec)
Three-Lane	A/B (11 sec)	A/B (10 sec)	B (10 sec)	B (17 sec)	B (15 sec)	B (12 sec)	A (8 sec)	C (20 sec)

(1) For unsignalized intersections, the overall LOS is presented followed by the worst approach LOS. The corresponding delay represents the worst side-street approach delay.

(2) For signalized intersections, the overall LOS is presented. The corresponding delay represents the overall intersection delay.

- Average travel times (based on SimTraffic results) for both directions of travel along Main Avenue (between Mandan Street and 7th Street) increased by less than 10 percent (i.e. approximately 10 seconds or less) during the peak hours, except the westbound direction during the p.m. peak hour.
  - Westbound travel time increased 17 percent during the p.m. peak hour, which is an increase of approximately 30 seconds. This increase is partially due to the lack of a westbound left-turn phase at 3rd Street, which results in queuing impacts to motorists in the through lane.
- The corridor travel time comparison is summarized in Table 3.

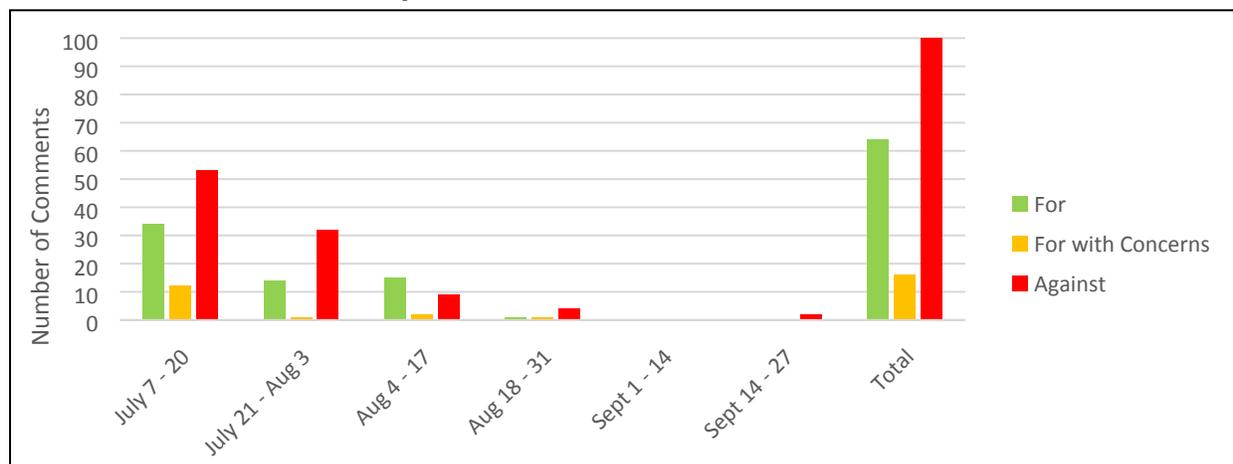
**Table 3 Corridor Travel Time Comparison**

Scenario	Corridor Travel Time (% Change)	
	Eastbound	Westbound
A.M. Peak Hour		
Four-Lane	138 seconds	139 seconds
Three-Lane	149 seconds	141 seconds
<b>Change In Travel Time</b>	<b>+11 seconds (+8%)</b>	<b>+2 seconds (+2%)</b>
P.M. Peak Hour		
Four-Lane	135 seconds	149 seconds
Three-Lane	143 seconds	175 seconds
<b>Change In Travel Time</b>	<b>+8 seconds (+6%)</b>	<b>+26 seconds (+17%)</b>

## Public Feedback

Since the conversion was implemented in late June, City staff has tracked public feedback regarding the project. A total of approximately 180 responses were received between the beginning of July and the end of September. A majority of these comments (99 comments) occurred within the first 14-days post-implementation, which is illustrated in Chart 3. Only two (2) comments were received in September. The feedback was reviewed and categorized based on the level of support for the conversion (i.e. for, for with concerns, and against). There were 64 comments “for” the conversion, 16 “for with concerns”, and 100 “against” the conversion. This equates to 45 percent in favor and 55 percent against. Feedback from the business association is not included as part of this review.

**Chart 3 Public Feedback Summary**



## Future Enhancements

If City leaders desire to permanently retain the three-lane facility along Main Avenue, the following area enhancements should be considered to refine operations along Main Avenue, as well as within the Downtown area.

- Implement flashing yellow arrow left-turn phasing at the Main Avenue/3rd Street intersection to reduce left-turn queuing from impacting through motorists, which is also expected to improve overall corridor travel time.
- Consider additional flashing yellow arrow left-turn phasing at other locations along Main Avenue. Dedicated left-turn phasing can assist with the following:
  - Pedestrian Safety – provides flexibility in the signal timing operations, particularly with pedestrian conflicts at intersections, but may impact corridor operations for motorists.
  - Train Pre-emption – provides flexibility to reduce potential conflicts when a train is passing through (i.e. would allow a red left-turning arrow to be implemented during a train event to reduce driver confusion and conflicts), particularly for the westbound left-turn movement at 3rd Street and 5th Street.
- Review/refine the signal system to provide the most efficient system as possible. It should be noted that signal timing modifications along Main Avenue would need to be considered in conjunction with adjacent intersections due to the interaction with other downtown signals. Additional signal system modifications to consider include:
  - Convert the existing pre-timed traffic signals to an actuated system to improve the ability of the system to recover, particularly from train pre-emption events which occur approximately 30 times per day and results in a significant amount of lost time to get back into coordination.
  - Install pedestrian push buttons to improve signal timing flexibility and operations, particularly during lower pedestrian activity periods.
  - Emergency Vehicle Pre-emption – needs to be considered with respect to the signal head locations, if moved to accommodate left-turn phasing.
- Remove the striping adjacent to the on-street parking bays to reduce driver confusion with respect to the designated/proper parking areas relative to the curb. In other words, removing this stripe should help motorists park closer to the curb, reducing potential conflicts between parked and through vehicles.
- Modify the overhead signage along the westbound approach to the Main Avenue/7th Street intersection to help motorists identify the appropriate travel lane. This type of signage would reduce the likelihood of westbound motorists changing lanes between 6th Street and 7th Street.
- Convert Broadway Avenue to a two-way facility between 4th Street and 6th Street to provide an alternative route to Main Avenue and improve wayfinding/circulation within Downtown.

The addition of right-turn lanes was considered along Main Avenue in locations that do not currently exist. Based on this review, the right-turn lanes do not provide a significant operational benefit from an intersection delay or queuing perspective. Furthermore, to implement additional right-turn lanes would result in on-street parking impacts. Additional discussion would be needed with area stakeholder to determine the level of support for any additional right-turn lanes.



## ENGINEERING DEPARTMENT

**DATE:** November 15, 2016  
**FROM:** Gabe Schell, PE | City Engineer   
**ITEM:** NDDOT HSIP Funding Solicitation

### REQUEST

Permission to pursue NDDOT Highway Safety Improvement Funding (HSIP) for conversion of two-lane roadways to three-lane roadways

Please place this item on the November 22, 2016 City Commission meeting.

### BACKGROUND INFORMATION

The NDDOT solicits local cities and counties for safety projects as part of their Highway Safety Improvements Program (HSIP). This solicitation is usually funded at an 80/10/10 split with Federal Safety Funds Paying 80%, NDDOT paying 10% and the City of Bismarck paying 10% of the construction costs. These dollars are typically used to address safety issues or reduce crash potential on roadways within a community. The solicitations are due on December 5<sup>th</sup> to our metropolitan planning organization (MPO) where they will be ranked and prioritized before sending to the NDDOT for review and potential award. The project funding year is 2021.

There have been two studies conducted in Bismarck that independently determined that a conversion for some of our two-lane roadways to three-lane reduces crash potential and increases safety. The first was the 2013 Local Road Safety Program study conducted by the NDDOT. The latest of these studies was the Mandan-Bismarck Corridor Improvement Study that was conducted by our MPO and was presented to the City Commission on August 9. In addition to the crash reduction potential, there are also traffic operational benefits of a three lane section that reduces delay through a corridor.

One of the drawbacks of this conversion is that the existing curb to curb utilization of the roadway would have to change. Many of these corridors have parking and/or bike lanes on one or both sides

of the road. A conversion to a three lane section would impact the ability to maintain parking, bike lanes and a two way left turn lane. No final decisions are requested to be made at this time regarding parking, bike lanes or even which corridors would be converted. These decisions would be made if funding is awarded and once design concepts are refined and recommendations can be made to the commission.

A significant hurdle is what would have to be taken away from these corridors in order to accommodate a three lane section. Most have parking on both sides, some have bike lanes on both sides. We could implement a three lane roadway with parking on one side or a three lane section with bike lanes on both side but we would not be able to accommodate both in most situations.

### **RECOMMENDED CITY COMMISSION ACTION**

Permission to pursue NDDOT Highway Safety Improvement Funding (HSIP) for conversion of two-lane roadways to three-lane roadways

### **STAFF CONTACT INFORMATION**

Gabe Schell, PE, City Engineer, 355-1505, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)