



December 8, 2016

Board of City Commissioners
Bismarck, ND

Dear Commissioners:

The Board of City Commissioners is scheduled to meet in regular session on Tuesday, December 13, 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 27, 2016**
- January 10 & 24, 2017
- February 14 & 28, 2017

BOARD OF HEALTH

1. Call to order - President Seminary
2. Strategic Plan update
 - a. CDC Worksite Health Scorecard - Renae Moch
 - b. Worksite Wellness "How Far We've Come" - Katie Johnke
3. Adjourn

Documents:

[City Board of Health 12 13 16.pdf](#)

BOARD OF CITY COMMISSIONERS

1. Consider approval of the minutes of the regular meeting on November 22, 2016.
2. CONSENT AGENDA
 - A. Consider approval of expenditures.

B. Consider approval of personnel actions.

Documents:

[Personnel Actions for December 13 meeting.pdf](#)

C. Consider request for approval from the Bismarck Airport for Amendment 4 to the May 12, 2015 Engineering Services Agreement with Kadrmas, Lee and Jackson (KLJ) for Airport Drainage Study, Storm Sewer Televising, Cleaning and Report.

Documents:

[Amendment 4 to KLJ May 12, 2015 Engineering Services Agreement.pdf](#)

D. Consider request for approval from the Assessing Division of tax abatement applications for Wheelchair Exemption.

Documents:

[Abatements for 121316 Meeting.pdf](#)

E. Consider request for approval to introduce and call for a public hearing on Ordinance 6242 at the request of the Bismarck Larks Baseball Team for an amendment to the Class L liquor license. The public hearing for this item will take place at the January 10, 2017 City Commission meeting.

Documents:

[Ordinance 6242 to amend Class L liquor license.pdf](#)

F. Consider requests for approval from the Community Development Department for the following items:

- Reappointment of Mr. Joe Fink and Mr. Todd Van Orman to the Renaissance Zone Authority until December 31, 2019.
- Amendment to the Brokerage Contract between the City of Bismarck and the Bis-Man Transit Board.
- Permission for Bismarck-Mandan Metropolitan Planning Organization staff to submit and FY2017 Section 5339 grant application on behalf of Bis-Man Transit.

Documents:

[Renaissance Zone Authority reappointments.pdf](#)

[Amendment to Transit Brokerage Contract with Bis-Man Transit Board.pdf](#)

[Permission to submit FY 2017 Section 5339 Grant Application on behalf of Bis-Man Transit.pdf](#)

G. Consider requests for approval from the Engineering Department for the following items:

- Amendment to Consultant Agreement with Apex Engineering Group for professional services relating to the North Washington Street regional storm water detention pond design.
- Endorsement of two projects that Bismarck Parks and Recreation District would like to submit to the Metropolitan Planning Organization (MPO) for the North Dakota Department of Transportation (NDDOT) Transportation Alternatives Program (TAP) grant.
- Approval of various easements related to Light of Christ Addition.
- Permission to move establishment date for Quiet Rail Zone.

Documents:

[Amendment to existing agreement for professional services.pdf](#)

[Endorsement to submit applications for NDDOT TAP grant.pdf](#)

[Various easements related to Light of Christ Addition.pdf](#)

[Move establishment date for Quiet Rail Zone.pdf](#)

H. Consider requests for approval from the Finance Department for the following items:

- Contract for appraisal services for commercial properties with Vanguard Appraisals, Inc.
- 2016 year budget transfers, authorizations and adjustments for the General Fund.

Documents:

[Contract for commercial appraisal services.pdf](#)
[Year end 2016 budget adjustments.pdf](#)

I. Consider requests for approval from the Human Resources Department for the following items:

- Request to pay exempt public safety officers for mutual aid reimbursed hours.
- Waiver of use or lose annual leave balance for public safety officers.
- Approval of changes to the Discrimination and Harassment and Equal Employment Opportunity policies.

Documents:

[Pay exempt public safety officers for mutual aid reimbursed hours.pdf](#)
[Waiver of use or lose annual leave balance for public safety officers.pdf](#)
[Discrimination and harassment and equal employment opportunity policy changes.pdf](#)

J. Consider requests for approval from the Public Works Service Operations Department for the following items:

- Change Order 5 for \$39,552.09 with Northern Improvement Company for Waste Utility Project LF 16-01.
- Permission to purchase one pickup truck for Bismarck-Burleigh Public Health using 2016 funds.

Documents:

[Change Order 5 with Northern Improvement for Waste Utility Project LF 16 01.pdf](#)
[Purchase one pickup truck for Public Health using 2016 funds.pdf](#)

K. Consider requests for approval from the Public Works Utility Operations Department for the following items:

- Permission to use a sole source contract with PKG Contracting, Inc. to complete the emergency repairs of pipes at the Wastewater Treatment Plant.
- Change Order 1 for \$14,105 with Northern Plains Contracting, Inc. on the Wachter Avenue Master Lift Station project.

Documents:

[Sole source contract and completion of emergency repairs at Wastewater Treatment Plant.pdf](#)
[Change Order 1 with Northern Plains Contracting for Wachter Avenue Master Lift Station project.pdf](#)

L. Addendum Item: Consider request for approval from the Public Works Service Operations Department to accept additional snow hauling contractors at the discretion of the Public Works Service Operations Director.

Documents:

[Accept additional snow hauling contractors.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. Snow removal operations report from the Public Works Service Operations Department.

(No attachment)

5. DAPL response status update from the Police Department.

(No attachment)

6. Consider request from Anne Cleary to appeal the decision of the Board of Adjustment to deny variances relating to lot area and building setbacks for part of Lot 3, Block 5, Northern Pacific Addition (717 N Mandan Street).

Documents:

[Appeal of part of Lot 3 Block 5 Northern Pacific Addition.pdf](#)

7. PUBLIC HEARING on the request to vacate the east 35 feet of the Ottawa Street right of way adjacent to Lots 19-22, Block 1, Wutzke's 2nd Subdivision, leaving a remainder of 80 feet of right of way for Ottawa Street.

Documents:

[Vacation of part of Ottawa Street right of way.pdf](#)

8. PUBLIC HEARING on Ordinance 6239 relating to permits required under the provisions of Title 8.

Documents:

[Ordinance 6239.pdf](#)

9. PUBLIC HEARING on Ordinance 6240 relating to pools; operation permits, permit fee and operational practices (Title 4, Chapter 4-06).

Documents:

[Ordinance 6240.pdf](#)

10. PUBLIC HEARING on Ordinance 6241 relating to the repeal of Chapter 8-2 (Frozen Desserts).

Documents:

[Ordinance 6241.pdf](#)

11. Consider request for approval from the Public Works Utility Operations Department to receive and consider disposition of bids for chemicals to be used at the Water and Wastewater Treatment Plants in 2017.

Documents:

[Chemical bids for Water and Wastewater Treatment for 2017.pdf](#)

12. Consider requests for approval from the Bismarck Airport for the following items relating to the Runway 13/31 Reconstruction project:

- Reimbursable Agreement with the Federal Aviation Administration (FAA) for navigation aid flight checks associated with this project.
- Engineering Services Agreement with KLJ for the second year design of this project.

Documents:

[Reimbursable agreement with FAA for navigation aid flight checks.pdf](#)
[Engineering Services Agreement with KLJ for second year Runway 13 31 reconstruction.pdf](#)

13. Consider requests for approval of the following from the Engineering Department relating to Sewer Improvement District 16-571.

- Resolution Creating District and Ordering Preparation of the Preliminary Report; and
- Resolution Approving Preliminary Report and Directing Preparation of Plans and Specifications.

Documents:

[Resolutions relating to Sewer Improvement District 16 571.pdf](#)

14. Consider request for approval from the Engineering Department for the contract with Kadmas, Lee & Jackson (KLJ) for Engineering Consultant Services for a fiber optic network system study.

Documents:

[Engineering consultant services for fiber optic network system study.pdf](#)

15. Consider request for approval from the Engineering Department to receive opinion of costs for permanent improvements to Main Avenue as a three-lane roadway.

Documents:

[Main Ave opinion of costs for improvement.pdf](#)

16. Consider other business.

(No attachment)





Bismarck-Burleigh Public Health

**City of Bismarck
Board of Health Meeting
Agenda
December 13, 2016
5:15 PM**

- I. Call to Order**
Mayor Seminary

- II. Strategic Plan Update**
 - a. CDC Worksite Health Scorecard**
Renae Moch, MBA, FACMPE, Director

 - b. Worksite Wellness – “How Far We’ve Come”**
Katie Johnke, RD,LRD, Nutrition Services Coordinator

- III. Adjourn**

Strategic Plan Update

Priority: Improving Employee Health & Wellness

Goal 1 of 1: Encourage a healthy and active work environment.

Objective 1 of 4: By December 2016, BBPH will identify gaps in the City of Bismarck's worksite wellness program.

Complete 10/27/16

Objective 2 of 4: By December 2016, BBPH will educate the City Board of Health on the gaps and strategies identified through the CDC Worksite Health Scorecard.

Will be complete on 12/13/2016

Objective 3 of 4: By December 2017, BBPH and BEAT (Bismarck Employees Active & Thriving) will implement City/County approved strategies identified through the CDC Worksite Health Scorecard.

Implementation of identified strategies in 2017.

Objective 4 of 4: By December 2018, BBPH will assess the outcomes of strategies implemented to address gaps in worksite wellness program.

Evaluation to be completed following implementation of strategies.

CDC Worksite Health Scorecard

What is The CDC Worksite Health Scorecard?

The CDC Worksite Health Scorecard is a tool designed to help employers assess whether they have implemented **evidence-based health promotion interventions or strategies** in their worksites to prevent heart disease, stroke, and related conditions such as hypertension, diabetes, and obesity.

The approach that has proven most effective is to implement an **evidence-based comprehensive health promotion program** that includes individual risk reduction programs, coupled with environmental supports for healthy behaviors, and is coordinated and integrated with other wellness activities

What can The CDC Worksite Health Scorecard tell you?

The tool contains 125 questions that assess how evidence-based health promotion strategies are implemented at a worksite. These strategies include health promoting counseling services, environmental supports, policies, health plan benefits, and other worksite programs shown to be effective in preventing heart disease, stroke, and related health conditions.

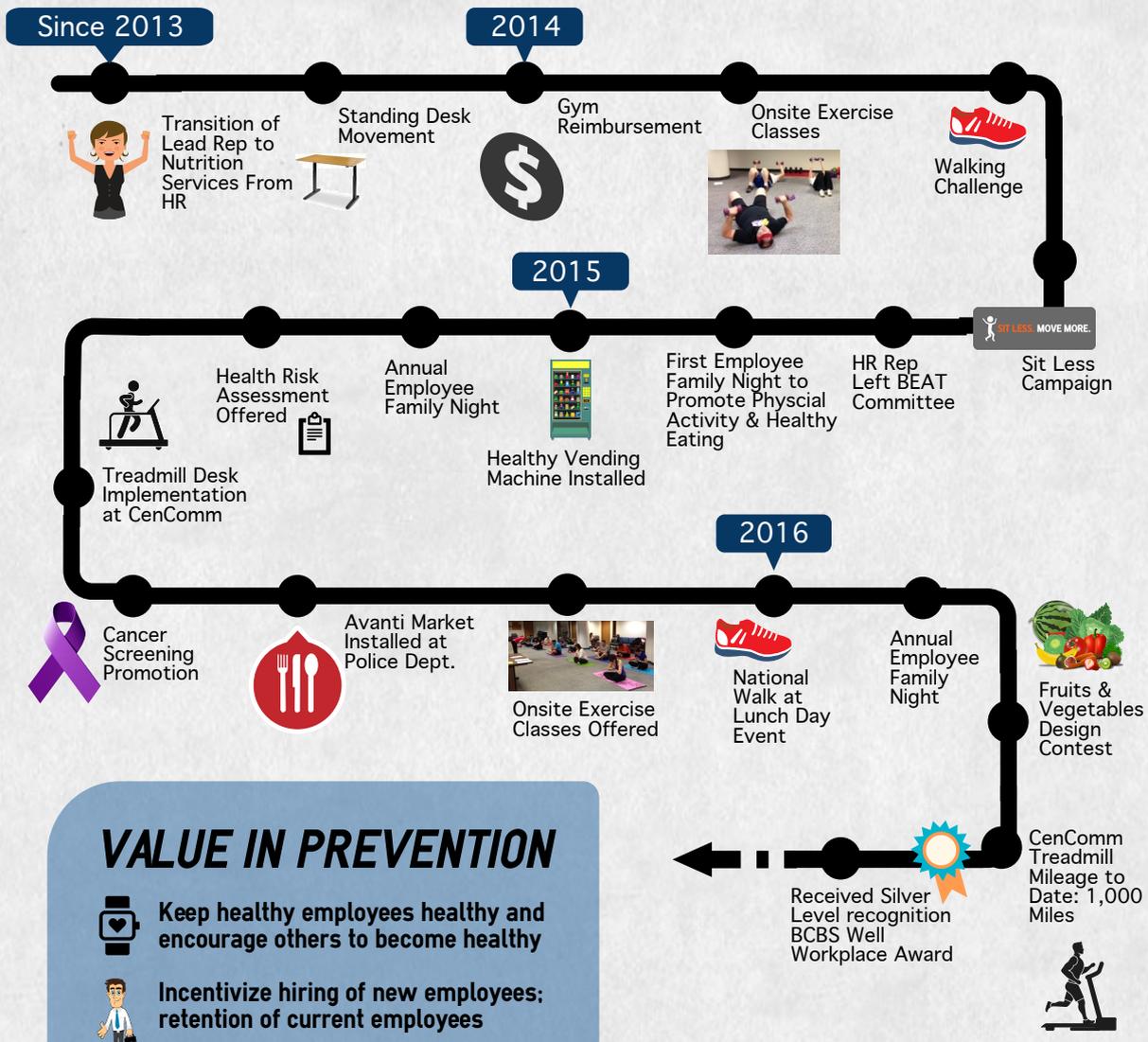
Employers can use this tool to assess how a comprehensive health promotion and disease prevention program is offered to their employees, to help identify program gaps, and to prioritize across the following health topics:

- Organizational Supports (18 questions)
- High Cholesterol (6 questions)
- Tobacco Control (10 questions)
- Diabetes (6 questions)
- Nutrition (13 questions)
- Signs/Symptoms of Heart Attack & Stroke (4 questions)
- Lactation Support (6 questions)
- Emergency Response to Heart Attack & Stroke (9 questions)
- Physical Activity (9 questions)
- Weight Management (5 questions)
- Occupational Health & Safety (10 questions)
- Stress Management (6 questions)
- Vaccine-Preventable Diseases (6 questions)
- Depression (7 questions)
- High Blood Pressure (7 questions)
- Community Resources (3 questions; not scored)



Worksite Wellness

How Far We've Come



VALUE IN PREVENTION

-  Keep healthy employees healthy and encourage others to become healthy
-  Incentivize hiring of new employees; retention of current employees
-  Increased productivity and decreased health care costs and absenteeism

PERSONNEL ACTIONS FOR THE MEETING ON Dec. 13, 2016

Full-Time and Part-Time Appointments

Burchinal, Pamela Concessions	Event Center	Part time appointment @ \$12.00/hr. 11/30/2016
Claymore, Tara Concessions	Event Center	Part time appointment @ \$12.00/hr. 11/30/2016
Rudolph, Steve Maintenance Attendant I	Event Center	Part time appointment @ \$15.50/hr. 11/28/2016
Kraft, Jean Health Maintenance Nurse	Public Health	Part time appointment @ \$25.75/hr. 11/29/2016

Separations

Cox, Joseph Fire Marshall	Fire	Resigned. 12/19/2016
Bride, Keith Wastewater Plant Operator	Public Works	Retired. 12/30/2016
LaFramboise, Jeremy Seasonal Truck Driver	Public Works	Declined position 11/14/2016

Others

Redman, Susan Planner	Community Development	Annual Salary adj. @ \$37.57/hr. 12/18/2016
Roberson-Kitzman, Joseph Transportation Planner	Community Development	Annual Salary adj. @ \$26.12/hr. 12/18/2016
Paulson, Rose Acting HR Generalist	Human Resources	Salary adj. @ \$23.23/hr. 10/23/16
Rutschke, Nicholas To remain Acting W/WW Plant Supervisor	Public Works	Salary adj. eff. 10/23/2016 @ \$25.61/hr.



AIRPORT

DATE: December 5, 2016
FROM: Gregory B. Haug, Airport Director
ITEM: Agenda Item for December 13, 2016

A handwritten signature in blue ink, appearing to be "G. Haug", written over the "FROM:" line of the memo.

REQUEST

Consider Amendment 4 to the May 12, 2015 Engineering Services Agreement with Kadrmass, Lee and Jackson (KLJ) for Airport Drainage Study, Storm Sewer Televising, Cleaning and Report..

BACKGROUND INFORMATION

On July 21, 2016 the Board approved an extension to December 16, 2016 and additional funding to complete heavy cleaning and televising of the storm sewer drainage system. Work on storm sewer televising, cleaning and report are completed. A drainage study based on the results of the televising and report was submitted to Federal Aviation Administration (FAA). FAA comments received on the drainage study took longer to obtain than anticipated and were more substantial than expected as a result the study cannot be completed by December 13, 2016. Completion of the drainage study is contingent on comments and approval of the FAA and coordination with the US Army Corps of Engineers. Amendment 4 extends the completion date to September 30, 2017 but adds no additional cost. Staff has set the date of September 30, 2017 to allow for unknowns related to timing and study completion that depend on FAA and Corps of Engineers input.

RECOMMENDED CITY COMMISSION ACTION

1. Approve Amendment 4 to the May 12, 2015 Engineering Services Agreement with KLJ.

STAFF CONTACT INFORMATION

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

Enclosures:

1. Amendment 4 to May 12, 2015 Engineering Services Agreement with KLJ.

PROFESSIONAL SERVICES CONTRACT CHANGE FORM

DEPARTMENT

Contract between the City of Bismarck and KLJ

Purpose of Contract AMENDMENT 4 TO MAY 12, 2016 PROFESSIONAL SVS AGREEMENT
(AIRPORT DRAINAGE STUDY, STORM SEWER TELEVISION, CLEANING AND REPORTS DRAINAGE STUDY: (APG, AIP56, DSSST))
Contract Number: 2015-0000031 Project/Subproject Number: STORM SEWER TELEVISION (APG, AIP56, SSTR)

Original Contract Amount: \$433,261.34

Contract Change Amount: 0 TOTAL REMAINS: \$701,434.92

Funding Source of Change Amount (If applicable) 0 FAA AIP56 GRANT

Change in Contract Timeline: NEW COMPLETION DATE OF SEPTEMBER 30, 2017.

Change in Scope of Contract: NA

CHANGES COMPLETION DATE FROM DEC 13, 2016 TO SEPT 30, 2017

Department Head Signature: _____ Date: _____

COMMISSION APPROVAL

Change in contract amount less than 10% of the original contract amount or not greater than \$15,000 placed on the City Commission consent agenda

Change in contract amount that exceeds 10% of the original contract amount or \$15,000 or greater, placed on City Commission regular agenda

Change to original scope of contract and/or contract period placed on City Commission consent agenda

City Commission Meeting Date: DECEMBER 13, 2016

GRANTS COORDINATOR: _____

TO ALL DEPARTMENTS: Please attach verification of Commission approval and send to Fiscal Services.

CITY ATTORNEY REVIEW: _____



Amendment to Agreement for Professional Services

Project # 1515703

Amendment # 4

Background Data

- a. Effective Date of Agreement for Professional Services May 12, 2015
- b. Engineer Kadmas, Lee & Jackson, Inc.
- c. Owner City of Bismarck
- d. Project Airport Drainage Study, Storm Sewer Televising, Cleaning and Report
- e. This Part of the Project Task 2 and Task 2A

Nature of Amendment (check all that apply)

- Additional services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications to payment to Engineer
- Modifications to time(s) for rendering Services

Description of Modifications

The Engineer is requesting additional time to complete the work under the Agreement:

1. As part of this Agreement, the Engineer is to perform televising and cleaning of the Owner's storm sewer system. In the original Agreement, the amount of storm sewer pipe that required heavy cleaning of pipe was estimated. Actual field conditions warranted additional heavy cleaning beyond the original Detailed Scope of Services.
2. The FAA comments on the Drainage Study took longer to obtain that anticipated and are more substantial than anticipated. The Engineer anticipates having to refine a response to the comments, then complete an additional review with the FAA to discuss these comments and the resolution to them.
3. Per the original Agreement, the Engineer is also seeking a meeting with the US Army Corps of Engineers to discuss the Drainage Study, and is awaiting their response to a meeting.

Amendment #3 to the Agreement for Professional Services between the Owner and Engineer specified a completion date of December 13, 2016. The revised completion date is September 30, 2017. This date should allow ample time for the additional FAA and US Army Corps of Engineers coordination required as part of this project.

Agreement Summary (Airport Drainage Study, Task 2)

a. Original Agreement amount	<u>\$234,111.34</u>
b. Net change for prior Amendments	<u>\$19,760.54</u>
c. This Amendment amount	<u>\$0.00</u>
d. Adjusted Agreement amount	<u>\$253,871.88</u>

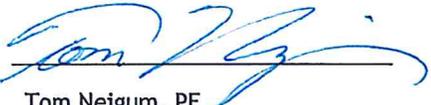
Agreement Summary (Storm Sewer Televising, Cleaning and Report, Task 2A)

a. Original Agreement amount	<u>\$199,150.00</u>
b. Net change for prior Amendments	<u>\$248,413.04</u>
c. This Amendment amount	<u>\$0.00</u>
d. Adjusted Agreement amount	<u>\$447,563.04</u>

Agreement Summary (Entire Agreement, Tasks 2 and 2A Combined)

a. Original Agreement amount	<u>\$433,261.34</u>
b. Net change for prior Amendments	<u>\$268,173.58</u>
c. This Amendment amount	<u>\$0.00</u>
d. Adjusted Agreement amount	<u>\$701,434.92</u>

All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is December 13, 2016.

<p>Engineer <u>Kadmas, Lee & Jackson, Inc.</u></p> <p>Signed </p> <p>Name <u>Steve Synhorst, PE</u></p> <p>Title <u>Division Leader</u></p> <p>Date <u>12/05/16</u></p> <p>Attest </p> <p>Name <u>Tom Neigum, PE</u></p> <p>Title <u>Aviation Services Manager</u></p>	<p>Owner <u>City of Bismarck</u></p> <p>Signed _____</p> <p>Name <u>Michael C. Seminary</u></p> <p>Title <u>President, Board of City Commissioners</u></p> <p>Date _____</p> <p>Attest _____</p> <p>Name <u>Keith J. Hunke</u></p> <p>Title <u>City Administrator</u></p>
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Abatements for December 13, 2016 City Commission Meeting

- 2828 E Calgary Ave (1611-001-145) – 2015 & 2016 – Wheelchair Exemption



ASSESSING DIVISION

DATE: November 22, 2016
FROM: Debi Goodsell, City Assessor *DHG*
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 – George & Nancy Volk
Property Address – 2828 E Calgary Ave (1611-001-145)

Please place this item on the December 13, 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 (20) to apply for the Wheelchair Exemption.

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 1
County of BURLEIGH Property I.D. No. 1611-001-145
Name GEORGE & NANCY VOLK Telephone No. _____
Address 2828 E CALGARY AVE BISMARCK, ND 58503-1351

Legal description of the property involved in this application:

LOT 30, BLOCK 1, EDGEWOOD VILLAGE 6TH ADDITION

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

Land \$ 52,000
Improvements \$ 334,200
Total \$ 386,200
(1)

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

Land \$ 52,000
Adj. Improvements \$ 234,200
Adj. Total \$ 286,200
(2)

The difference of \$ 100,000.00 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. wheelchair
- 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: \$ _____
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 wheelchair exemption 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 [Signature]

Date 11-17-16

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 George & Nancy Voik

County Auditor's File No. 116-254

Date Application Was Filed With The County Auditor 11/21/2016

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

Henry Abbott
by eob.

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 1
County of BURLEIGH Property I.D. No. 1611-001-145
Name GEORGE & NANCY VOLK Telephone No. _____
Address 2828 E CALGARY AVE BISMARCK, ND 58503-1351

Legal description of the property involved in this application:

LOT 30, BLOCK 1, EDGEWOOD VILLAGE 6TH ADDITION

Total true and full value of the property described above for the year 2016 is:

Land \$ 52,000
Improvements \$ 349,600
Total \$ 401,600
(1)

Total true and full value of the property described above for the year 2016 should be:

Land \$ 52,000
Adj. Improvements \$ 249,600
Adj. Total \$ 301,600
(2)

The difference of \$ 100,000.00 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. wheelchair
- 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: \$ _____
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 wheelchair exemption 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 George + Nancy Volk

County Auditor's File No. 116-265

Date Application Was Filed With The County Auditor 11/21/11

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

Kenneth P. Finney



CITY ATTORNEY

DATE: December 5, 2016
FROM: Charlie Whitman, City Attorney
ITEM: Request by Bismarck Larks for amendment to Class L Liquor License

REQUEST

Consider introduction and call for a public hearing on Ordinance 6242 at the request of the Bismarck Larks Baseball Team. The proposed amendment is Ordinance 6242

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The Bismarck Larks have entered into a lease to hold baseball games at the Bismarck Municipal Ballpark during the summer of 2017. Currently a Class L license allows for the sale of beer and wine, on-sale, at Riverwood Golf Course and Tom O'Leary Golf Course (VFW Sports Center). The proposed amendment would add the Bismarck Municipal Ballpark to the locations that may be licensed by the entity holding the concession with the Park District. Ordinance 6242 would amend Section 5-01-04(2)(l) to allow for the sale of beer and wine at the Bismarck Municipal Ballpark.

RECOMMENDED CITY COMMISSION ACTION

Consider introduction and call for a public hearing on Ordinance 6242 .

STAFF CONTACT INFORMATION

Charlie Whitman, City Attorney
cwhitman@bismarcknd.gov



Attn: Charles Whitman
City Attorney
701-355-1340
221 N 5th Street
PO Box 55303
Bismarck, ND 58506

Charles,

This letter's purpose is to request an addition to the Class L city ordinance regarding beer and wine sales at local municipalities be put on the December 13 city commission agenda.

The Bismarck Larks would like to request that Bismarck Municipal Ballpark be added to that city ordinance.

If you have any questions or any further information is needed please feel free to contact me at the information below. Thank you!

John Bollinger
General Manager
Bismarck Larks
Telephone: (701) 557-7600
Email: john@larksbaseball.com

CITY OF BISMARCK

Ordinance No. 6242

First Reading	_____
Second Reading	_____
Final Passage and Adoption	_____
Publication Date	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 5-01-04 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO CLASSES OF RETAIL LICENSES.

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

Section 1. Amendment. Section 5-01-04 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Classes of Retail Licenses is hereby amended and re-enacted to read as follows:

5-01-04. Classes of Retail Licenses.

1. The board hereby finds that in order to ensure compliance by all licensees with all applicable federal, state and city laws, ordinances and regulations, and in order to adequately police all licensed establishments and to promote the public welfare, it is necessary and proper to limit the number of licenses issued pursuant to the city's police powers and authority granted by Title 5 of the N.D.C.C.

* * * * *

1. **Class L.** A license to sell retail beer and wine may be issued to the operator(s) of the food and beverage concession(s) at the Riverwood Golf Course, and the Tom O'Leary Golf Course (~~All Seasons Arena~~ VFW Sports Center) and the Bismarck Municipal Ballpark under lease from the Bismarck Park District of the City of Bismarck. The license is nontransferable and may be held only by the operator(s) who has been awarded and currently holds the concession(s), and may

be held only for the period of the operator's concession and shall terminate with the termination of the contract or lease of the concession(s). This license is limited to on-sale service of beer and wine to patrons of the Riverwood Golf Course, ~~and the~~ Tom O'Leary Golf Course (VFW Sports Center) and the Bismarck Municipal Ballpark, and, with an event permit, the patrons of Pebble Creek Golf Course.

* * * * *

(Ord. 4116, Sec. 1, 12-2-86; Ord. 4120, Sec. 1, 12-16-86; Ord. 4124, Sec. 1, 1-13-87; Ord. 4148, 5-12-87; Ord. 4179, 9-29-87; Ord. 4193, 2-2-88; Ord. 4211, 7-19-88; Ord. 4253, 4-25-89; Ord. 4380, 6-18-91; Ord. 4430, 3-31-92; Ord. 4596, 04-12-94; Ord. 4618, 6-21-94; Ord. 4657, 12-20-94; Ord. 4705, 07-11-95; Ord. 4725, 09-26-95; Ord. 4938, 08-25-98; Ord. 5141, 11-13-01; Ord. 5152, 01-08-02; Ord. 5454, 08-23-05; Ord. 5513, 06-13-06; Ord. 5600, 05-08-07; Ord. 5821, 05-24-11; Ord. 5839, 07-12-11; Ord. 5848, 10-11-11; Ord. 5860, 02-28-12; Ord. 5985, 07-09-13; Ord. 5991, 08-27-13; Ord. 5998, 08-27-13; Ord. 6005, 09-24-13; Ord. 6025, 01-14-14; Ord. 6053, 05-27-14; Ord. 6096, 12-23-14; Ord. 6097, 1-13-15; Ord. 6189, 2-9-16)

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.



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: December 7, 2016
FROM: Carl D. Hokenstad, AICP – Director of Community Development *CDH*
ITEM: Renaissance Zone Authority Appointments

REQUEST

On behalf of Mayor Seminary, I would recommend that Mr. Joe Fink and Mr. Todd Van Orman be re-appointed to another term on the Renaissance Zone Authority.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

Terms held by Mr. Fink and Mr. Van Orman will expire on December 31, 2016. If confirmed by the Board of City Commissioners, the terms for these positions would expire in December 2019.

RECOMMENDED CITY COMMISSION ACTION

It is recommended that the Board of City Commissioners confirm the reappointment of Mr. Fink and Mr. Van Orman to the Renaissance Zone Authority.

STAFF CONTACT INFORMATION

Please contact Daniel Nairn, AICP, the planner in our office assigned to this request, at 355-1854 or dnairn@bismarcknd.gov, or Kim L. Lee, AICP, Planning Manager, at 355-1846 or klee@bismarcknd.gov.

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



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: December 6, 2016

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

ITEM: Amendment to Transit Brokerage Contract with Bis-Man Transit Board

REQUEST

The brokerage contract between the City of Bismarck and Bis-Man Transit Board will expire December 31, 2016. We request approval of an amendment to the brokerage contract, extending its terms to a month-by-month basis, until such time an updated contract may be finalized and approved by the Bis-Man Transit Board and the Bismarck Board of City Commissioners.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

Through an RFP process, the Bis-Man Transit Board was awarded the contract to provide transit services for the Bismarck-Mandan area for a five year period, starting January 1, 2017. The Bismarck-Mandan MPO is facilitating negotiations between Bismarck City Staff and Bis-Man Transit for an updated brokerage contract. Final approval will not be gained before the expiration of the current contract. A contract amendment has been drawn up by City Attorney Charlie Whitman and agreed to by the Bis-Man Transit Board. (See attachment)

RECOMMENDED CITY COMMISSION ACTION

Consider approval of the amendment to the Brokerage Contract between the City of Bismarck and the Bis-Man Transit Board.

STAFF CONTACT INFORMATION

Please contact Rachel Drewlow, Transportation Planner, at 355-1852 or rdrewlow@bismarcknd.gov if you have questions about this request.

Rachel Drewlow will also be present at the Commission meeting if you have any questions.

AMENDMENT 1 TO THE AGREEMENT BETWEEN THE CITY OF BISMARCK AND THE BIS-MAN TRANSIT BOARD

Whereas, the City of Bismarck and the Bis-Man Transit Board have a current Agreement, dated November 27, 2012, whereby the Bis-Man Transit Board provides transportation services to the City of Bismarck; and

Whereas, the Agreement between the City of Bismarck and the Bis-Man Transit Board expires December 31, 2016; and

Whereas, the City of Bismarck, through an RFP process, has selected the Bis-Man Transit Board to continue to provide such services in the City of Bismarck for an additional term, the parties agree to amend the current Agreement as follows:

Paragraph 8 of the Agreement between the City of Bismarck and the Bis-Man Transit Board dated November 27, 2012 is deleted and replaced with the following:

8. The term of this Agreement shall be until December 31, 2016 and shall continue thereafter on a month to month basis until such time the parties enter into a new agreement or the contract is canceled. This Agreement shall be cancelable by either party upon 30 day written notice.

All of the other terms, conditions and provisions of the Agreement dated November 27, 2012, between the City of Bismarck and the Bis-Man Transit Board not specifically amended by this Amendment 1 shall remain in full force and effect.

Dated this ____ day of December, 2016

CITY OF BISMARCK, NORTH DAKOTA

Attest:

By: _____
Keith J. Hunke
City Administrator

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

Dated this ____ day of December, 2016.

Bis-Man Transit Board

By: _____
Roy Rickert, Executive Director

By: _____
Ben Ehreth, President of the Board



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: December 5, 2016
FROM: Carl D. Hokenstad, AICP, Director of Community Development
ITEM: FY2017 Section 5339 Grant Application

REQUEST

The Bismarck-Mandan Metropolitan Planning Organization requests approval to submit a FY2017 Section 5339 Grant application on behalf of Bis-Man Transit. The application requests grant funds in the total amount of \$840,000 for the purchase of two (2) new, Heavy Duty 35' ADA accessible fixed route buses. These will replace two (2) Gillig 35' Heavy Duty buses which are both beyond their useful life. The buses will become assets of the City of Bismarck. However, the matching amount for the grant will be provided solely by Bis-Man Transit and no money will pass through the City of Bismarck. The application is attached.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

Section 5339, Bus and Bus Facilities Program, is a capital only grant. This capital program provides funding to replace, rehabilitate, and purchase buses and related equipment, and to construct bus-related facilities. Section 5339 funds cannot be used for operating assistance.

RECOMMENDED CITY COMMISSION ACTION

Staff requests approval to submit application on behalf of Bis-Man Transit.

STAFF CONTACT INFORMATION

Please contact Steve Saunders, Executive Director, Bismarck-Mandan Metropolitan Planning Organization at (701) 355-1848 or ssaunders@bismarcknd.gov with any questions regarding this request.

Section 5339 Bus & Bus Facilities Grant Program	
Agency Name	Bis-Man Transit
Contact Person	Roy Rickert
DUNS #	83-441-0987

GENERAL INFORMATION	
Provide a detailed description of the transportation services your agency currently provides and plans for increasing services, expanding service area and increasing ridership.	Bis-Man Transit currently provides fixed route service to the cities of Bismarck and Mandan, and complementary paratransit service, with demand response available for senior and disabled passengers. Our current focus is to transition more riders from the demand response service to fixed route as well as possibly run fixed route service to the University of Mary which is expected to increase ridership by over 30%
Provide a description of the current services being provided (Days and hours of service, fare structure, total vehicles your agency has in service, type of service being provided, counties and communities in your service area).	<p>Fixed Route service is provided from 6:10 a.m. - 6:55 p.m. Monday through Friday and 7:00 a.m.- 6:55 p.m. on Saturday. All 10 vehicles in the fleet are ADA accessible and service is provided to the cities of Bismarck and Mandan. Regular fares are: \$1.25 for a one way trip, \$5.00 1 day pass, \$30.00 for a 30 day pass. Reduced fare for those with disabilities, seniors, students K-12 and those on Medicare is \$.50 for a one way trip, \$2.50 1 day pass, \$20.00 for a 30 day pass. In 2015, 133,348 unlinked passenger trips were provided.</p> <p>Paratransit/Demand response service is provided with a fleet of 22 cutaway buses and two minivans, to individuals with disabilities and seniors over the age of 60. The service area covers two miles outside the city limits of Bismarck and Mandan, the city of Lincoln and the University of Mary. A one way fare is \$2.50. Services are currently provided 24 hours a day, 365 days per year. In 2015, 162,309 unlinked passenger trips were provided.</p> <p>Both services operate in Burleigh and Morton counties</p>
Provide a detailed explanation of how and why	These new buses will help us maintain the current level of

<p>this request is important to your agency and how it will improve or provide for future service to citizens in the communities/counties you provide service to. Explain where in your current coordination plan is this project specifically stated (list section and page number(s)).</p>	<p>our fleet. The vehicles being replaced have already exceeded their useful life criteria for both age and mileage, as such; the cost of maintaining the vehicles continues to increase.</p>
<p>What percentage of change in ridership has your agency experienced in the FY2016 reporting period? Provide a brief explanation of the reason for the change in ridership.</p>	<p><input type="checkbox"/> Increase <input checked="" type="checkbox"/> Decrease For FY16, to date our fixed route service has had a decrease of .74% over FY15 and demand response service has decreased by 2.27%. These decreases are attributed to above average temperatures over the winter months and continued low fuel prices.</p>

VEHICLE PROJECT REQUESTS

There is space provided below to request replacement or expansion vehicles. Please include all vehicle requests in the boxes provided. If additional space is needed, please attach an additional sheet to this application and indicate this in the project description box.

<p>NOTE: The request for each vehicle MUST first be created as a project in the Black Cat System.</p>	
<p>Description of the vehicle(s) you are requesting. (Include: Year, Make, ADA qualified, seating capacity, & number of vehicles requesting)</p>	<p>Bis-Man Transit is requesting to funds to purchase two new, replacement heavy duty, 35', ADA accessible fixed route buses. The number of passengers, and the make & model will be dependent on the procurement process.</p>
<p>Describe in detail which programs and services the requested vehicle(s) will be utilized in and how it will enhance or maintain your service?</p>	<p>These vehicles will be used for providing fixed route service to the Bismarck/Mandan communities. The replacement of buses that are beyond their useful life will allow us to ensure that service will continue to run while reducing maintenance costs and potential service interruptions.</p>
<p>If requesting a replacement, which vehicle(s) in your fleet are you replacing? (Your description MUST include: VIN, Year, Make, Model, and Current Mileage)</p>	<p>2004 Gillig, 35'Heavy Duty, VIN# 15GGE291941090845 With 496,292 miles 2004 Gillig, 35'Heavy Duty, VIN# 15GGE291941090846 With 487,654 miles</p>
<p>If requesting an expansion vehicle(s), list the agency/community/county to be served (Include: hours and days of service and estimated ridership).</p>	<p>N/A</p>
<p>If requested vehicle is a non-ADA vehicle, can your agency certify to NDDOT that you can adequately meet these needs with your existing fleet? Applicant MUST attach a Certificate of Equivalent Services.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No Fixed route bus will be ADA accessible</p>
<p>Estimate the total cost of vehicle(s)</p>	<p>\$840,000</p>

Following are suggested price requests for vehicles based on current state bid quotes. Keep in mind if you intend to order vehicles with additional options prices will vary accordingly.

ADA Low Floor Mini Van NDDOT Term Contract No. 382	\$37,995
14 Passenger or 12 + 2 Passenger Cutaway NDDOT Term Contract No. 384	\$58,759 - \$59,100
15 Passenger (including driver) Cutaway NDDOT Term Contract No. 300	\$69,995 - \$74,184
MV-1- Multi Purpose Built Mobility Vehicle NDDOT Term Contract No. 184	\$42,000

FACILITY REHABILITATION & CONSTRUCTION PROJECT

NOTE: This request MUST first be created as a project in the Black Cat System.

FACILITY REHABILITATION PROJECT	
Do you currently have a transit facility? If no, skip to the Construction Project section below.	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, briefly describe the facility and the need for rehabilitation, improvements or remodeling? Include information on the current building, the number of vehicles your facility holds and any changes in your program that justify the request.	
Give a detailed description of the proposed project. Include necessary repair work, cost estimates, temporary or permanent repair, and other details that you deem relevant to assist NDDOT in making a project determination.	
Are you proposing to use the value of land as match, in whole or part, for your project? If yes, please indicate whether this is an appraised value or estimate. Only the portion of land required for the project can be considered in this valuation.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Appraised Value <input type="checkbox"/> Estimate Value
If land does not cover your entire match, does your agency have adequate cash on hand to be utilized as match for this project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has your agency held public meetings about this project? If yes, when and did the community support this project? Include documentation of all public meetings (agendas, advertisements, meeting minutes, comments, and list of attendees)	<input type="checkbox"/> Yes <input type="checkbox"/> No

If this request is for a facility expansion, explain in detail the need for the expansion, scope of the project, and cost estimates.	
Does your agency have a written Facility Maintenance Plan? Explain the procedures to ensure facility & equipment is inspected and maintained per manufacturer's warranty instructions on a regular scheduled basis as described in your Facility Maintenance Plan.	
Estimate total project cost?	

CONSTRUCTION PROJECT

Are you proposing to buy or build a new facility? Build Buy

Buying a Facility	Complete this portion if you propose to purchase an existing facility.
If buying a facility, what is the asking price?	
Have you completed an Independent Cost Estimate to show that the price is fair and reasonable? Provide this documentation.	
Justify why it is more cost effective to purchase this facility versus building a new one.	
Describe the facility you are considering for purchase in detail. Provide specifications, environmental assessments, drawings/plans, etc.	
Are there any known environmental issues with the facility you are proposing to purchase? (e.g. underground fuel storage) If yes, please describe.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will this facility require any renovation for use in your transit program? If yes, please describe these renovations in detail and specify whether or not these costs are figured into the above asking price.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has your agency held any public meetings about this project? If yes, when and did the community support this project? Include documentation of all public meetings (agendas, advertisements, meeting minutes, comments, and list of attendees)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there any additional details or factors that	

you feel NDDOT should consider when evaluating this project?	
Estimate project cost including purchase and renovations?	

Building a Facility	Complete this portion if you propose to build a new facility.
Describe in detail the need for a facility in your transit program.	
Describe your proposed project in detail. Include a description of all the amenities you feel the project will need to meet your needs – e.g. number of vehicles it will hold, wash bays, etc. Keep in mind, this facility should be designed to meet your current needs with a reasonable projection of your future needs.	
Do you have preliminary design plans for this project? If you do, please include a copy with this application.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Your agency will be required to interview and hire a consultant to design the plans and specifications and manage the bidding and construction of this building. Have you incorporated these costs into your request?	
Have you completed an equity analysis for the proposed building location? Please attach.	
Are you proposing to use the value of land as match, in whole or part, for your project? If yes, please indicate whether this is an appraised value or estimate. Only the portion of land required for the project can be considered in this valuation.	<input type="checkbox"/> Yes <input type="checkbox"/> No
If land does not cover your entire match, does your agency have adequate cash on hand to be utilized as match for this project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there any known environmental issues with the land on which you propose to build? (e.g. underground fuel storage) If yes, please describe.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has your agency held any public meetings about this project? If yes, when and did the community support this project? Include documentation of all public meetings (agendas, advertisements, meeting minutes, comments, and list of attendees).	

Have you looked at options to scale the building back in case the construction costs come in over budget?	
Estimate total project cost?	

EQUIPMENT & MISCELLANEOUS CAPITAL PROJECTS

Fill in the requested information below regarding your Equipment and Miscellaneous Capital Project(s). These projects must directly relate to your transportation program. Any equipment purchased with these funds must be required for and used for public transportation.

NOTE: This request MUST first be created as a project in the Black Cat Grants System.

Describe your proposed project(s) in detail (Detail MUST include: type, quantity, estimated cost, purpose of equipment being requested).	
How does this project enhance your transportation program?	
What is the estimated cost for the proposed project?	

FY 2017 PROJECT FUNDING REQUEST

In the table below, list and specify in detail the sources and dollar amounts of Local Match funding (state aid, mill levy, donations, contract income, etc.) that are available to be used towards each project (Vehicle, Facility Rehabilitation & Construction, and/or Equipment/Miscellaneous Capital). ***Documentation of sources of Local Match MUST be attached or it will not be considered.**

Ranking	Project	Estimated Cost of Project	Local Match Needed	Sources of Local Match*
1	Heavy Duty Bus Replacement	\$840,000	\$168,000	Local mil and state grant funds held in capital reserve.
2				
3				
4				
5				
6				



ENGINEERING DEPARTMENT

DATE: December 7, 2016

FROM: Gabe Schell, PE | City Engineer 

ITEM: Amendment to Existing Agreement for Professional Services

REQUEST

Approval of Amended Consultant Agreement with Apex Engineering Group for Professional Services relating to North Washington Street Regional Storm Water Detention Pond design.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

On July 26, 2016, the Commission entered into an agreement with Apex Engineering Group. The project includes preliminary engineering, final design, and bid-related professional services related to the construction of two master planned regional ponds in the North Washington Street Watershed.

The attached amendment expands that contract to include preliminary engineering, final design, and bid-related professional services related to construction of one additional master planned regional pond in the same watershed. The goal will be to bid and construct all three regional ponds collectively.

Attached is the amendment along with the amended scope and fee. The amendment amount is \$44,967.00, bringing the total contract amount to \$202,738.00 (hourly not to exceed).

The proposed amendment with Apex Engineering Group does not include engineering construction services. The consultant is aware that City Engineering may request Board approval of an amendment to the agreement to include these services if warranted by staff workload at the time of construction.

RECOMMENDED CITY COMMISSION ACTION

Approval of contract amendment with Apex Engineering Group.

STAFF CONTACT INFORMATION

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

PROFESSIONAL SERVICES CONTRACT CHANGE FORM

DEPARTMENT

Contract between the City of Bismarck and Apex Engineering

Purpose of Contract Design Services for Regional Stormwater Detention Ponds

Contract Number: 2016-41 Project/Subproject Number: SE16-563

Original Contract Amount: \$157,771.00

Contract Change Amount: \$44,967.00

Funding Source of Change Amount (If applicable) _____

Change in Contract Timeline: _____

Change in Scope of Contract: Third pond was added to design.

Department Head Signature: *Pat Hull* Date: 12/7/16

COMMISSION APPROVAL

Change in contract amount less than 10% of the original contract amount or not greater than \$15,000 placed on the City Commission consent agenda

Change in contract amount that exceeds 10% of the original contract amount or \$15,000 or greater, placed on City Commission regular agenda

Change to original scope of contract and/or contract period placed on City Commission consent agenda

City Commission Meeting Date: on 12/13/16 agenda

TO ALL DEPARTMENTS: Please attach verification of Commission approval and send to Fiscal Services.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July 26, 2016.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. 1

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: July 26, 2016
- b. Owner: City of Bismarck
- c. Engineer: Apex Engineering Group, Inc.
- d. Project: North Washington Street Watershed– Section 17 Regional Stormwater Facilities

Description of Modifications:

- a. Engineer shall perform or furnish the following Additional Services:
 - 1) Design Services – Apex will provide design services for a proposed third regional storm water facility located in the NE ¼ of the NW ¼ and the NW ¼ of the NE ¼ of Section 17, located west of future Amberglow Drive south of 57th Avenue. Coordination with property owners, land acquisition services, permitting and bidding services have been included. (See attached fee corresponding to additional design services.)
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows: NA
- c. The responsibilities of Owner are modified as follows: NA
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: See Attachment.
- e. The schedule for rendering services is modified as follows: NA
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows: NA

5. Agreement Summary (Reference only)

a. Original Agreement amount:	\$ <u>157,771.00</u>
b. Net change for prior amendments:	\$ <u>NA</u>
c. This amendment amount:	\$ <u>44,967.00</u>
d. Adjusted Agreement amount:	\$ <u>202,738.00</u>

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is December 13, 2016.

OWNER:

ENGINEER:

By: Mike Seminary

By: Scott E. Olson

Title: Mayor

Title: Vice President/Principal

Date
Signed: _____

Date Signed: _____

Apex Engineering Group
 Scope and Fee - Amendment 1
 City of Bismarck, North Dakota
 North Washington Street Watershed-- Section 17 Regional Stormwater Facilities

Phase/Task	Principal	Senior Engineer	Lead Engineer	Design Engineer	Senior Survey Crew Chief	Surveyor	Engineering Technician	Right-of-Way Specialist	Admin Support	Total
Phase 1 - Preliminary and Final Design	\$170	\$160	\$147	\$127	\$130	\$87	\$87	\$129	\$85	
Phase 1 - Task 1.0, Project Management										
1.1.1 Project Administration		2	2							\$614
1.1.2 Quality Assurance/Quality Control	2	6								\$1,300
1.1.3 Progress Meetings w/ City		2	2							\$614
1.1.4 Meetings w/ Developers and Agencies		6	6							\$1,842
Phase 1 - Task 1.0 Subtotal	2	16	10	0	0	0	0	0	0	\$4,370
Phase 1 - Task 2.0, Regional Stormwater Improvements, Construction Documents, Land Acquisition										
1.2.1 Field Survey			1		4	4	2			\$1,189
1.2.2 Preliminary Embankment Design/Final Modeling		16	10	20						\$6,570
1.2.3 Inlet Structure Design		10	6	6			8			\$3,940
1.2.4 Outlet Structure Design		10	6	6			8			\$3,940
1.2.5 Final Embankment Design		10	8	2			8			\$3,726
1.2.6 Preliminary Plans			12	4			12			\$3,316
1.2.7 Review Meeting and Incorporate City Comments		2	4	2			2			\$1,336
1.2.8 Land Exhibits/Easement Documents			2		10		8	10		\$3,580
1.2.9 Land Acquisition - On-Site			2					16		\$2,358
1.2.10 Land Acquisition - Off-Site										
1.2.11 Specifications		1	8							\$1,336
1.2.12 Final Plans		1	8				8			\$2,032
Phase 1 - Task 2.0 Subtotal	0	50	67	40	14	4	56	26	0	\$33,323
Phase 1 - Task 3.0, Permitting & Mitigation Plan										
1.3.1 Coordination with USACE		2	2							\$614
1.3.2 404 permit and mitigation plan		2	4	1						\$1,035
1.3.3 Wetland Mitigation Design							2			\$595
1.3.4 Floodplain permit			2	1						
Phase 1 - Task 3.0 Subtotal	0	4	8	2	0	0	2	0	0	\$2,244
Phase 1 - Task 4.0, Bidding Services										
Phase 1 - Task 4.0 Subtotal	0	0	0	0	0	0	0	0	0	0
Phase 1 Total	2	70	85	42	14	4	58	26	0	\$39,937
Phase 1 - Subconsultants										
Midwest Testing/Terracon - Borings and Soils Recommendations										\$3,000
North Dakota Guaranty and Title - Title Insurance										\$2,000
Phase 1 - Subconsultants Total										\$5,000
Phase 1 plus Subconsultants - Total										\$44,937
Reimbursables:										\$30
Project Total										\$44,967

REIMBURSABLE ITEMS

Vehicle Mileage	Round Trip From-To	No. of Trips	Per Trip Mileage	Total Mileage	Cost (@ \$0.75/mile)
Task 1.2.1 - Field Survey	Bismarck Project	1	20	20	\$15
1.2.9 Land Acquisition - On-Site	Bismarck Project	1	10	10	\$8
1.3.2 Wetland Mitigation Design - On-Site	Bismarck Project	1	10	10	\$8
	Vehicle Mileage Totals			40	\$30

Reimbursable Total **\$30**



ENGINEERING DEPARTMENT

DATE: December 7, 2016
FROM: Gabe Schell, PE | City Engineer 
ITEM: Endorsement to submit applications for NDDOT TAP grant

REQUEST

The Bismarck Parks and Recreation District (BPRD) would like to submit two (2) projects for the NDDOT Transportation Alternatives Program (TAP) grant to the Metropolitan Planning Organization (MPO).

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The BPRD would like to submit applications for the South Washington Street Trail Extension (new) and the Cottonwood Trail Rehabilitation (existing). The South Washington Street Trail Extension project would extend the existing trail on the west side of Washington Street south of Burleigh Avenue to Meridian Drive. This extension would allow the newly constructed South Meadows Park to be connected to the trail system. This extension will allow BPRD to get closer to one of their long-term goals of connecting the trail system to General Sibley Park.

The Cottonwood Trail Rehabilitation project is the reconstruction of an existing trail segment in south Bismarck. This trail serves as a vital connection from the Wachter Trail to Cottonwood Park.

RECOMMENDED CITY COMMISSION ACTION

Endorse projects for submittal of applications to the MPO for the NDDOT TAP grant.

STAFF CONTACT INFORMATION

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



Let's Play!

December 7, 2016

Gabe Schell
City Engineer
PO Box 5503
Bismarck, ND 58506

Dear Gabe:

At the October 20, 2016 Park Board meeting, the commissioners moved approval for the Park District to apply for the following Transportation Alternative Program (TAP) grants:

South Washington Street Trail Extension (new): The South Washington Street Trail Extension project would extend the existing trail on the west side of Washington Street south of Burleigh Avenue to Meridian Drive. This extension would allow the newly constructed South Meadows Park to be connected to the trail system. This extension will allow BPRD to get closer to one of their long-term goals of connecting the trail system to General Sibley Park.

The Cottonwood Trail Rehabilitation: This project is the reconstruction of an existing trail segment in south Bismarck. This trail serves as a vital connection from the Wachter Trail to Cottonwood Park.

The approved grant projects would be constructed in 2018. Bismarck Parks and Recreation District is now requesting approval of the projects by the Bismarck City Commission and then the Bismarck-Mandan Metropolitan Planning Organization so it can be submitted to the ND Department of Transportation.

If you have any questions you may contact me at 222-6455.

Sincerely,

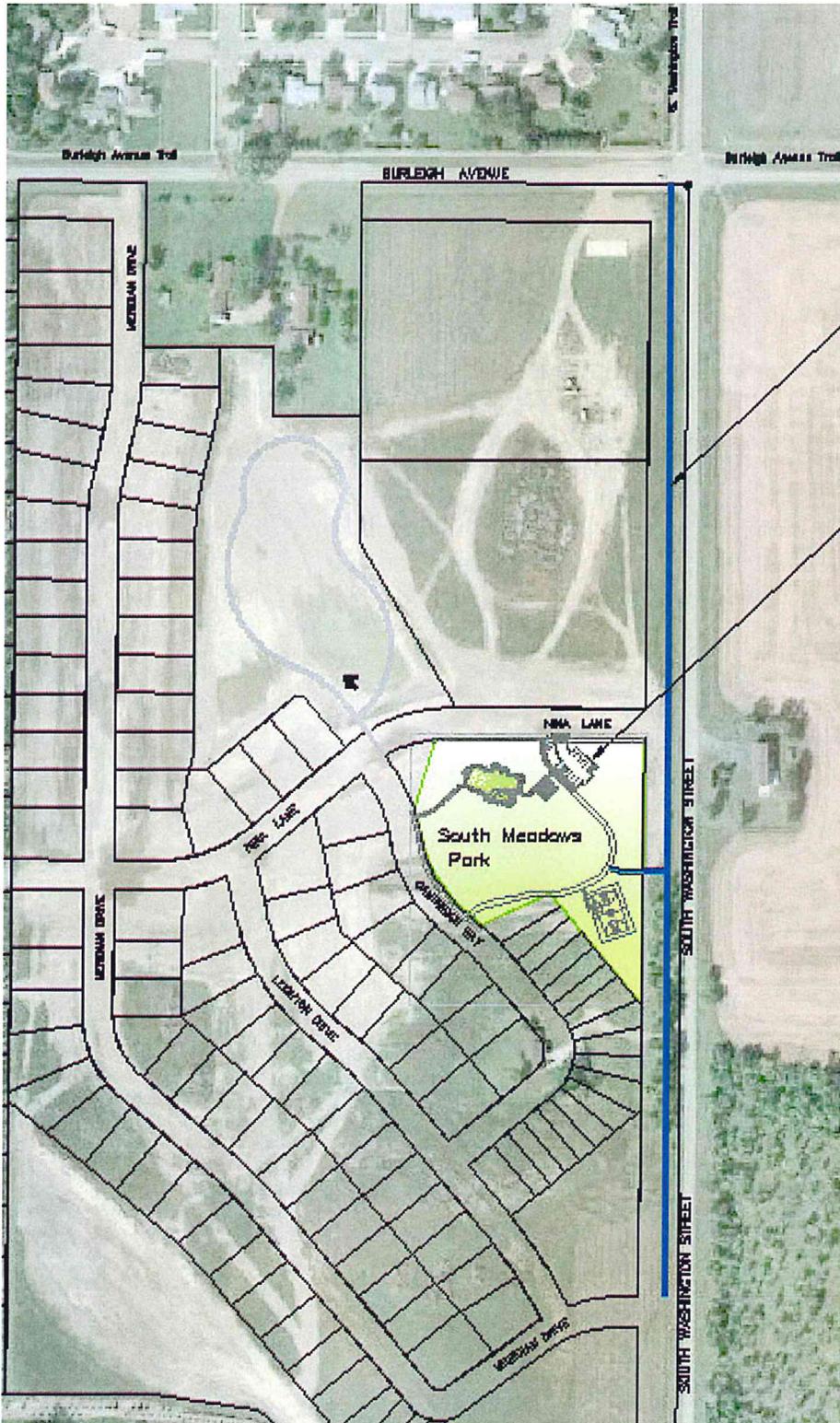
Randy Bina
Executive Director

Cc: Dave Mayer, Operations Director
Kathy Feist, Finance Director

A nationally accredited park and recreation agency.

NDDOT Transportation Alternatives Program Application FY 2018

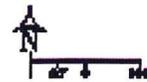
South Washington Street Recreation Trail Extension



S. WASHINGTON STREET Recreation Trail Extension

10' SHARED
USE PATH
2312 LF.

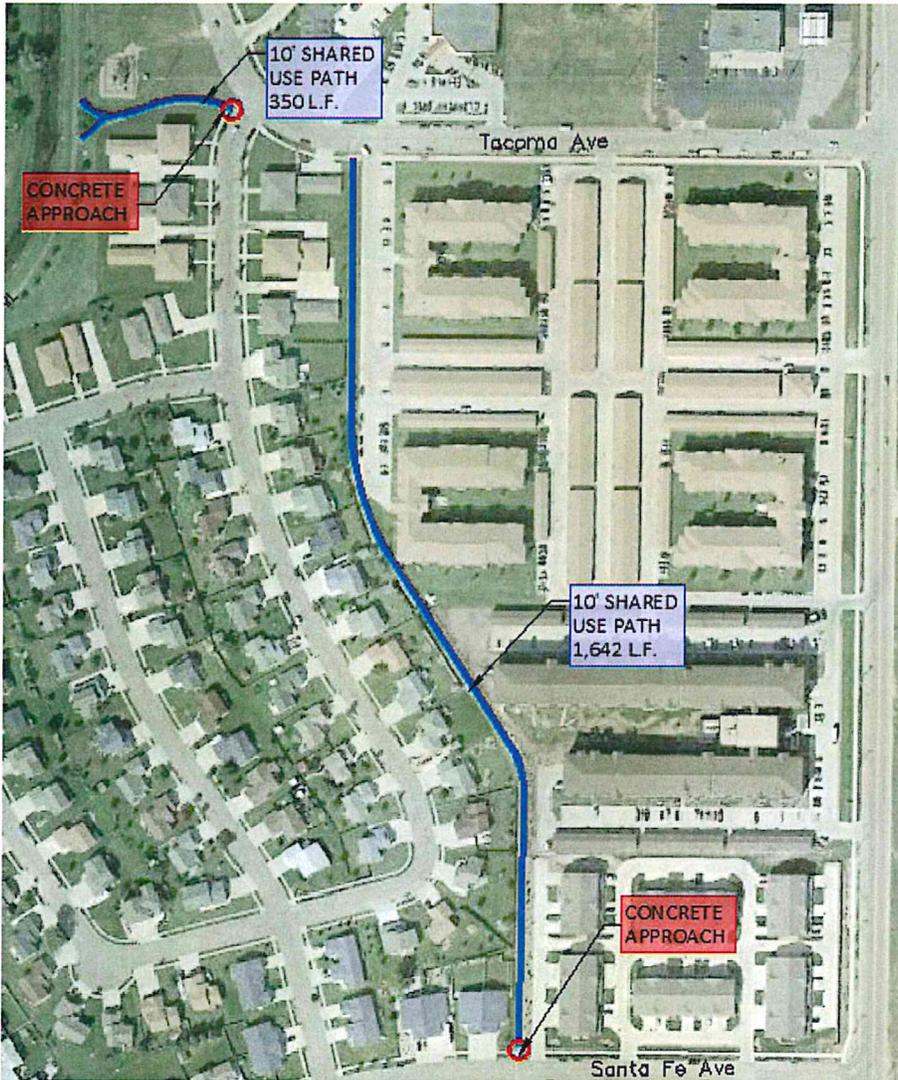
TRAIL HEAD
PARKING



Preliminary Cost Estimate

South Washington Street Trail Extension					
Estimated Total Trail length = 2,312 LF (0.44 Miles)					
Preliminary Opinion of Cost					
11/23/2016					
Item	Description	QTY	Unit	Unit Price	Total
1	Contract Bond	1	LS	\$ 2,500.000	\$ 2,500.00
2	Mobilization	1	LS	\$ 16,000.000	\$ 16,000.00
3	Topsoil	250	CY	\$ 200.00	\$ 50,000.00
4	Seeding	1.15	ACRE	\$ 4,000.00	\$ 4,600.00
5	Hydro Mulch	1.15	ACRE	\$ 3,000.00	\$ 3,450.00
6	4" Concrete Sidewalk	580	SF	\$ 5.75	\$ 3,335.00
7	Truncated Dome Panel	80	SF	\$ 60.00	\$ 4,800.00
8	Aggregate Base Course CL 5	589	TON	\$ 40.00	\$ 23,545.79
9	2.75" Asphalt Pavement	453	TON	\$ 90.00	\$ 40,803.10
10	Asphalt Cement	32	TON	\$ 625.00	\$ 20,000.00
11	24" Pavement Marking	160	LF	\$ 40.00	\$ 6,400.00
12	Storm Sewer Pipe	48	LF	\$ 40.00	\$ 1,920.00
13	Trailhead Sign	1	LS	\$ 4,000.00	\$ 4,000.00
14	Signage	1	LS	\$ 1,800.00	\$ 1,800.00
15	Traffic Control	1	LS	\$ 1,000.00	\$ 1,000.00
Total Construction Cost =					\$ 184,153.89
Construction Contingency (10%) =					\$ 18,415.39
Total Estimated Construction Cost =					\$ 202,569.28

NDDOT Transportation Alternatives Program Application FY 2018
Wachter Trail to Santa Fe Avenue Trail Connection Replacement



WACHTER TRAIL TO
SANTA FE AVE. CONNECTION
— Recreation Trail Replacement



Preliminary Cost Estimate

Cottonwood Trail Rehabilitation					
Estimated Total Trail length = 1,992 LF (0.38 Miles)					
Preliminary Opinion of Cost					
11/23/2016					
Item	Description	QTY	Unit	Unit Price	Total
1	Contract Bond	1	LS	\$ 4,000.000	\$ 4,000.00
2	Mobilization	1	LS	\$ 22,000.000	\$ 22,000.00
3	Remove Asphalt Pavement	2324	SY	\$ 7.000	\$ 16,268.00
4	Remove Concrete	300	SF	\$ 1.500	\$ 450.00
5	Topsoil	430	CY	\$ 200.00	\$ 86,000.00
6	Seeding	0.5	ACRE	\$ 4,000.00	\$ 2,000.00
7	Hydro Mulch	0.5	ACRE	\$ 3,000.00	\$ 1,500.00
8	Landscape bed repairs	1	LS	\$ 5,000.00	\$ 5,000.00
9	4" Concrete Sidewalk	2224	SY	\$ 53.00	\$ 117,872.00
10	Truncated Dome Panel	60	SF	\$ 60.00	\$ 3,600.00
11	Aggregate Base Class 5	460	TON	\$ 40.00	\$ 18,400.00
12	Asphalt Patching	1	LS	\$ 3,000.00	\$ 3,000.00
13	24" Pavement Marking	100	LF	\$ 40.00	\$ 4,000.00
14	Traffic Control	1	LS	\$ 1,000.00	\$ 1,000.00
Total Construction Cost =					\$ 285,090.00
Construction Contingency (10%) =					\$ 28,509.00
Total Estimated Construction Cost =					\$ 313,599.00



ENGINEERING DEPARTMENT

DATE: December 7, 2016
FROM: Gabe Schell, PE | City Engineer 
ITEM: Various Easements Related to Light of Christ Addition

REQUEST

Approval of a Sanitary Sewer Easement and a Water Main Easement with Five Guys Investments, LLP and approval of a Sanitary Sewer Easement with Ron Knutson.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The following easements represent the easements that were required as a condition in the Light of Christ Development Agreement. These easements give the City the means to provide utility service to Light of Christ Addition.

Sanitary Sewer Easement from Five Guys Investments, LLP is an easement connecting the sanitary sewer in Ridgeland Drive, Light of Christ Addition, to the City's sanitary sewer system in Calvert Drive, Sonnet Heights Addition. The sanitary sewer will not be installed at this time, but the easement ensures that as development requires this sewer, the City will have the means to provide service.

Sanitary Sewer Easement with Ron Knutson is an easement connecting the sanitary sewer in Saints Drive, Light of Christ Addition, to the City's sanitary sewer system in Mica Drive, Boulder Ridge 5th Addition. The sanitary sewer installation is currently under contract for installation to the Light of Christ Addition lot.

Water Main Easement with Five Guys Investments, LLP is an easement connecting the water main in Saints Drive, Light of Christ Addition, to the City's water main in Mica Drive, Boulder Ridge 5th Addition. The water main installation is currently under contract for installation to the Light of Christ Addition lot.

RECOMMENDED CITY COMMISSION ACTION

Approval of Sanitary Sewer Easement and Water Main Easement with Five Guys Investments, LLP.

Approval of Sanitary Sewer Easement with Ron Knutson

STAFF CONTACT INFORMATION

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

SANITARY SEWER EASEMENT

This indenture, made this _____ day of _____, 2016, between **Five Guys Investment, LLP**, a North Dakota limited liability partnership, whose post office address is 4308 Boulder Ridge Rd, Bismarck, ND 58503-6128, Grantor, and the **City of Bismarck**, a municipal corporation, whose post office address is P.O. Box 5503, Bismarck, North Dakota 58506-5503, Grantee.

WHEREAS, Grantee desires to acquire a certain sanitary sewer easement (the "Easement") covering only a portion of the Grantor's real property located in the N½, Section 16, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, and the location of which Easement is described below and depicted on Exhibit "A" ("Easement Area") which is attached hereto and made a part hereof.

NOW, THEREFORE,

1. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, a non-exclusive easement to construct, operate, maintain, and repair a public sanitary sewer under and across the Easement Area, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said sanitary sewer. Grantee shall have the right of ingress and egress across the Easement Area for the purposes herein granted. Grantor expressly reserves for itself and its successors and assigns, the right to use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted.
2. This Easement and all rights of access are limited to the Easement Area described as follows:

A 30.00 foot wide tract of land lying in the North Half (N½) of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

A strip of land lying on and 15.00 feet on each side of the following described line:

Commencing at the northwest corner of Section 16; thence along the north line of said Section 16, S 89°56'10" E a distance of 2394.91 feet to the POINT OF BEGINNING; thence from said POINT OF BEGINNING, S 00°28'05" E a distance of 1022.81 feet; thence S 58°42'36" E a distance of 273.82 feet to the west boundary line of Sonnet Heights Subdivision, which is also the POINT OF TERMINATION.

The sidelines of said easement are to be prolonged or shortened to terminate on the west boundary line of Sonnet Heights Subdivision and the north line of Section 16.

Said Easement Area contains 38,892 square feet or 0.893 acres more or less.

3. Grantee shall give Grantor at least ninety (90) days' prior written notice of any proposed improvement, construction, or development of the Easement and the Easement Area for the development of the sanitary sewer system. Following receipt of the written notice from Grantee, the Grantor may elect to relocate the Easement and the Easement Area if in the sole opinion of Grantor the Easement and the Easement Area unreasonably interfere with the present or future use by Grantor of land owned by the Grantor adjacent and in close proximity to the Easement Area. The costs for such relocation shall be at the Grantor's sole cost and expense; provided, however, that Grantor shall provide to Grantee a substitute Easement Area reasonably suited to the Grantee's needs for the sanitary sewer at no cost to Grantee.

4. Grantee shall at all times maintain the Easement Area and the sanitary sewer Easement together with any and all improvements constructed or installed thereon by Grantee or associated with Grantee's use of the Easement Area for the sanitary sewer. The operation and maintenance of such improvements and of the Easement Area shall be at the Grantee's sole cost and expense.

5. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, and licenses, easements, and rights-of-way pertaining to the Easement Area whether or not of record. The use of the word "grant" shall not imply any warranty on the part of Grantor with respect to the Easement or the Easement Area.

6. Grantee shall comply with all applicable laws, ordinances, rules and regulations, including, but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense.

7. Grantee shall not use, deposit, or permit the use or deposit of any hazardous material or toxic waste or other harmful substance on the Easement Area or on any other real property of Grantor located adjacent to in close proximity to the Easement Area.

8. Grantee shall not materially interfere with the use by and operation and activities of Grantor on Grantor's property, and the Grantee at all times shall use such routes and follow such procedures on Grantor's property within the Easement Area which will result in the least damage and inconvenience to Grantor.

9. Grantee shall be responsible for any damage to Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of Grantor's property, including, but not limited to, roads, utilities, and fences that may be altered, damaged, or destroyed in connection with the exercise of the Easement or the use of the Easement Area.

10. Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this Easement, restore the Easement Area to

as near its original condition as reasonably possible and remove all debris, spoils, and equipment resulting from or used in connection with the construction or installation or access to the lands.

11. Grantor may terminate this Easement, the Easement Area, and all of the rights granted herein through a Plat of the land owned by Grantor, including the Easement Area, provided such a Plat is approved by the Grantee. In the event of such termination, the Easement shall be vacated through the recording of the approved Plat, and any and all interest in the Easement and Easement Area conveyed through this Easement shall automatically terminate.

12. This Easement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this Easement shall be of no further force or effect except as provided for in a subsequent modification in writing, signed by the party to be charged.

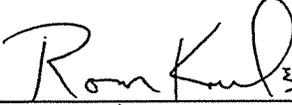
13. This Easement shall bind and insure to the benefit of the respective successors and assigns of the parties hereto.

14. Grantor and Grantee agree to not erect or permit any structure or obstruction other than fences, private drives, parking areas or driveways, and not to change the ground elevation without consent of the other party, or perform any act that interferes with each party's rights under this Easement within the Easement Area, except with the written consent of the other party.

15. Subject to any earlier termination as provided for herein, the term of this Easement herein reserved is ninety-nine (99) years, beginning upon execution in 2016 and ending in 2115.

16. Grantor hereby reserves title to and any interest in any and all archeological and paleontological materials, whether located on or below the surface of the Easement Area.

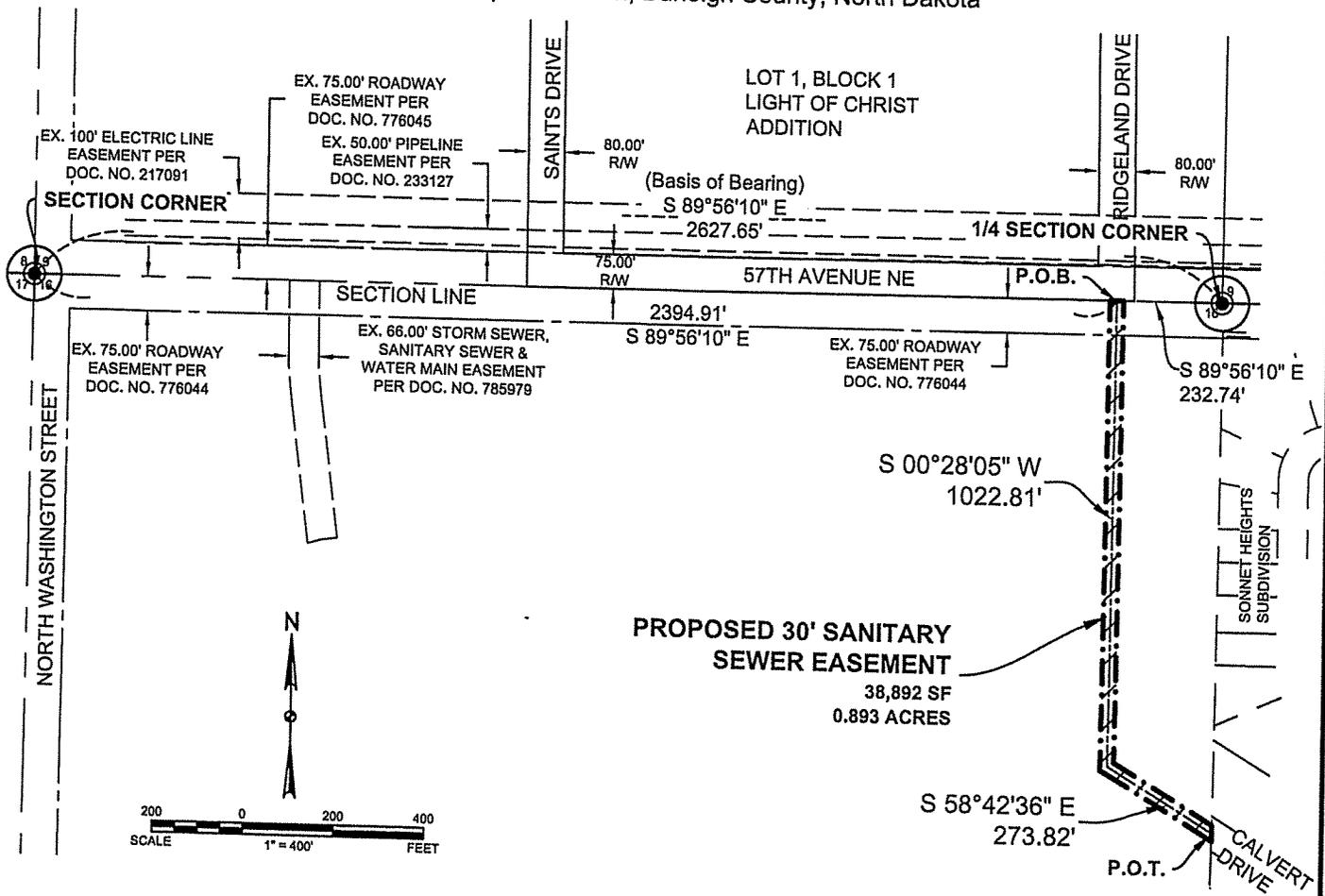
Dated this _____ day of _____, 2016.



RONALD KNOTSON, Partner
Five Guys Investment, LLP

SANITARY SEWER EASEMENT

A tract of land lying in the N 1/2 of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota



Note: Said tract of land is subject to any easement, restrictions or reservations, either existing or of record.

Bearings and distances may vary from previous plats due to different methods of measurements.

LEGEND

- Rebar and Cap Illegible Found
- ▨ Proposed 30' Sanitary Sewer Easement

LEGAL DESCRIPTION

A 30.00 foot wide tract of land lying in the North Half of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

A strip of land lying on and 15.00 feet on each side of the following described line:

Commencing at the northwest corner of Section 16; thence along the north line of said Section 16, S 89°56'10" E a distance of 2394.91 feet to the POINT OF BEGINNING; thence from said POINT OF BEGINNING, S 00°28'05" E a distance of 1022.81 feet; thence S 58°42'36" E a distance of 273.82 feet to the west boundary line of Sonnet Heights Subdivision, which is also the POINT OF TERMINATION.

The sidelines of said easement are to be prolonged or shortened to terminate on the west boundary line of Sonnet Heights Subdivision and the north line of Section 16.

Said easement contains 38,892 square feet or 0.893 acres more or less.



SANITARY SEWER EASEMENT

This indenture, made this _____ day of _____, 2016 between **Ronald Knutson**, whose post office address is 555 Hwy 1804, Bismarck, ND 58504, Grantor, and the **City of Bismarck**, a municipal corporation, whose post office address is P.O. Box 5503, Bismarck, North Dakota 58506-5503, Grantee.

WHEREAS, Grantee desires to acquire a certain sanitary sewer easement (the "Easement") covering only a portion of the Grantor's real property located in the SW1/4, Section 9, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, and the location of which Easement is described below and depicted on Exhibit "A" ("Easement Area") which is attached hereto and made a part hereof.

NOW, THEREFORE,

1. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, a non-exclusive easement to construct, operate, maintain, and repair a public sanitary sewer under and across the Easement Area, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said sanitary sewer. Grantee shall have the right of ingress and egress across the Easement Area for the purposes herein granted. Grantor expressly reserves for itself and its successors and assigns, the right to use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted.

2. This Easement and all rights of access are limited to the Easement Area described as follows:

A 75.00 foot wide tract of land lying in the Southwest Quarter of Section 9, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

The south 75.00 feet of the east 523.48 feet of the west 1087.34 feet of the Southwest Quarter of Section 9.

Said easement contains 39,261 square feet or 0.901 acres more or less.

3. Grantee shall at all times maintain the Easement Area and the Sanitary sewer Easement together with any and all improvements constructed or installed thereon by Grantee or associated with Grantee's use of the Easement Area for the sanitary sewer. The operation and maintenance of such improvements and of the Easement Area shall be at the Grantee's sole cost and expense.
4. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, and licenses, easements, and rights-of-way pertaining to the Easement Area whether or not of record. The use of the word "grant" shall not imply any warranty on the part of Grantor with respect to the Easement or the Easement Area.
5. Grantee shall comply with all applicable laws, ordinances, rules and regulations, including, but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense.
6. Grantee shall not use, deposit, or permit the use or deposit of any hazardous material or toxic waste or other harmful substance on the Easement Area or on any other real property of Grantor located adjacent to in close proximity to the Easement Area.
7. Grantee shall not materially interfere with the use by and operation and activities of Grantor on Grantor's property, and the Grantee at all times shall use such routes and follow such procedures on Grantor's property within the Easement Area which will result in the least damage and inconvenience to Grantor.
8. Grantee shall be responsible for any damage to Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of Grantor's property, including, but not limited to, roads, utilities, and fences that may be altered, damaged, or destroyed in connection with the exercise of the Easement or the use of the Easement Area.
9. Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this Easement, restore the Easement Area to as near its original condition as reasonably possible and remove all debris, spoils, and equipment resulting from or used in connection with the construction or installation or access to the lands.
10. Grantor may terminate this Easement, the Easement Area, and all of the rights granted herein through a Plat of the land owned by Grantor, including the Easement Area, provided such a Plat is approved by the Grantee. In the event of such termination, the Easement shall be vacated through the recording of the approved Plat, and any and all interest in the Easement and Easement Area conveyed through this Easement shall automatically terminate.

11. This Easement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this Easement shall be of no further force or effect except as provided for in a subsequent modification in writing, signed by the party to be charged.

12. This Easement shall bind and insure to the benefit of the respective successors and assigns of the parties hereto.

13. Grantor and Grantee agree to not erect or permit any structure or obstruction other than fences, private drives, parking areas or driveways, and not to change the ground elevation without consent of the other party, or perform any act that interferes with each party's rights under this Easement within the Easement Area, except with the written consent of the other party.

14. Subject to any earlier termination as provided for herein, the term of this Easement herein reserved is ninety-nine (99) years, beginning upon execution in 2016 and ending in 2115.

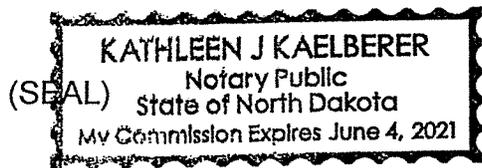
15. Grantor hereby reserves title to and any interest in any and all archeological and paleontological materials, whether located on or below the surface of the Easement Area.

Dated this ____ day of _____, 2016.

Ronald Knutson
Ronald Knutson

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

On this 16 day of November, 2016, before me personally appeared Ronald Knutson known to me to be the person who is described in, and who executed the within and foregoing instrument and acknowledged to me that he executed the same.



Kathleen J. Kaelberer
Notary Public
My commission expires: June 4, 2021

Acceptance of dedicated lands by the **City of Bismarck**:

Michael C. Seminary
President, Board City Commissioners

Attest: _____
Keith J. Hunke
City Administrator

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

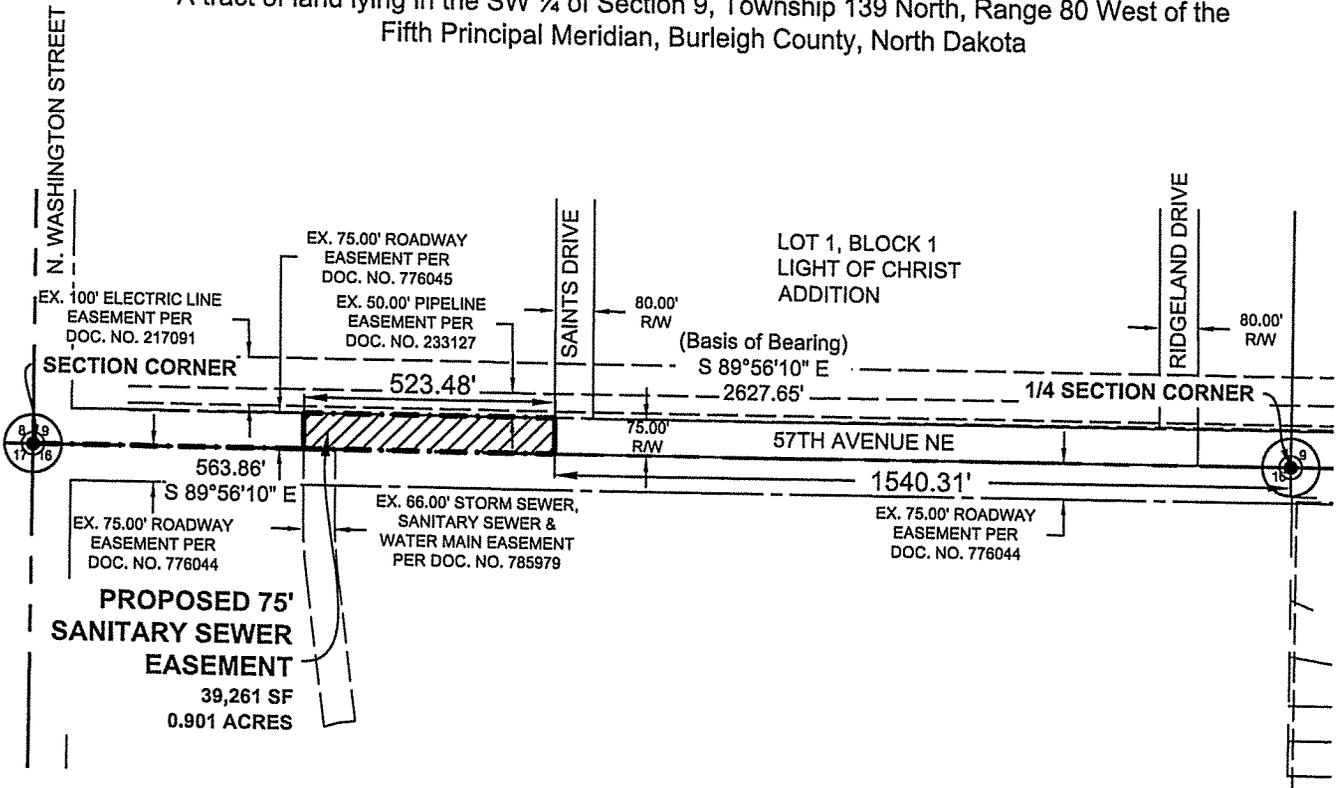
On this _____ day of _____, 2016, before me personally appeared Michael C. Seminary, President of Board of City Commissioners, and Keith J. Hunke, City Administrator, known to me to be the persons who are described in, and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

(SEAL) _____
Notary Public
My commission expires: _____

The legal description was prepared by Kent Orvik, PLS, KLJ, 4585 Coleman Street, Bismarck, North Dakota 58503 or obtained from a previously recorded instrument.
Burleigh County Recorder

SANITARY SEWER EASEMENT

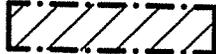
A tract of land lying in the SW ¼ of Section 9, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota

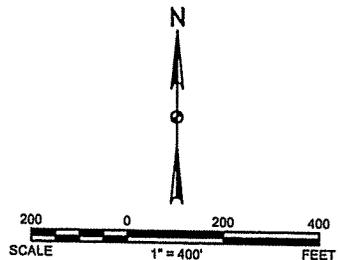


Note: Said tract of land is subject to any easement, restrictions or reservations, either existing or of record.

Bearings and distances may vary from previous plats due to different methods of measurements.

LEGEND

-  Rebar and Cap Illegible Found
-  Proposed 75' Sanitary Sewer Easement



LEGAL DESCRIPTION

A 75.00 foot wide tract of land lying in the Southwest Quarter of Section 9, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

The south 75.00 feet of the east 523.48 feet of the west 1087.34 feet of the Southwest Quarter of Section 9.

Said easement contains 39,261 square feet or 0.901 acres more or less.



WATER MAIN EASEMENT

This indenture, made this _____ day of _____, 2016, between **Five Guys Investment, LLP**, a North Dakota limited liability partnership, whose post office address is 4308 Boulder Ridge Rd, Bismarck, ND 58503-6128, Grantor, and the **City of Bismarck**, a municipal corporation, whose post office address is P.O. Box 5503, Bismarck, North Dakota 58506-5503, Grantee.

WHEREAS, Grantee desires to acquire a certain water main easement (the "Easement") covering only a portion of the Grantor's real property located in the NW1/4, Section 16, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, and the location of which Easement is described below and depicted on Exhibit "A" ("Easement Area") which is attached hereto and made a part hereof.

NOW, THEREFORE,

1. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, a non-exclusive easement to construct, operate, maintain, and repair a public water main under and across the Easement Area, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said water main. Grantee shall have the right of ingress and egress across the Easement Area for the purposes herein granted. Grantor expressly reserves for itself and its successors and assigns, the right to use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted.

2. This Easement and all rights of access are limited to the Easement Area described as follows:

A 75.00 foot wide tract of land lying in the Northwest Quarter of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

The north 75.00 feet of the east 1997.79 feet of the Northwest Quarter of Section 16.

The sidelines of said easement are to be prolonged or shortened to terminate on the east easement line per Doc. No. 785979 and the east line of the Northwest Quarter of Section 16.

Said easement contains 149,834 square feet or 3.440 acres more or less.

3. Grantee shall at all times maintain the Easement Area and the Water Main Easement together with any and all improvements constructed or installed thereon by Grantee or associated with Grantee's use of the Easement Area for the water main. The operation and maintenance of such improvements and of the Easement Area shall be at the Grantee's sole cost and expense.
4. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, and licenses, easements, and rights-of-way pertaining to the Easement Area whether or not of record. The use of the word "grant" shall not imply any warranty on the part of Grantor with respect to the Easement or the Easement Area.
5. Grantee shall comply with all applicable laws, ordinances, rules and regulations, including, but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense.
6. Grantee shall not use, deposit, or permit the use or deposit of any hazardous material or toxic waste or other harmful substance on the Easement Area or on any other real property of Grantor located adjacent to in close proximity to the Easement Area.
7. Grantee shall not materially interfere with the use by and operation and activities of Grantor on Grantor's property, and the Grantee at all times shall use such routes and follow such procedures on Grantor's property within the Easement Area which will result in the least damage and inconvenience to Grantor.
8. Grantee shall be responsible for any damage to Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of Grantor's property, including, but not limited to, roads, utilities, and fences that may be altered, damaged, or destroyed in connection with the exercise of the Easement or the use of the Easement Area.
9. Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this Easement, restore the Easement Area to as near its original condition as reasonably possible and remove all debris, spoils, and equipment resulting from or used in connection with the construction or installation or access to the lands.
10. Grantor may terminate this Easement, the Easement Area, and all of the rights granted herein through a Plat of the land owned by Grantor, including the Easement Area,

provided such a Plat is approved by the Grantee. In the event of such termination, the Easement shall be vacated through the recording of the approved Plat, and any and all interest in the Easement and Easement Area conveyed through this Easement shall automatically terminate.

11. This Easement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this Easement shall be of no further force or effect except as provided for in a subsequent modification in writing, signed by the party to be charged.

12. This Easement shall bind and insure to the benefit of the respective successors and assigns of the parties hereto.

13. Grantor and Grantee agree to not erect or permit any structure or obstruction other than fences, private drives, parking areas or driveways, and not to change the ground elevation without consent of the other party, or perform any act that interferes with each party's rights under this Easement within the Easement Area, except with the written consent of the other party.

14. Subject to any earlier termination as provided for herein, the term of this Easement herein reserved is ninety-nine (99) years, beginning upon execution in 2016 and ending in 2115.

15. Grantor hereby reserves title to and any interest in any and all archeological and paleontological materials, whether located on or below the surface of the Easement Area.

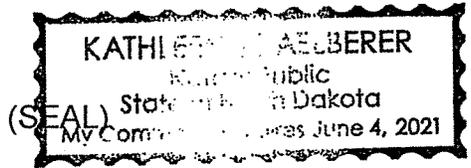
Dated this _____ day of _____, 2016.

Ronald Knutson

RONALD KNUTSON, Partner
Five Guys Investment, LLP

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

On this 16 day of November, 2016, before me personally appeared Ronald Knutson, known to me to be a Partner of Five Guys Investment, LLP, the limited liability partnership that is described in and that executed the within and foregoing instrument, and acknowledged to me that such limited liability partnership executed the same.



Kathleen J. Kalberer
Notary Public
My commission expires: June 4, 2021

Acceptance of dedicated lands by the **City of Bismarck:**

Michael C. Seminary
President, Board City Commissioners

Attest: _____
Keith J. Hunke
City Administrator

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

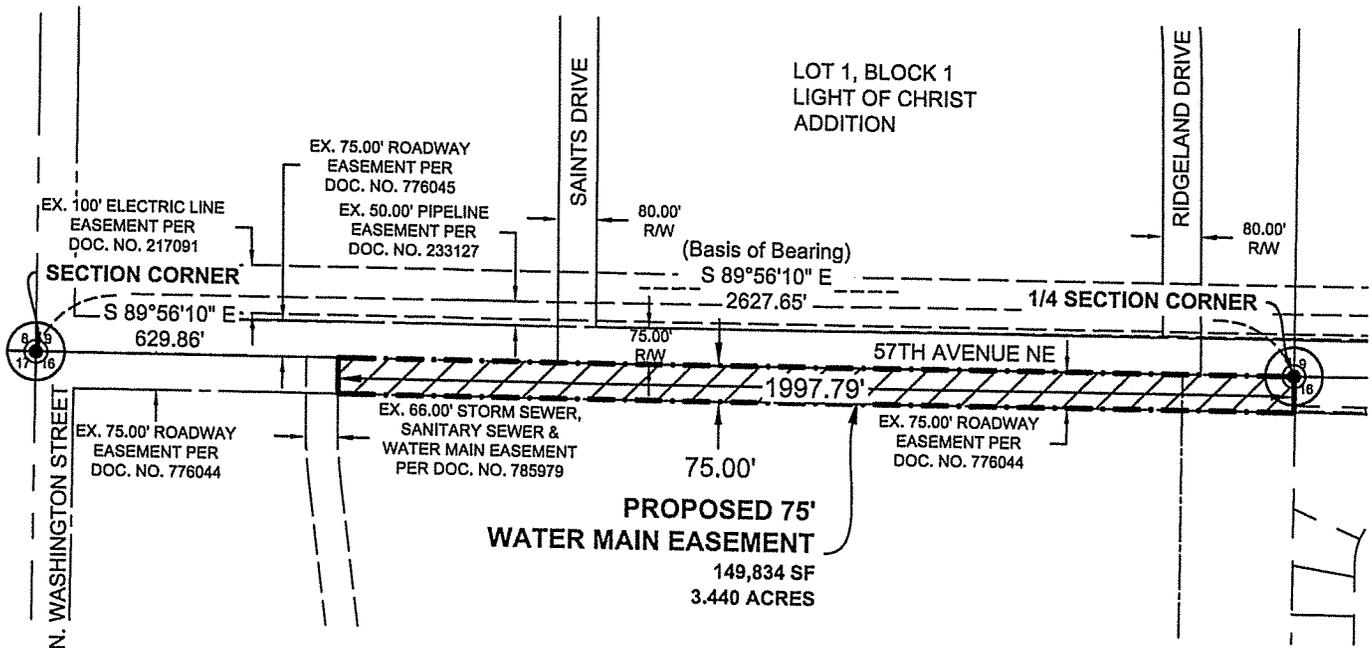
On this ____ day of _____, 2016, before me personally appeared Michael C. Seminary, President of Board of City Commissioners, and Keith J. Hunke, City Administrator, known to me to be the persons who are described in, and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

(SEAL) _____
Notary Public
My commission expires: _____

The legal description was prepared by Kent Orvik, PLS, KLJ, 4585 Coleman Street, Bismarck, North Dakota 58503 or obtained from a previously recorded instrument.
Burleigh County Recorder

WATER MAIN EASEMENT

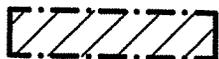
A tract of land lying in the N ½ of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota

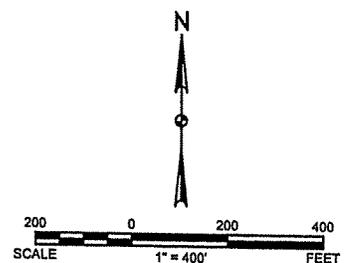


Note: Said tract of land is subject to any easement, restrictions or reservations, either existing or of record.

Bearings and distances may vary from previous plats due to different methods of measurements.

LEGEND

-  Rebar and Cap Illegible Found
-  Proposed 75' Water Main Easement



LEGAL DESCRIPTION

A 75.00 foot wide tract of land lying in the Northwest Quarter of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

The north 75.00 feet of the east 1997.79 feet of the Northwest Quarter of Section 16.

The sidelines of said easement are to be prolonged or shortened to terminate on the east easement line per Doc. No. 785979 and the east line of the Northwest Quarter of Section 16.

Said easement contains 149,834 square feet or 3.440 acres more or less.





ENGINEERING DEPARTMENT

DATE: December 7, 2016
FROM: Gabe Schell, PE | City Engineer 
ITEM: Move Establishment Date For Quiet Rail Zone

REQUEST

Request from BNSF to Change the Date of Establishment for the Quiet Rail Zone to After the First of the New Year.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

A Notice of Establishment dated December 2, 2016 for establishment of the Quiet Rail Zone in Bismarck was sent to BNSF. A quiet zone could be established twenty-one days after this notice. BNSF has requested that the City of Bismarck consider moving the date of establishment from December 24, 2016 to January 3, 2017. BNSF through email has stated "*citing not only schedule changes for train crews, but the additional motoring/traveling public who may not be as familiar with the area due to the holidays.*"

Under 49 CFR 222, BNSF cannot dictate which date the quiet zone goes into effect, to that extent we cannot even create a quiet zone. The authority to move the date is specifically with the City of Bismarck; we simply reached out as a courtesy to see if the City would move outside of the holiday peak travel season"

RECOMMENDED CITY COMMISSION ACTION

Decision to change the date of establishment of the quiet zone to January 3, 2017

STAFF CONTACT INFORMATION

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



FINANCE DEPARTMENT

DATE: November 30, 2016
FROM: Sheila Hillman *SH*
ITEM: Contract for Commercial Appraisal Services

REQUEST

Consider approval of a contract for appraisal services for commercial properties with Vanguard Appraisals, Inc.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

Assessing is currently in the process of converting our property data base to the new Vanguard Computer Assisted Mass Appraisal (CAMA) system. The City also has to complete all of the 2017 assessments by the NDCC deadline of February 1 of 2017. Since 2013 we have used Vanguard's appraisal services to assist in the valuation of the properties to help address staff turnover and continued growth in the City. The request is to continue to use Vanguard appraisal services to assist with the commercial appraisals and help provide timely completion of the valuations. Attached is the proposed contract for services. Vanguard will appraise 37 commercial properties which include the review of a number of existing properties as well as the completion of the valuation for the new properties. Based on their hourly rate of \$135, the estimated cost is \$20,000 and will be based on actual hours.

RECOMMENDED CITY COMMISSION ACTION

Approve the contract for appraisal services for commercial properties with Vanguard Appraisals, Inc.

STAFF CONTACT INFORMATION

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

Attachment

CONTRACT AND SPECIFICATIONS FOR ANNUAL MAINTENANCE OF REAL PROPERTY CHANGES FOR THE CITY OF BISMARCK, NORTH DAKOTA

All services are to be performed by Vanguard Appraisals, Inc. The term of this contract shall be for the assessment date of February 1, 2017.

All commercial real property parcels assigned to Vanguard Appraisals, Inc. by the city of Bismarck, North Dakota shall be completed in compliance with the Statutes of North Dakota in place at the signing of this agreement.

In complying with this agreement, Vanguard Appraisals, Inc. agrees to perform the following services:

1. Measure, list, inspect (either interior/exterior or both) and appraise all property included on the attached list (the Assessor's office reserves the right to add additional properties to this list).
2. All properties shall be valued utilizing the Vanguard Real Property Appraisal Manual and shall be priced in Vanguard's CAMAvision software. The software shall be licensed to the City under a separate contract.
3. The property record card shall include a land value (Vanguard will utilize the city's existing land value calculation), replacement cost calculations, physical depreciation and functional-economic obsolescence if necessary. Building sketches and photographs shall also be included.
4. Finalize all partial assessments as assigned by the Assessor or designee.
5. Review all adjustments and changes with the Assessor or designee.
6. Complete all assignments prior to March 1, 2017.
7. Provide liability and Workmen's Compensation insurance to save harmless the city of Bismarck.

Compensation to Vanguard Appraisals, Inc. for these services shall be at the rate of \$135.00 per hour, including field work and driving time. All clerical work shall be billed at the rate of \$50.00 per hour. The total estimated price for these services is \$20,000.00. This price will vary depending on the size and complexity of the properties to be appraised.

The city of Bismarck will be responsible for:

1. Supply existing information on all parcels included in this project. This shall include current land value calculations and existing pricing, sketches or photos if applicable.
2. Address of each parcel included in this project.
3. Supply Vanguard with up-to-date maps and/or plats depicting individual lot sizes.
4. Supply owner's name and legal description of each parcel included in this project.
5. Process, sort and attach each building permit to the proper individual parcel to be assigned.
6. Posting of all final values and changes, balancing of books and proper filing of all documents to the state.
7. Mail new assessment notices.

VANGUARD APPRAISALS, INC.

CONTRACT AND SPECIFICATIONS FOR ANNUAL MAINTENANCE OF REAL
PROPERTY CHANGES FOR THE CITY OF BISMARCK, NORTH DAKOTA
Page Two

VANGUARD APPRAISALS, INC.

BISMARCK, NORTH DAKOTA



Robert P. Ehler, President

Michael C. Seminary, Mayor

DATE

11/16/16

DATE

BISMARCK, NORTH DAKOTA ANNUAL MAINTENANCE 2017 PARCEL LIST

	Parcel #	Address	Type of Building
1	0000-001-490	2001 Maverick Ave	Rental Car Quick turnaround Facility
2	0001-096-001	310 N 9th St	Medical Office
3	0001-130-010	810 E Rosser	Medical Office
4	0005-000-800	1120 E Front Ave	Dean Food Parking Lot
5	0010-000-001	1207 E Main Ave	Dean Foods Creamery Office
6	0010-000-050	1216 E Front Ave	Dean Foods Creamery Bulk Plant
7	0005-032-005	1200 E Main Ave	Medical office and Medical Rehab Sales
8	0010-014-001	1307 E Broadway	Medical Office
9	0105-040-010	2301 E Main Ave	Bismarck Motor Hotel
10	0600-004-060	600 S 5th St	Kirkwood Mall Verizon
11	0644-001-200	2240 N 12th St	LaQuinta Inn
12	0655-001-025	2702 E Rosser Ave	Eastdale Mall
13	0773-002-001	1000 W Century	Waterford - Addition & New Bldg to Assisted Living
14	0776-000-183	910 Industrial Dr	New Office-warehouse Ace Towing
15	0812-001-001	4202 Coleman St	Addition to Dakota Carrier Network Office Bldg
16	0911-001-001	1601 N. 12th St	1st International Bank & Office complex
17	1060-002-500	2801 Gateway Ave	Staybridge 98 Units
18	1065-002-075	3001 N 15th St	Holiday Inn Express
19	1091-001-001	2020 Schafer St	Hampton Inn
20	1135-003-075	1356 Airport Rd	Completion of prefab Bldg-Rental
21	1160-001-001	2640 Centennial Rd	My Place Hotel
22	1180-001-200	1440 Mapleton Ave	Hampton Inn
23	1453-001-150	4400 Skyline Crossing	Candlewood Suites
24	1453-001-250	1421 Skyline Blvd	Wingate by Windham
25	1458-001-050	1405 Skyline Way	Super 8
26	1461-001-050	2706 Rock Island Pl	Retail Hot Springs Bldg
27	1462-002-001	3101 Rock Island Pl	New Office Bldg
28	1463-005-300	1502 Grumman LN	Completion of Office & Lab Bldg
29	1615-001-030	4580 Coleman St	St. Gaberials nursing home expansion
30	2035-001-005	3421 N 14th St.	Marriott Residence

**BISMARCK, NORTH DAKOTA ANNUAL MAINTENANCE 2017
PARCEL LIST (CONTINUED)**

	Parcel #	Address	Type of Building
31	2035-001-015	3319 N 14th St	Courtyard by Marriott
32	2045-001-005	3903 State St	Holiday Inn
33	2055-001-001	1510 E Century Ave	Sleep Inn
34	2135-001-045	3122 Yorktown Dr	Caribou Coffee bldg Completion
35	2135-001-150	3000 Yorktown Dr	BNC Bank Bldg
36	2160-002-200	2840 Valley Forge St	Office-Shop-Storage bldg-Northwest
37	2205-001-050	419 Riverwood Dr	Ofice Bldg completion



FINANCE DEPARTMENT

DATE: December 7, 2016
FROM: Sheila Hillman *SH*
ITEM: Year End 2016 Budget Adjustments

REQUEST

To approve the 2016 year budget transfers, authorizations and adjustments for the General Fund

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

Budget Transfers based on Commission authorization:

At the April 16, 2016 the Commission approved \$205,000 from the Building Construction Fund for an electrical distribution project for the City County Building.

The 2014 budget included \$490,000 from the Fire Truck Equipment Reserve fund for the Fire Burn Building/Fire Station projects that was reallocated for the purchase of 3 fire trucks in the 2016 budget.

The 2016 budget includes \$825,000 for the Contingency Fund which has not been used this year. The request is to transfer excess budget authority from the Contingency Fund to the Building Construction Fund and the Fire Truck project funds. The transfer is for budget authority only and allows the use of the fund sources designated by the Commission.

Budget Authorizations: The 2016 budget includes the following one-time building maintenance expenditures that were authorized but due to timing and coordination of the project, the repairs will not be completed until 2017: \$5,000 for catch basin repair and \$5,000 for roof drainage repair at Fire Station #5 and \$30,000 for the drywall repairs at the Convention Visitors Bureau (CVB). The 2016 budget also includes \$840,940 for the purchase and implementation of the new Work Order Management System (WMS). The contract and project budget for AssetWorks was approved by the

Commission on August 23, 2016. Since this is a multi-year project, the funds will be expended over the next three years.

The request is to authorize the one-time funds for the repair projects and the WMS to be expended in 2017.

Other Budget Adjustments:

The one-time budget for Police includes \$7,000 for towing which is utilized once the Police Department budget for towing is expended. Based on the projected expenditures to date, an additional \$25,000 is needed plus any additional towing that may result from the recent weather conditions.

The one-time budget also includes \$50,000 in pool funds for vehicle maintenance and repairs that exceed the General Fund department budgets for these repairs. Both Fire and Police have exceeded their department budget and have used the total pool of funds. Based on year end projections, an additional \$75,000 is estimated for repairs.

Police have been monitoring their expenses and have made adjustments in their operating budget to address some of the projected costs. They also have excess one-time funds authorized for vehicle purchases.

The one-time pool fund of \$125,000 for fuel has not been used in 2016 so this excess could be used to fund the additional vehicle repairs. The request is to authorize the use of the pool funds for the projected expenditures for towing, vehicle maintenance and repair once the Police and Fire exceed their overall department operating and one-time budgets.

The Police budget is currently funding the costs associated with supporting Morton County in the DAPL protests. Those costs will ultimately be funded by the State mutual aid to Morton County but the reimbursement may not occur until 2017. The associated costs for the non-exempt officers' time for August through October exceed \$200,000. The costs for November currently be compiled will be in addition to that total plus any future expenses for December. The 2016 budget includes \$500,000 for FEMA matching funds for the 2011 event which have not been used. The request is to authorize the transfer of the excess budget authority to Police for associated DAPL costs to be reimbursed to ensure the department does not exceed their 2016 budget.

RECOMMENDED CITY COMMISSION ACTION

To approve the 2016 year budget transfers, authorizations and adjustments for the General Fund

STAFF CONTACT INFORMATION

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



HUMAN RESOURCES DEPARTMENT

DATE: November 28, 2016

FROM: Robert McConnell, Director of Human Resources *RAM*

ITEM: Request to pay Exempt Public Safety Officers for mutual aid reimbursed hours.

REQUEST

Consider approval for Exempt Public Safety Officers to be paid straight time in 2017 for mutual aid reimbursed hours worked beyond the normal workweek at the request of the Morton County Unified Command pertaining to the DAPL protests.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The City of Bismarck Public Safety departments have exempt officers working significant hours above their normal schedule at the request of the Morton County Unified Command in support of Governor Dalrymple's Emergency Declaration pertaining to the Dakota Access Pipeline protests effective August 19, 2016. Where non-exempt officers are being paid overtime for their work, these exempt officers who are performing critical leadership roles have not been compensated above their normal salaried amount. The Human Resource department is requesting approval to pay these exempt officers straight time in 2017 for the hours worked above their normal schedule and limited to the hours reimbursed by State mutual aid funding administered by Morton County. Only the State reimbursed hours in excess of their regular time will be paid to the officers with no resulting impact on the City of Bismarck's 2017 budget authorization.

RECOMMENDED CITY COMMISSION ACTION

The Human Resource department recommends approval for Exempt Public Safety Officers to be paid straight time in 2017 limited to the State mutual aid reimbursed amount for the hours worked beyond the normal workweek at the request of Morton County Unified Command pertaining to the DAPL protests.

STAFF CONTACT INFORMATION

Robert McConnell, Director Human Resources, 701-355-1332, rmcconnell@bismarcknd.gov

Wage and Hour Division, Labor

§ 541.604

improper deductions. Employees in different job classifications or who work for different managers do not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager would lose the exemption; engineers at other facilities or working for other managers, however, would remain exempt.

(c) Improper deductions that are either isolated or inadvertent will not result in loss of the exemption for any employees subject to such improper deductions, if the employer reimburses the employees for such improper deductions.

(d) If an employer has a clearly communicated policy that prohibits the improper pay deductions specified in § 541.602(a) and includes a complaint mechanism, reimburses employees for any improper deductions and makes a good faith commitment to comply in the future, such employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints. If an employer fails to reimburse employees for any improper deductions or continues to make improper deductions after receiving employee complaints, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. The best evidence of a clearly communicated policy is a written policy that was distributed to employees prior to the improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, publishing the policy in an employee handbook or publishing the policy on the employer's Intranet.

(e) This section shall not be construed in an unduly technical manner so as to defeat the exemption.

§ 541.604 Minimum guarantee plus extras.

(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least \$455 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least \$455 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least \$455 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.

(b) An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least \$500 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid \$150 per shift without violating the salary basis requirement. The reasonable relationship requirement applies only if the employee's pay is computed on an hourly,

§ 541.605

daily or shift basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary of \$650 per week who also receives a commission of one-half percent of all sales in the store or five percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

§ 541.605 Fee basis.

(a) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a "fee basis" within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments resemble piecework payments with the important distinction that generally a "fee" is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least \$455 per week if the employee worked 40 hours. Thus, an artist paid \$250 for a picture that took 20 hours to complete meets the minimum salary requirement for exemption since earnings at this rate would yield the artist \$500 if 40 hours were worked.

§ 541.606 Board, lodging or other facilities.

(a) To qualify for exemption under section 13(a)(1) of the Act, an employee must earn the minimum salary amount set forth in § 541.600, "exclusive of board, lodging or other facilities." The phrase "exclusive of board, lodging or other facilities" means "free and clear" or independent of any claimed credit for non-cash items of value that an employer may provide to an em-

29 CFR Ch. V (7-1-10 Edition)

ployee. Thus, the costs incurred by an employer to provide an employee with board, lodging or other facilities may not count towards the minimum salary amount required for exemption under this part 541. Such separate transactions are not prohibited between employers and their exempt employees, but the costs to employers associated with such transactions may not be considered when determining if an employee has received the full required minimum salary payment.

(b) Regulations defining what constitutes "board, lodging, or other facilities" are contained in 29 CFR part 531. As described in 29 CFR 531.32, the term "other facilities" refers to items similar to board and lodging, such as meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing furnished for dwelling purposes; and transportation furnished to employees for ordinary commuting between their homes and work.

Subpart H—Definitions and Miscellaneous Provisions

§ 541.700 Primary duty.

(a) To qualify for exemption under this part, an employee's "primary duty" must be the performance of exempt work. The term "primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other



HUMAN RESOURCES DEPARTMENT

DATE: November 28, 2016

FROM: Robert McConnell, Director of Human Resources

ITEM: Waiver of Use or Lose Annual Leave Balance for Public Safety

REQUEST

Please consider approval to waive the Annual Leave use or lose policy for Public Safety that has been affected by DAPL mutual aid activities.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The City of Bismarck Public Safety departments have not been able to take leave due to the mission impact of DAPL activities. Officers have either had their leave cancelled or have not been able to take leave so that they would be available to support Morton County in mutual aid for the DAPL project. Many of these officers are in a use or lose status and would lose leave under City's Annual leave Policy "Annual leave accrued in excess of a total of three hundred sixty hours (360) for all covered employees or four hundred seventy seven hours (477) for fire fighters is forfeited without compensation on the day before the start of the last full pay period of any year." Please consider waiving this policy for Public Safety personnel through June 30, 2017 which should give officers a chance to take leave before losing it.

RECOMMENDED CITY COMMISSION ACTION

The Human Resource department recommends approval of a public safety waiver of the City use or loses policy through June 30th 2017.

STAFF CONTACT INFORMATION

Robert McConnell, Director Human Resources, 701-355-1332, rmcconnell@bismarcknd.gov

ANNUAL LEAVE

Annual leave shall accrue and be taken as follows:

- 1) Eligible regular full-time employees working a forty-hour week (average) are granted annual leave with pay based upon their total years of service with the City except that an employee who leaves employment with the City and then returns to employment with the City more than five (5) years after leaving employment shall not retain the prior years of service for purposes of determining annual leave. Annual leave shall be awarded as follows:

<u>Years of Service</u>	<u>Hours per Month</u>	<u>Year Hours per</u>
0-3	8	96
4-7	10	120
8-12	12	144
13-18	14	168
over 18	16	192

An hour of leave shall be used for each hour of absence from employment.

- 2) Fire employees who have a regular work week in excess of forty (40) hours per week are granted annual leave at a rate adjusted to take into account the extra hours so that their annual leave is comparable to the leave granted for 40-hour per week employees. Eligible fire employees are granted annual leave with pay based upon their total years of service with the City except that a fire employee who leaves employment with the City and then returns to employment with the City more than five (5) years after leaving employment shall not retain the prior years of service for purposes of determining annual leave. Annual leave shall be awarded as follows:

<u>Years of Service</u>	<u>Hours per Month</u>	<u>Hours per Year</u>
0-3	10.6	127.2
4-7	13.3	159.6
8-12	15.9	190.8
13-18	18.6	223.2
over 18	21.2	254.4

An hour of leave shall be used for each hour of absence from employment.

- 3) Annual leave accrued in excess a total of three hundred sixty hours (360) for all covered employees or four hundred seventy seven hours (477) for fire fighters is forfeited without compensation on the day before the start of the last full pay period of any year.

- 4) Annual leave with pay may be taken by the employee at such time as approved by the head of the Department. Hours for the days the employee would normally have off shall not be counted in the vacation period. No employee may waive leave for the purpose of receiving double compensation.
- 5) Regular part-time employees shall earn a pro-rated number of working days vacation payable at their usual rate of compensation.

Approval Date: 01/28/97

Revision Date: 03/24/09, 01/11/05 (retroactive in application to 10/1/03)



HUMAN RESOURCES DEPARTMENT

DATE: November 25, 2016
FROM: Robert McConnell, Director of Human Resources
ITEM: Discrimination & Harassment / EEO policy changes

REQUEST

Please consider approval of changes to the Discrimination & Harassment and the Equal Employment Opportunity policies.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The City of Bismarck has updated these two policies to add and include sexual orientation and gender identity to other protected statuses recognized under the United States or North Dakota.

RECOMMENDED CITY COMMISSION ACTION

The Human Resource department recommends approval of both policy changes.

STAFF CONTACT INFORMATION

Robert McConnell, Director Human Resources, 701-355-1332, rmcconnell@bismarcknd.gov

EQUAL EMPLOYMENT OPPORTUNITY

An employee or applicant for employment may not be appointed, promoted, demoted, dismissed, or in any way favored or discriminated against on the basis of race, color, religion, sex, national origin, age, physical or mental disability, sexual orientation, gender identity or expression, or status with regard to marriage or public assistance. No individual(s) involved in the selection process will deny any individual employment because of a disability, because of a record of a disability, or because he/she is perceived as having a disability.

Approval Date: 01/28/97

Revision Date:

DISCRIMINATION AND HARASSMENT

Purpose

The City of Bismarck believes in respecting the dignity of each employee and expects each employee to show respect and consideration for fellow employees, customers, and vendors. All employees are advised that discrimination and harassment in the workplace is a violation of Title VII of the Civil Rights Act of 1964 and of N.D.C.C. Chapter 14-02.4. Respectful, professional conduct furthers the City's mission, promotes productivity, minimizes disputes, and enhances the City's reputation. It is the policy of the City to insure that all of its employees can perform their assigned duties in an environment that is free from discrimination and harassment. This policy forbids unlawful conduct that is based on an individual's race, color, religion, gender, national origin, age, disability, sexual orientation, gender identity or expression, marital status, or any other protected status recognized under the United States or North Dakota Constitutions.

Coverage

This policy applies to all employees of the City and forbids any employee, or official of the City from committing any act of discrimination or harassment against any other person while engaged to work on behalf of the City.

Prohibited Conduct

The conduct prohibited by this policy includes any discriminatory employment action and any unwelcome harassing conduct because of that individual's protected status. Among the types of unwelcome conduct prohibited by this policy are verbal, physical or visual epithets, slurs, negative stereotyping, intimidating acts, and the circulation or posting of written or graphic materials that show hostility toward individuals because of their protected status. Where conduct is not sufficiently severe or pervasive to constitute actionable harassment, this policy prohibits any such conduct in the workplace.

Sexual Harassment

Sexual harassment is harassing conduct based on gender which is usually sexual in nature. This policy forbids any discrimination or harassment based on gender regardless of whether the offensive conduct is sexual in nature. Sexual harassment can occur even if the individual engaged in harassment and the individual being harassed are of the same genders.

According to the U.S. Equal Employment Opportunity Commission ("EEOC"), unwelcome sexual advances, requests for sexual favors, and other verbal, physical or visual conduct based on sex constitute unlawful sexual harassment when: 1. submission to such conduct becomes an implicit or explicit term or condition of employment, 2. submission to or rejection of the conduct is used as a basis for any employment decision, or 3. the conduct has the purpose or effect of unreasonable interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

This policy forbids harassment based on gender regardless of whether it rises to the level of a violation actionable under federal or state law. Examples of gender-based harassment forbidden by this policy include (1) offensive and unwanted sex-oriented verbal kidding, teasing or jokes; (2) repeated unwanted sexual flirtations, advances or propositions; (3) continued or repeated verbal abuse of a sexual nature; (4) graphic or degrading comments about an individual's appearance or sexual activity; (5) offensive visual conduct, including leering, making sexual gestures, the display of offensive sexually suggestive objects or pictures, cartoons or posters; (6) unwelcome pressure for sexual activity; (7) offensively suggestive or obscene letters, notes or invitations; or (8) offensive physical contact such as patting, grabbing, pinching, or brushing against another's body.

Employee Responsibility

Every employee or official of City can help assure that the workplace is free from discrimination or harassment. Every employee or official is expected to avoid any behavior or conduct that could reasonably be interpreted as discrimination or harassment based upon the victims membership in a protected class. Any employee, official or other person who feels that they are being subjected to discrimination or harassment prohibited by this policy should: ask the perpetrator to stop; report the situation to a supervisor or to the department head if the supervisor takes no action or is the perpetrator; or to the Director of Human Resources or an Ethics Committee member if the department head is the perpetrator or takes no action. Any manager or supervisor who is aware of conduct inconsistent with this policy or who receives a report of conduct inconsistent with this policy is to report immediately to the department head or if the department head is the perpetrator, to the Human Resources Director or an Ethics Committee member. This policy does not require reporting harassment or discrimination to any individual who is creating the harassment or discrimination.

Reporting Procedures

If an employee, official or other person experiences or witnesses any conduct in violation of this policy, he/she should immediately notify a supervisor or department head as stated above. The department head should immediately notify the Human Resources Director or a member of the Ethics Committee who are authorized by this policy to receive and act upon complaints of discrimination or harassment for the City.

City of Bismarck Response

All reports describing conduct alleged to be discrimination or harassment inconsistent with this policy will be investigated promptly. The City may take reasonable interim measures to protect the parties and the investigation while the investigation proceeds. The City will take further action, if appropriate, after the complaint has been thoroughly investigated and the City has made its findings as to whether or not a violation has occurred. Upon completion of the investigation, the City may enter a finding that a violation occurred, that no violation occurred, or that there is not sufficient evidence to conclude whether or not a violation occurred.

If an investigation reveals a violation of this policy or of another City policy, then the City will take corrective action against the perpetrator including discipline up to and including dismissal, as is appropriate under the circumstances. The City may discipline an employee for conduct inconsistent with this or any other policy of the City discovered in investigating reports made under this policy regardless of whether the conduct is a violation of Federal or State law or even a violation of City policy. If the person who engaged in discrimination or harassment is not employed by the City, the City will take whatever corrective action is reasonable and appropriate under the circumstances.

Policy Against Retaliation

The City will not tolerate any form of retaliation by an employee or official against any person for reporting discrimination or harassment, for assisting another employee or applicant in making a report, for cooperating in a discrimination or harassment investigation, or for filing any administrative claim with the EEOC or a state governmental agency. Any employees who experiences or witnesses any conduct they believe to be retaliatory should immediately follow the reporting procedures stated above.

Confidentiality

Subject to the North Dakota open records law, the City will attempt to preserve confidentiality to the extent that the situation permits.

Acceptance of Policy

Each City employee and official has a responsibility to conduct in a respectful and considerate manner and in compliance with this policy and to report any conduct inconsistent with this policy. If there are any questions concerning this policy, please contact the Human Resources Director.

Approval Date: 01/28/97

Revision Date: 11/15/06

DISCRIMINATION AND HARASSMENT

Policy is attached

RECEIPT OF POLICY BY EMPLOYEE:

I acknowledge that I have received a copy of the City of Bismarck's Discrimination and Harassment Policy. I agree to read the policy thoroughly, including the purpose and definitions. I agree that if there is any item in the policy that I do not understand, I will seek clarification from my supervisor. I agree to comply with the policy and seek further clarification if I have questions about compliance. I understand that nothing contained in the policy may be construed as creating a promise of future benefits or a binding contract with the City of Bismarck for benefits or for any other purpose. I also understand that this policy and procedure is continually evaluated and may be amended, modified, or terminated at any time.

Please sign and date this receipt and return it to the Human Resources Department.

Signature

Print Name

Date



PUBLIC WORKS – SERVICE OPERATIONS

DATE: December 5, 2016
FROM: Jeff Heintz, Director of Service Operations *JGH*
ITEM: Change Order 5 for Waste Utility Project No. LF 16-01

REQUEST

Approval of Contract Change Order No. 5.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

Waste Utility Project No. LF 16-01 is a project at the City of Bismarck Solid Waste Facility to expand the east half of the MSW pit (Phase 3).

Change Order No. 5 is an additional contract amount due to reconciliation of actual quantities to the estimated quantities as part of the project closeout. The approved project budget was \$981,695.12 which included a 10% contingency of \$81,131.83.

This change order, along with the previous change orders, were within the project scope; however, this represents a change of \$91,013.04 which exceeds the project budget by \$9,881.25 or 11.22% (1.22% over the original project budget amount). Contract Change Order No. 5 and the Revised Project Budget are attached.

RECOMMENDED CITY COMMISSION ACTION

Approve Change Order No. 5 for Waste Utility Project No. LF 16-01.

STAFF CONTACT INFORMATION

Jeff Heintz, Director of Service Operations, 355-1700, jheintz@bismarcknd.gov

PROJECT BUDGET

Number	LF16-01	Description	Bismarck Landfill Pit Expansion (LF16-01)
---------------	---------	--------------------	---

Scheduled Start	8/29/2016	Scheduled End	10/31/2016
------------------------	-----------	----------------------	------------

Project Contracts

<u>Project Construction Contracts</u>	<u>Amount</u>
Northern Improvement Compa	811,318.28
Change Order No. 1	45,519.60
Change Order No. 3	3,669.21
Change Order No. 4	2,272.14
Change Order No. 5	39,552.09
Total Construction Contracts	902,331.32

<u>Engineering Contracts</u>	<u>Contract No.</u>	<u>Amount</u>
		-
Total City Wide Contracts		-

Added Items by Others -
-
-

SUMMARY

TOTAL CONTRACT ITEMS	-----	902,331.32
CONTINGENCIES	0% -----	-
TOTAL CONSTRUCTION COST	-----	902,331.32

<u>Contracted items Eng., Etc.</u>	<u>Contract No.</u>	<u>Amount</u>
		-
Total Contracts		-

Construction Engineering	10.00%	-----	90,233.13
Administration	0.00%	-----	-
Advertising and Legal	0.00%	-----	-
Interest During Construction	0.00%	-----	-
LF16-01 TOTAL PROJECT COST		-----	992,564.45

<u>Project Funding</u>	<u>Amount</u>
Utility Funds	992,564.45
Total Funding	\$ 992,564.45

Date 12/6/2016

CONTRACT CHANGE ORDER FORM

DEPARTMENT

Contract between the City of Bismarck and Northern Improvement Company

Contract Number: 2016-43 Change Order Number: 5

Project/Subproject: LF2016-01 Original Contract Amt: \$811,318.28

Project Description: Subtitle "D" Landfill MSW Pit Expansion

Previous Contract Amount: \$862,779.23 (change order #s 1, 2, 3, & 4)

Change Order Amount: \$39,552.09

Original Contract Date: 10/31/16 Change in Contract Timeline: 12/31/16 (CO #2)

Within Project Scope: (Y) / N*

Within Project Funding: (Y) / N**

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

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

Type of Change Order

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

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

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

Other: (describe)

Project Manager Signature: (<\$15,000) Brenda W Wright 11/26/2016
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



PUBLIC WORKS SERVICE OPERATIONS

DATE: December 7, 2016
FROM: Jeff Heintz, Director of Service Operations 
ITEM: Permission to purchase one (1) Pickup Truck for Public Health using 2016 funds

REQUEST

Please place on the December 13th, 2016 Board of City Commissioner meeting agenda a request to purchase off State of ND bid a pickup truck for Public Health using existing 2016 funds.

BACKGROUND INFORMATION

The pickup truck is State Bid item SSP 3-4, a half ton Extended Cab Short Box 4X4 pickup. The State Bid price for this truck is \$25,600.

RECOMMENDED CITY COMMISSION ACTION

Approve the purchase through Ryan Dodge.

STAFF CONTACT INFORMATION

I will be present at the City Commission meeting to respond to questions the Board maybe have regarding this matter. **Contact:** Jeff Heintz, 355-1700, jheintz@bismarcknd.gov



PUBLIC WORKS – UTILITY OPERATIONS

DATE: December 5, 2016

FROM: Michelle Klose, Director of Utility Operations *MK*

ITEM: Approval of sole source contract and completion of emergency repairs at Wastewater Treatment Plant.

REQUEST

Consider and request use of a sole source contract with PKG to complete the replacement of pipes at the Wastewater Treatment Plant.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The Wastewater Treatment Plant experienced a pipe failure in the pretreatment building on October 7, 2016. The total estimated costs for the repairs are detailed on the attached spreadsheet. Photos of the corrosion on the pipe and the temporary repair are attached. We have issued contracts under emergency procurement 7-01-04, for removal of gravel from the second chamber to gain better access to potentially affected pipes and ultrasonic testing to determine the extent of the pipe damage. The commission has also approved an open-ended engineering contract to assist with assessing the damage, and management of the repair. We have costs documented for work completed, and estimates for work remaining in the attached spreadsheet, the total expected cost is nearly \$313,000.

We are requesting use of a sole source contract with PKG to complete the replacement of pipes. The attached drawing gives an indication of the extent of the work. The contract amount would be for \$215,271. This includes replacement of pipes and addition of air release valves to better manage hydrogen sulfide. A failure of the pipe before the repairs can be completed would have large impacts. All flow into the plant is moved through this pipeline, and would need to be diverted to the ponds which only have possibly two days of storage. PKG is familiar with the piping and the operations of the plant, and their quote has been evaluated by our engineers and determined fair for the work required.

Bypass piping and pumping is also required when the pipes are being replaced. This work will be highly variable depending on the length of the shutdown and weather conditions. The quotes received are to cover the extended period of two weeks. This request is for the approval up to \$18,500 for the bypass work.

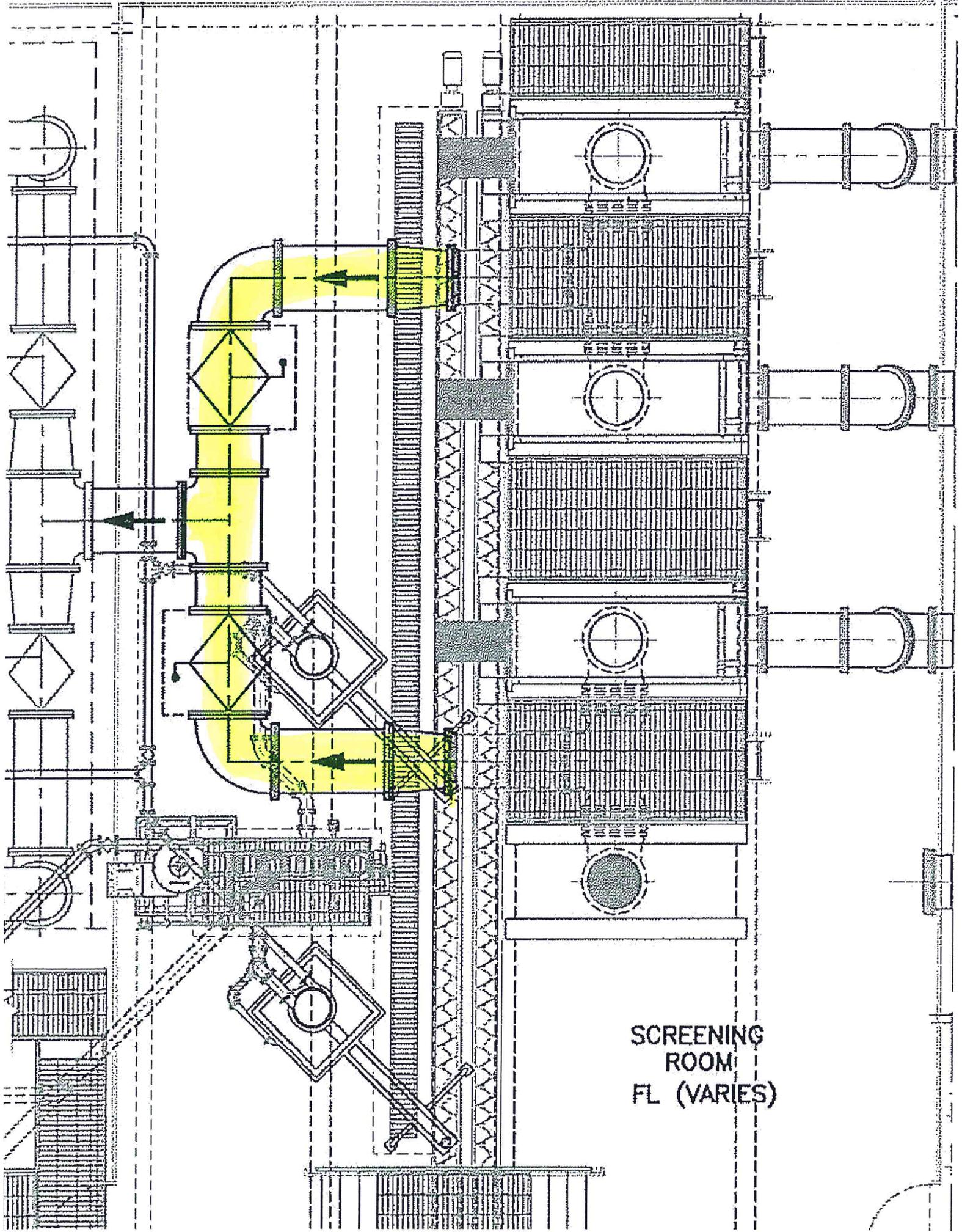
RECOMMENDED CITY COMMISSION ACTION

Approval to use a sole source contract with PKG to complete the emergency replacement of pipes at the Wastewater Treatment Plant, and approval of up to \$18,500 for the bypass work.

STAFF CONTACT INFORMATION

Michelle Klose, Director of Utility Operations, 355-1700, mklose@bismarcknd.gov





SCREENING
ROOM
FL (VARIES)

OPINION OF PROBABLE COST - HDPE PIPE - UNDER SCREENING ROOM ONLY							
ITEM	ITEM DESCRIPTION	UNIT	UNIT PRICE	QUANTITY	COST	LEAD TIME	COMMENTS
LABOR							
1	PREP AND SETUP	HR	\$75.00	200.00	\$15,000.00	-	PKG quote
2	DEMO AND REPLACEMENT	HR	\$75.00	300.00	\$22,500.00	-	PKG quote
MATERIAL AND EQUIPMENT							
3	PIPE AND FITTINGS FROM HD SUPPLY, PIPE SUPPORTS, 30" FULL PORT PLUG VALVES WITH HANDWHEEL OPERATORS, MISC. ACCESSORIES, 2" AIR RELEASE PIPING	LUMP SUM	\$117,840.12	1.00	\$117,840.12	4 TO 6 WEEKS	PKG quote - HD supply piping and valves. Kennedy valves quoted. Savings if Pratt valves are used but longer lead time.
4	PICKUPS, FORKLIFT, EQUIPMENT HOISTS, AND OTHER EQUIPMENT. DISPOSAL OF OLD MATERIAL	LUMP SUM	\$7,000.00	1.00	\$7,000.00	-	PKG quote
5	15% FEE - OVERHEAD AND PROFIT ON MATERIAL AND EQUIPMENT	LUMP SUM	\$24,351.02	1.00	\$24,351.02	-	PKG quote
SUBCONTRACTOR							
6	CONCRETE SAW CUTTING AND CORING ALLOWANCE	LUMP SUM	\$15,000.00	1.00	\$15,000.00	-	PKG quote but since this is an allowance item, could go up or down slightly. Estimated based on price from Edson's
7	2.5% OVERHEAD AND PROFIT ON SUBCONTRACTOR	LUMP SUM	\$750.00	1.00	\$750.00	-	PKG quote but since this is an allowance item, could go up or down slightly. Estimated based on price from Edson's
SUPPLEMENTAL COSTS							
8	SMALL TOOLS/EQUIPMENT AND EXPENDABLES	LUMP SUM	\$3,750.00	1.00	\$3,750.00	-	PKG quote. Equal to 10% of labor
9	SAFETY EXPENSE	LUMP SUM	\$750.00	1.00	\$750.00	-	PKG quote. Equal to 2% of labor
10	TEMPORARY CONSTRUCTION FACILITIES	LUMP SUM	\$4,123.82	1.00	\$4,123.82	-	PKG quote. Equal to 2% of project costs.
11	BONDS & INSURANCE PREMIUMS	LUMP SUM	\$4,206.30	1.00	\$4,206.30	-	PKG quote. Equal to 2% of project costs.

CONSTRUCTION TOTAL \$215,271.00 PKG quote

BYPASS INFLUENT TO PONDS AND BACK TO EQ TANK AND PRIMARY SPLITTER BOX: \$18,500.00 Rain for Rent

ENGINEERING - PREVIOUSLY INVOICED: \$21,234.50
 ENGINEERING - WORK COMPLETED BUT NOT YET INVOICED (THROUGH 11/18/16): \$8,207.03
 ENGINEERING - REMAINING DESIGN AND BIDDING ESTIMATE: \$7,800.00 Includes design time based on quoting by 1 contractor. Will increase if project is bid.
 ENGINEERING - ESTIMATE OF CONSTRUCTION ADMINISTRATION: \$29,500.00 Full time wastewater RPR 2 weeks, local RPR 2 weeks
 VISTEC INVOICE: \$8,144.00 Gravel Vac.
 EDSONS INVOICE: \$2,000.00 Concrete wall cutting
 BRAUN INVOICE: \$1,923.50 Ultrasonice pipe thickness testing - estimate by Braun, will get me exact number soon
 EMERGENCY PIPE REPLACEMENT PROJECT TOTAL: \$312,580.03

PKG CONTRACTING, INC.
 4301 SOUTH UNIVERSITY DRIVE, FARGO, ND 58104
 PHONE (701) 232-3878 • FAX: (701) 232-3935
 e-mail: admin@pkg-inc.com

12/5/16

Mr. Colin Marcusen

SEH, Inc.
 1200 25th Ave S.
 St. Cloud, MN 56302

RE: Bismarck WWTF PTB Piping
 Bismarck, ND

SUBJECT: Proposal

Dear Mr. Marcusen, PE

Below is quote for removal and replacement of existing 30" / 36" Piping under the existing Pretreatment building as we have discussed and as noted below.

Costs below are associated with the removal of existing DIP pipe, and installation of HDPE spools prefabricated by HD Supply. (See attached drawing showing piping). New valves quoted as Kennedy valves currently on the shelf. Quote also includes (12) HDG adjustable pipe supports. Some to go under existing screens where pea rock was removed. (A saw cutting allowance of \$15,000 is included). Note, no painting, electrical, bypass pumping, or on site HDPE Fab is included. Supports sized based on 30" and 36" IPS pipe. Price may need to be adjusted if OD of HDPE pipe fittings is larger.

A.)	1. Labor / Burden / Lodging / Per Diem	37,500.00	
	2. Material (including tax):	117,840.12	
	3. Equipment: (Fuel, Oil, & Other) / Disposal	7,000.00	
	4. 15% Fee (Overhead & Profit on items A.1.2.3)	24,351.02	
	<i>Subtotal Section A</i>		\$186,691.14
B.)	1. Subcontractor: (Saw cut / Coring Allowance)	15,000.00	
	2. 5% Fee (Overhead & Profit on item B.1)	750.00	
	<i>Subtotal Section B</i>		\$15,750.00
C.)	Supplemental Costs:		
	1. Small Tools/Equip. & Expendables (10% of A.1)	3,750.00	
	2. Safety Expense (2% of A.1)	750.00	
	3. Temporary Construction Facilities (2% of Section A, B & C.1)	4,123.82	
	4. Bonds & Insurance Premium (2% of Section A, B, C1., C.2)	4,206.30	
	<i>Subtotal Section C</i>		\$12,830.12
	TOTAL CHANGE REQUEST		\$215,271

Should you need additional information, please do not hesitate to contact me.

Thank you,

PKG Contracting, Inc.


 Michael A. Sikorski
 Project Manager

attachments

PKG CONTRACTING, INC.

4301 SOUTH UNIVERSITY DRIVE • FARGO, ND 58104 • PHONE (701) 232-3878 • FAX: (701) 232-3935 • www.pkg-inc.com

12-5-16

BISMARCK PTB PIPE / VALVE REPLACE

wkst .

LABOR:

PREP / SETUP \approx 200 mh-s
 Demo / Rplce \approx 300 wks

$$500 \times 75$$

$$= 37,500$$

LA / Hous / Sub

MAT'L.

PIPE / FINING 17 DS

33,540

SUPPORTS

10,800

VALVES

63,300

MISC. ACCESSORIES: 2" IRV
 Piping allow

3,000

110,640

w/ 6.5%

117,840.12

EQ. TOOLS.

ACCUPS.

1500

FLLIFT

1500

MIC EQ HANDSEK

1500

RT

4,000

5500

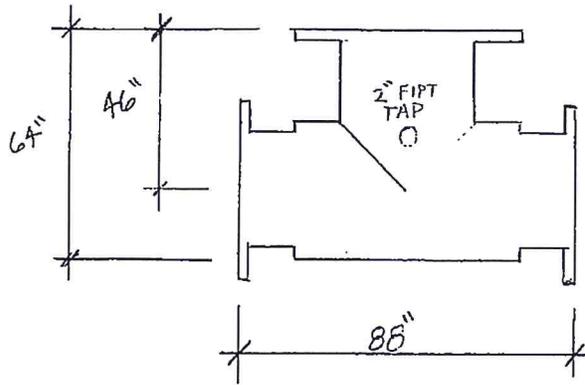
Disposal old mat'l

1500

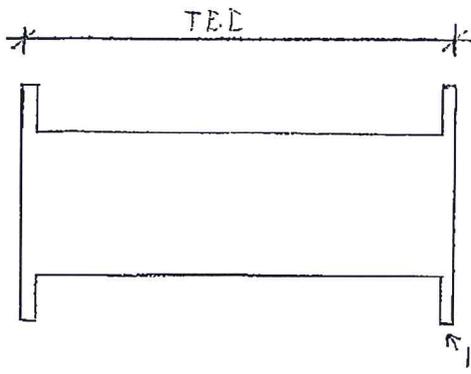
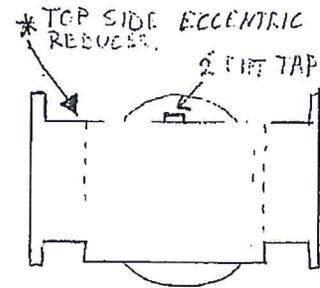
7,000

SUPPLY®

WATERWORKS

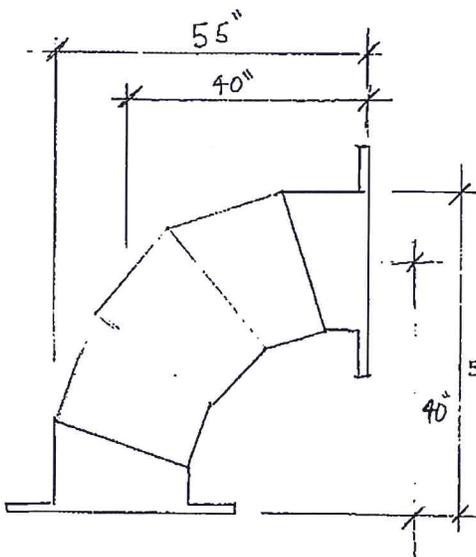


SDR32.5 IPS HDPE
 36" TEE W/ 36" X 30" ECC.
 REUSEL. ENDS ON 2 RUNS
 FLG ENDS W/ DI RINGS



SDR32.5 IPS HDPE
 30" FLG X FLG STROOL
 W/ DI RINGS

1/2" HDPE THICK FLANGE



30" SDR32.5 IPS HDPE
 FLG 90 BEND
 W/ DI RINGS



Bid Proposal for Bismarck WWTF Improvement

ALL BIDDING CONTRACTORS #230
 Job Location: Bismarck, ND
 Engineer: SEH
 Bid Date: 12/02/2016 12:00 p.m.
 HD Supply Bid #: 209289

HD Supply Waterworks
 16195 54th St NE
 St Michael, MN 55376
 Phone: 763-428-7473
 Fax: 763-428-7559

Seq#	Qty	Description	Units	Price	Ext Price
10		HDPE PRICES FIRM THRU 12-16-16			
30	2	30"X7'-0" FLG X FLG SDR32.5 IPS HDPE SPOOL W/ DI BACKUP RINGS	EA	1,515.00	3,030.00
40	2	30" SDR32.5 IPS HDPE FLANGED 90 BEND W/ DI BACKUP RINGS (SHORT RADIUS)	EA	3,455.00	6,910.00
50	1	36" SDR32.5 IPS HDPE FLG TEE W/ 2 EA 30" FLG OUTLETS & DI BU RINGS & 2" FIPT TAP	EA	6,975.00	6,975.00
70	8	30" STAINLESS STEEL FLANGE ACC SET (EPDM GASKET)	EA	797.00	6,376.00
80	1	36" STAINLESS STEEL FLANGE ACC SET (EPDM GASKET)	EA	1,084.00	1,084.00
100	2	30" MEGAFLANGE DIP	EA	1,605.00	3,210.00
110	1	36" MEGAFLANGE DIP	EA	2,455.00	2,455.00
130		*FREIGHT ADD TO JOBSITE			
140		\$3000 TRUCK LOAD* <i>7500 / misc freight direct</i>			
160		HD SUPPLY- WATERWORKS IS NOT			
170		LIABLE FOR DELIVERY DELAYS,			
180		CANCELLATIONS OR PRICE			
190		INCREASES RESULTING FROM ANY			
200		CAUSE BEYOND OUR CONTROL.			
210		THESE INCLUDE BUT ARE NOT			
220		LIMITED TO: MANUFACTURERS'			
230		SHORTAGES, AVAILABILITY OR			
240		TIMELINESS OF TRANSPORTATION,			
250		MATERIALS, FUELS, OR SUPPLIES.			
260		THIS QUOTE IS NOT A CONTRACT			
270		TO SUPPLY MATERIAL OR			
280		GUARANTEE OF PRODUCT			
290		AVAILABILITY.			
				Sub Total	30,040.00
				Freight	3,000.00
				Tax	0.00
				Total	33,040.00

33,540

ACME Construction Supply, Co.

Quotation

Quote PKG Contracting, Inc.
 To: C/O Bismarck WWTF
 601 London Ave.
 Bismarck, ND 58504
 United States

Quote Number:	12540		Contact:	
Quote Date:	11/28/16	Expires: 12/28/16	Inquiry:	
Customer:	PKG		Terms:	Net 30 Days
Salesman:	PATRICKO		Phone:	(701) 232-3878
Ship Via:	Most Economical Option		FAX:	(701) 232-3935

<u>Item</u>	<u>Part Number</u> <u>Description</u>	<u>Revision</u>	<u>Quantity</u>	<u>Price</u>	<u>Ext. Price</u>
1	NCF211-02072 Fig.317/319/216T / 30"IPS / BOP= 33" ; HDG		8	529.3365 /EA	4,234.6920
2	NCF211-02073 Fig.317/319/216T / 36"IPS / BOP= 33" ; HDG		4	528.3472 /EA	2,113.3888
Total:					6,348.0800

Based on IPS
Pipe OD

FREIGHT	\$ 1,000
Anchors	1060
Grout	200
Isolation Mats	200

8808

+ 1000 ea
+ Allowance
Support @ valve,

+ 2000

10,808



Bid Proposal for Bismarck Wastewater Treatment Valve

ALL BIDDING CONTRACTORS #230
 Job Location: Bismarck, ND
 Engineer: SEH
 Bid Date: 11/30/2016 12:00 p.m.
 HD Supply Bid #: 209092

HD Supply Waterworks
 16195 54th St NE
 St Michael, MN 55376
 Phone: 763-428-7473
 Fax: 763-428-7559

Seq#	Qty	Description	Units	Price	Ext Price
20	2	30" FLG KENNEDY PLUG VALVE W/ GEAR & HAND WHEEL, EPOXY LINED	EA	31,650.00	63,300.00
40		*FOB JOBSITE*			
50		*2 WEEK LEAD TIME ARO*			
60		*VALVES CURRENTY ON HAND -			
70		SUBJECT TO PRIOR SALE*			
90		HD SUPPLY- WATERWORKS IS NOT			
100		LIABLE FOR DELIVERY DELAYS,			
110		CANCELLATIONS OR PRICE			
120		INCREASES RESULTING FROM ANY			
130		CAUSE BEYOND OUR CONTROL.			
140		THESE INCLUDE BUT ARE NOT			
150		LIMITED TO: MANUFACTURERS'			
160		SHORTAGES, AVAILABILITY OR			
170		TIMELINESS OF TRANSPORTATION,			
180		MATERIALS, FUELS, OR SUPPLIES.			
190		THIS QUOTE IS NOT A CONTRACT			
200		TO SUPPLY MATERIAL OR			
210		GUARANTEE OF PRODUCT			
220		AVAILABILITY.			
				Sub Total	63,300.00
				Tax	0.00
				Total	63,300.00

Freight assumed Inc.



PUBLIC WORKS – UTILITY OPERATIONS

DATE: December 5, 2016
FROM: Michelle Klose, Director of Utility Operations *MK*
ITEM: Change Order Request No. 1 for Wachter Ave Master Lift Station Project

REQUEST

Approve Contract Change Order No. 1 with Northern Plains Construction on the Wachter Avenue Master Lift Station Project.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The general contractor, Northern Plains Construction, has submitted a change order request (attached) for \$16,145 related to the helical pier installation depth. The contract documents require that the helical piers be installed until a specified torque is reached. At the time of bid, the anticipated helical pier installation depth was 45' – 47' based on four (4) helical pier quotes provided by the general contractor. The actual helical pier installation depth averaged 91'.

The change order also includes a deduction of building plaque for \$2,040.

RECOMMENDED CITY COMMISSION ACTION

Approve Change Order No. 1 in the amount of \$14,105 with Northern Plains Construction for the Wachter Avenue Master Lift Station Project.

STAFF CONTACT INFORMATION

Michelle Klose, Director of Utility Operations, 701.355.1700, mklose@bismarcknd.gov

CONTRACT CHANGE ORDER FORM

PUBLIC WORKS DEPARTMENT

Contract between the City of Bismarck and **Northern Plains Contracting, Inc.**

Contract Number: **SU 16-63**

Change Order Number: **1**

Project/Subproject: **SANSWRUTIL.LEFTSTATIONREP.WACHTERCONST**

Original Contract Amount: **\$2,511,410**

Project Description: **Wachter Ave Master Lift Station Project Improvements**

Previous Contract Amount: **\$2,511,410**

Change Order Amount: **\$14,105**

Original Contract Date: **7-26-2016** Change in Contract Timeline: **0 days**

Within Project Scope: Y / N*

Within Project Funding: Y / N**

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

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

Type of Change Order

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

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

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

Other: (describe)

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

Department Head Signature: (<\$25,000) Michele Klose _____ Date 12/5/2016

On agenda for 12/13/16

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

Date of Issuance: 11/28/16	Effective Date: 11/28/16
Owner: City of Bismarck, North Dakota	Owner's Contract No.: SU 16-63
Contractor: Northern Plains Contracting, Inc.	Contractor's Project No.: 16-500
Engineer: Apex Engineering Group	Engineer's Project No.: 10.118.0014
Project: Wachter Avenue Master Lift Station Improvements	Contract Name: General Construction

The Contract is modified as follows upon execution of this Change Order:

Description: RFC 1 (Helical Piers) and RFC 2 (Building Plaque).

Attachments: Change Order 1 Summary, RFC 1, RFC 2

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: <u>\$ 2,511,410.00</u>	Original Contract Times: Substantial Completion: <u>September 20, 2017</u> Ready for Final Payment: <u>December 13, 2017</u> City of Bismarck Contract Completion: <u>April 11, 2018</u>
[Increase] [Decrease] from previously approved Change Orders No. <u>n/a</u> to No. <u>n/a</u> : <u>\$ 0.00</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>n/a</u> to No. <u>n/a</u> : Substantial Completion: <u>0 days</u> Ready for Final Payment: <u>0 days</u> City of Bismarck Contract Completion: <u>0 days</u>
Contract Price prior to this Change Order: <u>\$ 2,511,410.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>September 20, 2017</u> Ready for Final Payment: <u>December 13, 2017</u> City of Bismarck Contract Completion: <u>April 11, 2018</u>
[Increase] [Decrease] of this Change Order: <u>\$ 14,105.00</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: <u>0 days</u> Ready for Final Payment: <u>0 days</u> City of Bismarck Contract Completion: <u>0 days</u>
Contract Price incorporating this Change Order: <u>\$ 2,525,515.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>September 20, 2017</u> Ready for Final Payment: <u>December 13, 2017</u> City of Bismarck Contract Completion: <u>April 11, 2018</u>

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>Mike Berg</u> Engineer (if required)	By: _____ Owner (Authorized Signature)	By: <u>Spenny Johnson</u> Contractor (Authorized Signature)
Title: <u>Project Manager</u>	Title: _____	Title: <u>Project Manager</u>
Date: <u>12/2/16</u>	Date: _____	Date: <u>11/29/16</u>

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____



Water | Transportation | Municipal | Facilities

Change Order 1 Summary

General Construction Contract

July 2016 – November 2016

Wachter Ave. Master Lift Station Improvements City of Bismarck, ND

City of Bismarck Project No. SU 16-63
Apex Project No. 10.118.0014

RFC 1 Helical Pier Installation Depth	\$16,145
RFC 2 Building Plaque Deduct	<u>-\$2,040</u> (deduct)
Total Change Order #1	\$14,105

Original Contract Price:	\$2,511,410
Net changes from previously approved Change Orders:	0
Contract Price Prior to this Change Order:	\$2,511,410
Contract Price Incorporating This Change Order:	\$2,525,515

Original General Construction Contingencies (5%):	\$125,570
Remaining General Construction Contingencies:	\$111,465

Descriptions:

RFC 1 Helical Pier Installation Depth: The new building addition is supported by helical piers. This type of pier is screwed into the soil until a design torque is reached. In the bid phase the contractors designed and bid the helical piers based on soil borings provided in the contract documents. During construction the actual required installation depth was much greater than expected. It is believed that the increased installation depth is due to soil conditions that were materially different from those reasonably anticipated at the time of bid.

RFC 2 Building Plaque Deduct: The building plaque was deleted from the project.

NORTHERN PLAINS CONTRACTING CHANGE ORDER PROPOSAL

Project: Wachter Ave Master Lift Station Improvements
Date: 10/10/2016
CO Description: Helical Pile Installation Adjustment

Bond: 2.00%
 Change Order No. 16-500-CO01

Labor

Description	Quantity	Unit	Unit Price	Total
Project Manager (1/2 hour minimum)		Whr	\$ 90.00	\$ -
Superintendent		Whr	\$ 70.00	\$ -
Associate		Whr	\$ 60.00	\$ -
Labor Total				\$ -

Material

Description	Quantity	Unit	Unit Price	Total
				\$ -
Material Total				\$ -

Subcontracts

Description	Quantity	Unit	Unit Price	Total
Veit (\$22.5/LF Over 47')	750	LF	\$ 22.50	\$ 16,875.00
Subcontract Total				\$ 16,875.00

Supplemental & Equipment Costs

Description	Quantity	Unit	Unit Price	Total
Equipment Total				\$ -

Apex Response: Approved in the amount of \$16,145 as shown below (MAB 11/10/16).

Estimated 10' Pier Lengths (5 lengths x 16 piers)	80		
Reasonable variability (+/- 10%)	8		
Contractors Responsibility	88		
Installed 10' Pier Lengths	155		
Contractors Responsibility	-88		
Owner's Responsibility	67		
67 additional 10' pier lengths, \$225 per extension	\$15,075		
Contractor Profit & Overhead (5%)	\$754		
Subtotal	\$15,829		
Bond & Insurance (2%)	\$317		
Total Cost	\$16,145		

Cost Summary

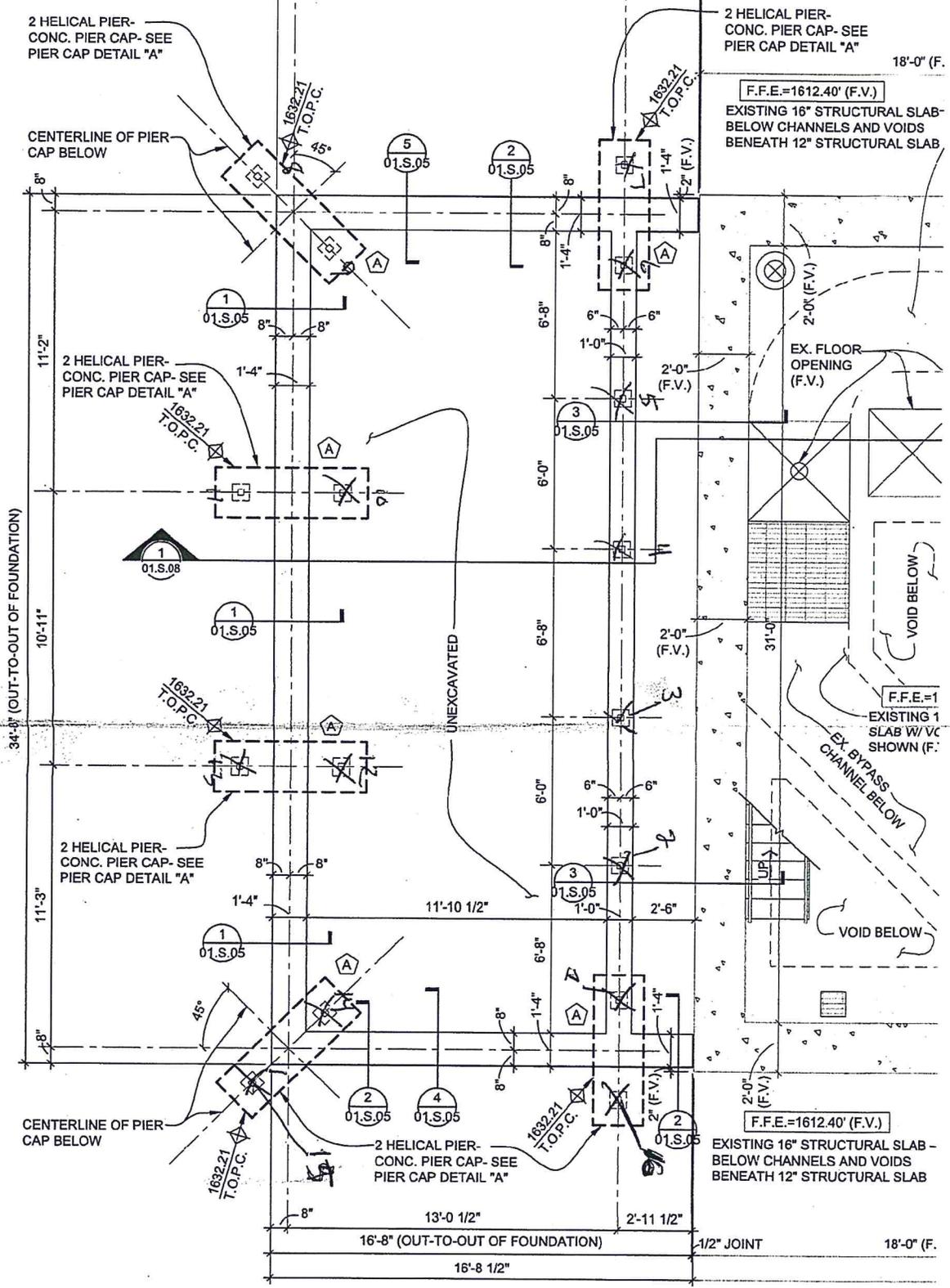
Labor	\$	-
Material	\$	-
Subcontracts	\$	16,875.00
Equipment	\$	-
Sub-Total	\$	16,875.00
Margin @ 15%	\$	-
Sub - Margin @ 5%	\$	843.75
Sub-Total	\$	17,718.75
Bond & Insurance @: 2.00%	\$	354.38
Total Cost (addition)	\$	18,073.13

16-0293 WACHTER LIFT STATION HELICAL PILE RECAP
 DESIGN CAPACTIY 40 KIPS
 ULTIMATE CAPACITY 80 KIPS

<u>PILE #</u>	<u>LENGTH</u>	<u>10' LEADS</u>	<u>10' EXT</u>	<u>5' Lead</u>	<u>Torque</u> <u>Ave. Last 3 feet</u>	<u>Ultimate</u> <u>Capacity</u>
1	94	1	9		9800	83.3 Kips
2	96	1	9		9700	82.5 Kips
3	102	1	10		9733	82.7 Kips
4	96	1	9		9633	81.9 Kips
5	95	1	9		9600	81.6 Kips
6	96	1	9		9566	81.3 Kips
7	91	1	9		9866	83.9 Kips
8	40	1	4		9616	81.7 Kips
9	92	1	9		9633	81.9 Kips
10	94	1	9		9600	81.6 Kips
11	94	1	9		9633	81.9 Kips
12	96	1	9		9533	81 Kips
13	96	1	9		9633	81.9 Kips
14	96	1	9		9533	81 Kips
15	85	1	8		9666	82.2 Kips
16	<u>92</u>	<u>1</u>	<u>9</u>	<u>0</u>	<u>9600</u>	81.6 Kips
	1455	16	139	0		

Ave Depth 90.9 Feet

1632.06
EX. T.O.P.



REVISIONS

Description	Date





Greg Norris
Project Manager
14000 Veit Place
Minneapolis, MN 55374

Office 763.428.6756
Mobile 612.282.5002
Fax 763.428.8348
gnorris@VeitUSA.com

18 July, 2016

Bidding Contractors

PROJECT: Helical Piles for Wachter Avenue Lift Station, Bismarck, North Dakota

QUOTE: Helical Piles - Lump Sum: \$28,970.00

NOTE: This quote is based on using Helical Anchors, Inc. (HAI) materials.

INCLUDES:

- One Mobilization and all work done in one continuous operation.
- Furnish and Install sixteen (16) galvanized helical piles and black pile caps for encasement in concrete foundation. Work will take at least two (2) days.
- Helical piles will have a design depth, ultimate load capacity and quantities as listed below:
16 Piles – 80 Kips Compressive 47'
- Piles will be placed to a design depth. For depths beyond the design depth, an additional charge of \$225.00 per 10 foot section used.
- Professional Engineering Design

EXCLUDES:

- Testing and Third Party Observation of Pile Installation and Testing
- Permits, Fees, and Licenses, Layout/Surveying Services
- Due to the specialized nature of our work, limited/competitive crew sizes, training and experience required of our personnel in the means and methods of our work, we cannot be responsible for full or partial participation in or compliance with specified EEO workforce goals that may be applicable to the contract. After award, we will work with you in trying to meet these goals
- Relocation of buried or concealed utilities, which may interfere with or be affected by our work.
- Installing helical piles through frozen ground.
- Excavation, to include, but not limited to any pot-holing, hydro-excavation, or other means and methods to locate, expose, or clear area to facilitate installation of helical piles. An OSHA Compliant Excavation is required.

NOTE:

- Veit assumes access to immediate work area for crew and equipment to be provided.
- Lead time on the material is approximately 2-3 weeks.
- Quote is valid for 30 days and if required, Bonds will be 1% of the above price.

Any questions, please feel free to call me at 763-428-6756

Respectfully,

Gregory A. Norris LEED AP
Project Manager
Foundation Group
Veit & Company, Inc.
gnorris@veitusa.com

NORTHERN PLAINS CONTRACTING CHANGE ORDER PROPOSAL

Project: Wachter Ave Master Lift Station Improvements

Date: 10/14/2016

CO Description: Building Plaque Deduct

Bond: 2.00%
Change Order No. 16-500-CO02

Labor

Description	Quantity	Unit	Unit Price	Total
Project Manager (1/2 hour minimum)		Whr	\$ 90.00	\$ -
Superintendent		Whr	\$ 70.00	\$ -
Associate		Whr	\$ 60.00	\$ -
Labor Total				\$ -

Material

Description	Quantity	Unit	Unit Price	Total
Building Plaque Deduct	1	LS	\$ (2,000.00)	\$ (2,000.00)
Material Total				\$ (2,000.00)

Subcontracts

Description	Quantity	Unit	Unit Price	Total
				\$ -
Subcontract Total				\$ -

Supplemental & Equipment Costs

Description	Quantity	Unit	Unit Price	Total
Equipment Total				\$ -

Additional Notes

Cost Summary			
Labor		\$	-
Material		\$	(2,000.00)
Subcontracts		\$	-
Equipment		\$	-
Sub-Total		\$	(2,000.00)
Margin @		\$	-
Sub - Margin @		\$	-
Sub-Total		\$	(2,000.00)
Bond & Insurance @:	2.00%	\$	(40.00)
Total Cost (addition)		\$	(2,040.00)

Apex Response: Approved. This will be incorporated into a future change order.

(MAB 10/14/16)



PUBLIC WORKS SERVICE OPERATIONS

DATE: December 12, 2016

FROM: Jeff Heintz, Director of Service Operations 

ITEM: Request approval to accept additional snow hauling contractors at the discretion of the Public Works Service Operations Director

REQUEST

Please place on the December 13th, 2016 Board of City Commission meeting agenda approval to accept additional contract snow haulers.

BACKGROUND INFORMATION

Contracted snow haulers were approved by bid process at the November 8th Commission meeting. Due to the volume of snow received we need additional contracted snow haulers to help clear the city.

RECOMMENDED CITY COMMISSION ACTION

Request permission to accept contracted snow haulers, that will not be used until the approved contractors from the November 8th meeting are given the first opportunity to haul snow.

STAFF CONTACT INFORMATION

I will be present at the City Commission meeting to respond to questions the Board may have regarding this matter. **Contact:** Jeff Heintz, 355-1700, jheintz@bismarcknd.gov



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: December 5, 2016

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

ITEM: Part of Lot 3, Block 5, Northern Pacific Addition – Appeal

REQUEST

Anne Cleary is appealing the decision of the Board of Adjustment to deny a variances from Sections 14-04-03(4) of the City Code of Ordinances (R5-Residential)(Lot Area) to allow the construction of a single-family dwelling on a lot, platted prior to 1953, that is less than 5,000 square feet; from Section 14-04-03(7) of the City Code of Ordinances (R5-Residential)(Front Yard) to reduce the required front yard setback from twenty-five (25) feet to ten (10) feet; and from Section 14-04-03(9) of the City Code of Ordinances (R5-Rear Yard) to reduce the required rear yard setback from twenty (20) feet to five (5) feet.

Ms. Cleary is proposing to construct a single-family dwelling at 717 North Mandan Street. The lot is located within a subdivision (Northern Pacific Addition) that was platted in 1879 and certified and recorded in 1912. This parcel was created for the construction of a water pump house owned and operated by the City of Bismarck. The City of Bismarck sold the property in July 2015 and the pump house was demolished in November 2015.

The property is located in central Bismarck, between West Avenue C and West Avenue D, along the east side of North Mandan Street.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The Board of Adjustment held a public hearing on the variance request on November 3, 2016.

Numerous members of the public spoke at the public hearing. Written comments and a petition in opposition to the proposed request were submitted to the Board of Adjustment for review and are attached to the draft minutes (attached).

At the conclusion of the public hearing, and based on the findings contained in the staff report, the Board of Adjustment unanimously denied the variances needed to allow the construction of a single-family dwelling.

RECOMMENDED CITY COMMISSION ACTION

Consider the request for an appeal of the November 3, 2016 decision of the Board of Adjustment to deny variances from Section 14-04-03(4) of the City Code of Ordinances (R5-Residential)(Lot Area) to allow the construction of a single-family dwelling on a lot, platted prior to 1953, that is less than 5,000 square feet; from Section 14-04-03(7) of the City Code of Ordinances (R5-Residential)(Front Yard) to reduce the required front yard setback from twenty-five (25) feet to ten (10) feet; and from Section 14-04-03(9) of the City Code of Ordinances (R5-Rear Yard) to reduce the required rear yard setback from twenty (20) feet to five (5) feet on Part of Lot 3, Block 5, Northern Pacific Addition (717 N Mandan Street).

STAFF CONTACT INFORMATION

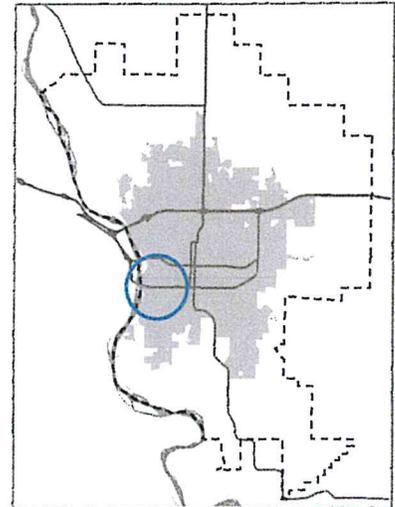
Please contact Jenny Wollmuth, CFM, the planner in our office assigned to this request at 355-1845 or jwollmuth@bismarcknd.gov.

Jenny Wollmuth, CFM, will present this item at the meeting.

Application for: Variance

Project Summary

Title:	The South 50 feet of the W1/3 of Lot 4, Block 5, Northern Pacific Addition (717 North Mandan Street)
Status:	Board of City Commissioners – Appeal
Owner(s):	Anne Cleary
Project Contact:	Blake Preszler, Plain View LLC
Location:	In central Bismarck, between West Avenue C and West Avenue D, along the east side of North Mandan Street
Request:	Variance from Sections 14-04-03(4); 14-04-03(7); and 14-04-03(9) of the City Code of Ordinances (R5 – Residential)(Lot Area / Front Yard / Rear Yard)



Staff Analysis

The applicant is requesting variances to allow the construction of a single-family dwelling on a lot platted prior to 1953, that is less than 5,000 square feet; to reduce the front yard setback along the west side of the property adjacent to North Mandan Street from twenty-five (25) feet to ten (10) feet; and to reduce the required rear yard setback located along the east side of the property from twenty (20) feet to five (5) feet.

The lot is located within a subdivision (Northern Pacific Addition) that was platted in 1879 and certified and recorded in 1912. The parcel was created for the construction of a water pump house owned and operated by the City of Bismarck. The City of Bismarck sold the property in July 2015 and the pump house was demolished prior to the sale of the parcel.



717 North Mandan Street

Applicable Provision(s) of Zoning Ordinance

Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, "A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular

(continued)

hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.”

Section 14-04-03(4) of the City Code of Ordinances states, “Each permitted structure hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than seven thousand (7,000) square feet. Provided, however, that on a record lot corresponding to a plat recorded prior to 1953, a single-family dwelling and accessory buildings may be erected, provided said lot contains no less than five thousand (5,000) square feet.” The lot is located within a plat recorded prior to 1953. The plat titled Northern Pacific Addition was recorded in 1912. However, the lot is less than 5,000 square feet. According to property information the lot is 2,500 square feet in area.

Section 14-04-03(7) of the City Code of Ordinances (R5 – Residential)(Front Yard) states, “Each lot shall have a front yard not less than twenty-five (25) feet in depth.” According to the site plan submitted with the application the proposed single-family dwelling would be setback ten (10) feet from the front property line located along the west side of the property adjacent to North Mandan Street.

Section 14-04-03(9) of the City Code of Ordinances (R5 – Residential)(Rear Yard) states, “Each lot shall have a rear yard not less than twenty (20) feet in depth.” According to the site plan submitted with the application the proposed single-family dwelling would be located five (5) feet from the rear property line along the east side of the property.

Required Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific

parcel of land involved that are not generally applicable to other properties in this area and within R5 - Residential zoning classifications.

2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Staff Recommendation

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Attachments

1. Location Map
2. Site Plan and Architectural Renderings
3. Written Statement of Hardship
4. Board of Adjustment Minutes , November 3, 2016 - Draft

Bismarck *City Administration*

November 28, 2016

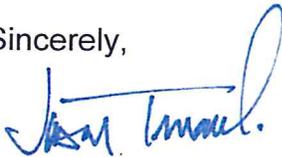
ANNE CLEARY
1603 1/2 HARMON AVE
BISMARCK ND 58501-2872

Dear Ms. Cleary:

This letter is to inform you that we have received your letter notifying the Bismarck City Commission that you have requested an appeal of the Board of Adjustment's November 3, 2016 decision to deny variances from Section 14-04-03(4) of the City Code of Ordinances (R5-Residential)(Lot Area) to allow the construction of a single-family dwelling on a lot, platted prior to 1953, that is less than 5,000 square feet, from Section 14-04-03(7) of the City Code of Ordinances (R5-Residential)(Front Yard) to reduce the required front yard setback from twenty-five (25) feet to ten (10) feet and from Section 14-04-03(9) of the City Code of Ordinances (R5-Rear Yard) to reduce the required rear yard setback from twenty (20) feet to five (5) feet, located on The North 50 feet of the West 1/3 of Lot 4, Block 5, Northern Pacific Addition (717 North Mandan Street).

We have put your appeal on the regular agenda of the December 13, 2016 City Commission meeting. The meeting will be held in the Tom Baker Meeting Room of the City/County Office Building at 221 North Fifth Street and will begin at 5:15 p.m. You or your representative should attend this meeting to answer any questions the Commission may have.

Sincerely,



Jason Tomanek
Assistant City Administrator
JT/keh

cc: Blake Preszler, Plain View Design Co.
Jenny Wollmuth, Planner
Carl Hokenstad, Community Development Director

From: [Jenny Wollmuth](#)
To: [Hilary Balzum](#)
Subject: FW: Appealing variance
Date: Tuesday, November 08, 2016 12:15:30 PM

Hilary,

Please set up a BCCA project for VAR2016-023.

Note: APO letters need to be in the mail by December 1ST.

Jenny Wollmuth, CFM, Planner
Community Development Department
Planning Division
701 355 1840 Department

www.bismarcknd.gov

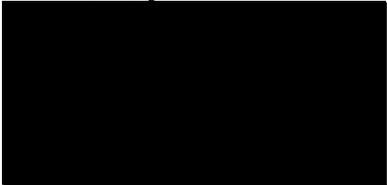
From: Anne Cleary 
Sent: Tuesday, November 08, 2016 12:13 PM
To: Jenny Wollmuth
Subject: Appealing variance

Hello Jenny,

I'm writing to you to request to appeal the variance denied on November 3rd. I would like to attend and be on the schedule for the December 13th city commission meeting. Please let me know if that works, and if you need any other information from me for this appeal.

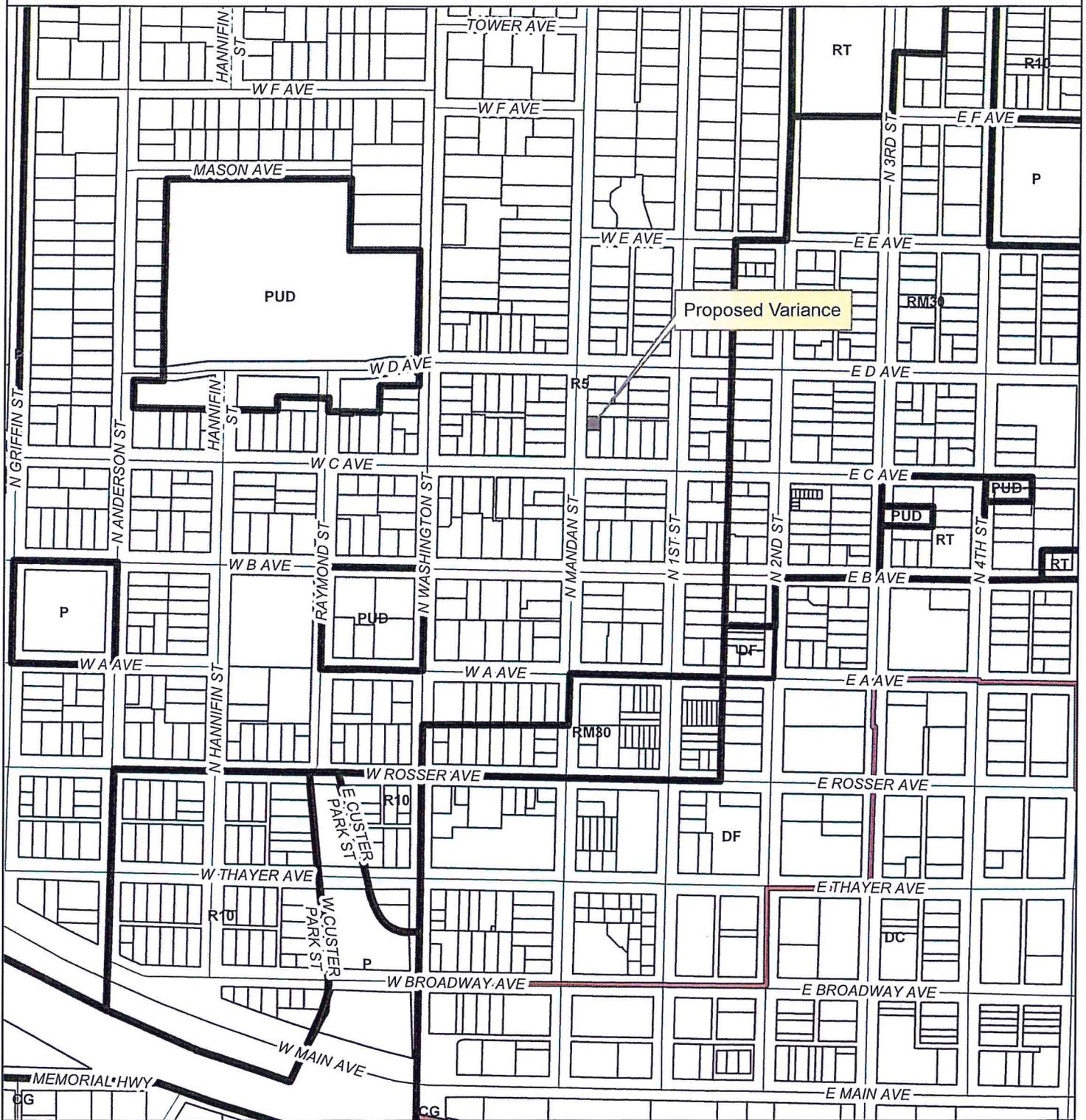
Thank you,
Anne Cleary

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Anne Cleary


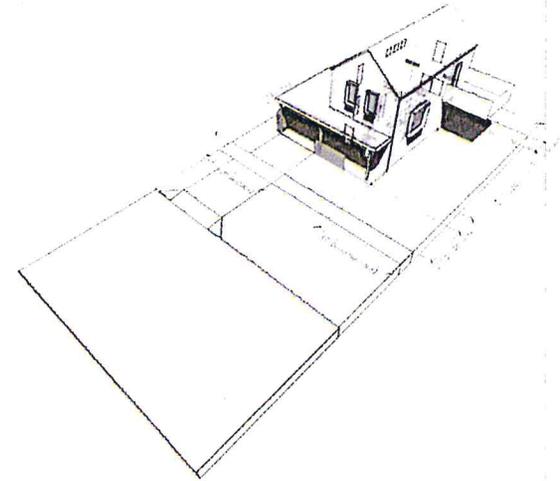
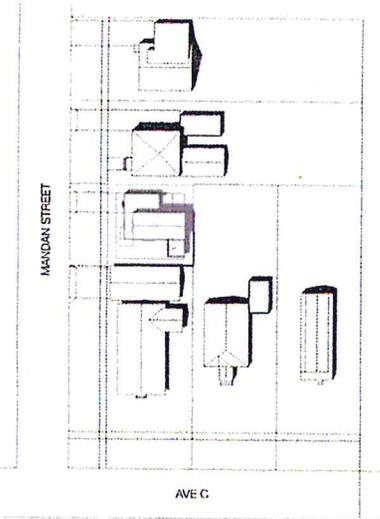
Proposed Variance

The North 50' of Lot 3, Block 5, Northern Pacific Addition

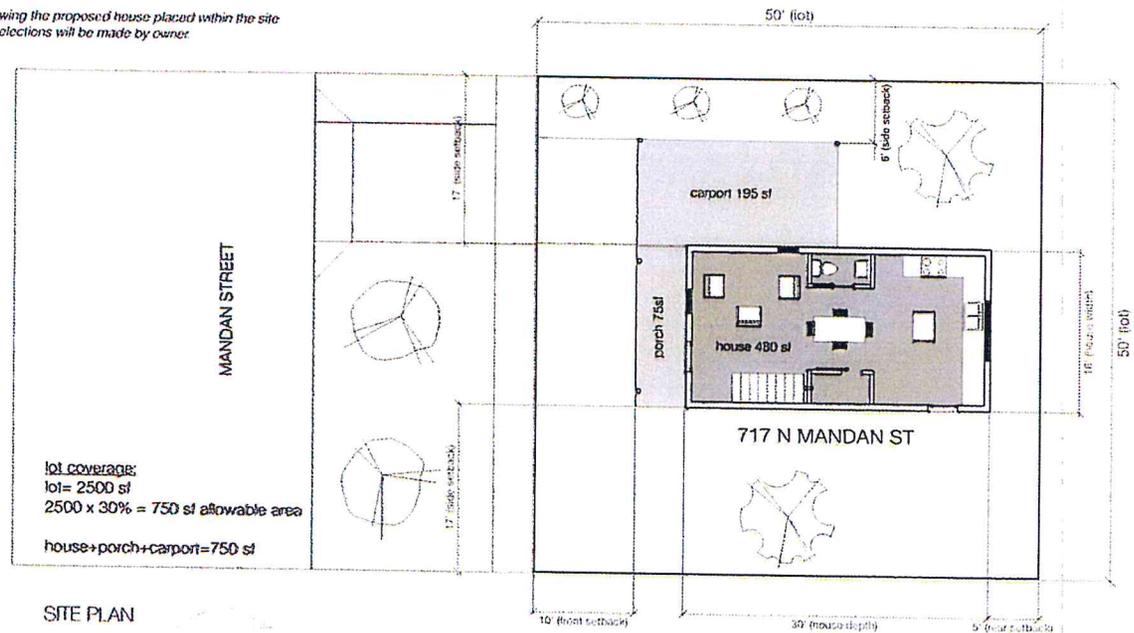
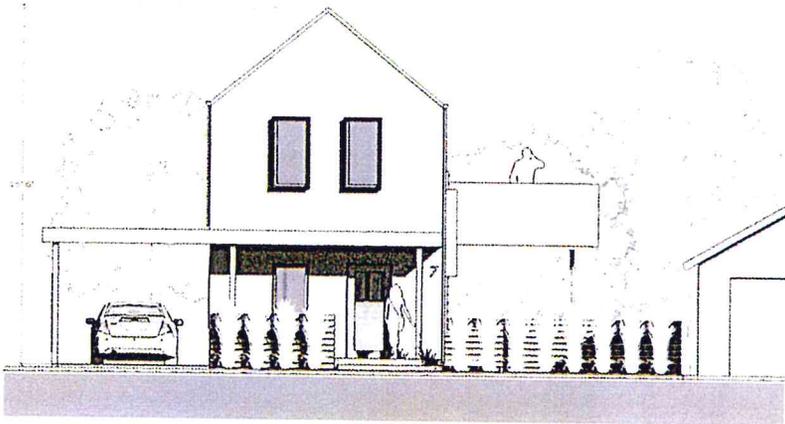


This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

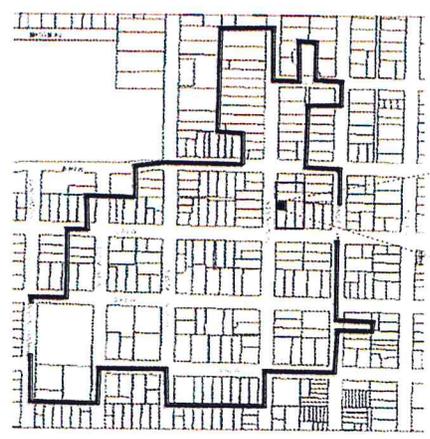
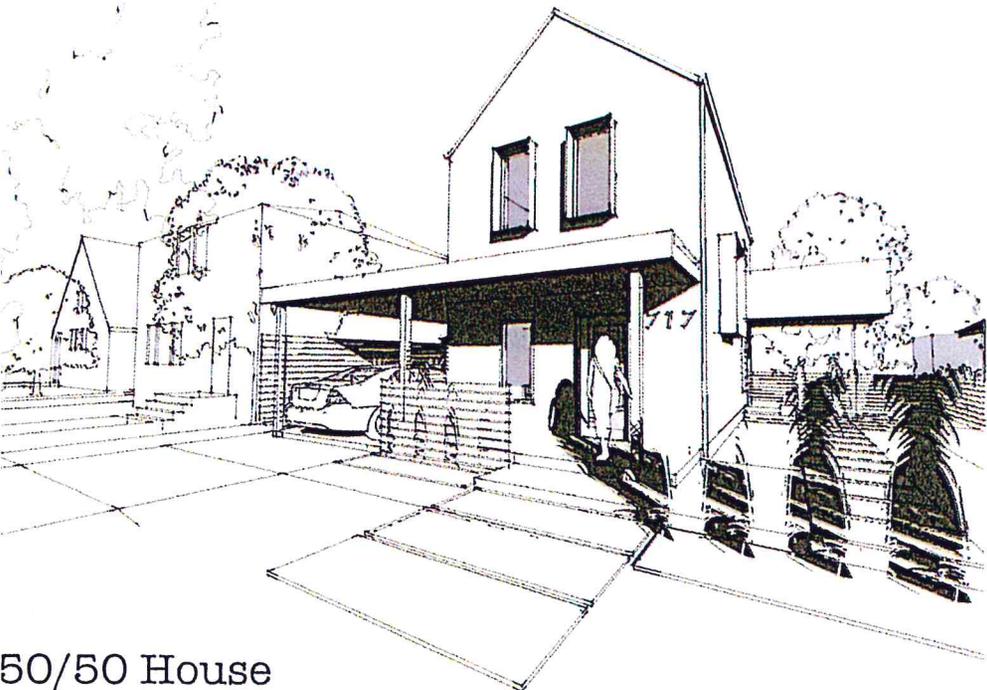




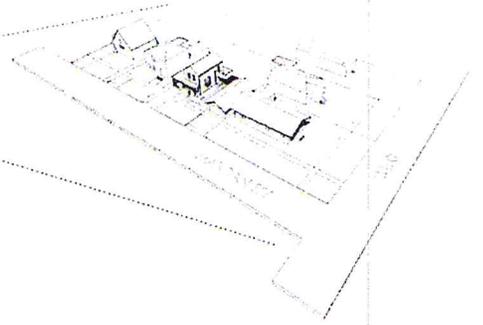
***conceptual rendering strictly for the intention of showing the proposed house placed within the site
- siding and colors are purely representational; final selections will be made by owner.*



SITE PLAN



CATHEDRAL DISTRICT



Urban infill is defined as new development that is sited on vacant or undeveloped land within an existing community, and that is enclosed by other types of development. The term "urban infill" itself implies that existing land is mostly built-out and what is being built is in effect "filling in" the gaps.

*sustainableinfrastructure.org

50/50 House

THE RESIDENCE OF ANNE CLEARY 717 NORTH MANDAN ST

The Cathedral District is one of Bismarck's most cherished and historically significant neighborhoods. Located on portions of two early Bismarck subdivisions—the Northern Pacific Addition, platted in 1876, and McKenzie's Addition of 1882, it was not until the early 1900s when the first homes were constructed.

Mostly developed from 1900-1945 the Cathedral District consists of homes of Shingle, Prairie, Tudor Revival, Craftsman, Cape Cod, and American Foursquare architectural styles. Today, this variety of style stands as Bismarck's most architecturally diverse and beloved neighborhoods.

The proposed 50/50 House on the vacant lot of 717 North Mandan Street seeks to continue the diverse legacy of the district. Through the process of design and understanding the rich context and history, the house is merely a modern continuation of the Cathedral District's story. Not unlike the homes in the district, the house is to be designed and built of its time and place.



EXISTING ELEVATION-MANDAN ST



PROPOSED ELEVATION-MANDAN ST

CITY OF BISMARCK/ETA
APPLICATION FOR APPROVAL OF A VARIANCE
WRITTEN STATEMENT

1. Property Address or Legal Description: 717 N. MANDAN ST.

2. Location of Property: City of Bismarck Extraterritorial Area (ETA)

3. Type of Variance Requested: SETBACKS: FRONT; REAR

4. Applicable Zoning Ordinance Chapter/Section: 14-04-03

5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features - such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition - that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

- THE CITY ORDINANCE STATES A 25' FRONT YARD SETBACK. THE AVERAGE FRONT YARD SETBACK IN THE NEIGHBORHOOD IS (10'-12'). WE ARE PROPOSING A (10') SETBACK TO ACHIEVE CONTINUITY.
- ORDINANCE STATES 20' REAR YARD. WE ARE PROPOSING A 5' SETBACK. 20' IS TOO RESTRICTIVE SINCE LOT IS (50') DEEP.

6. Describe how these limitations would deprive you of reasonable use of the land or building involved and result in unnecessary hardship.

THE LIMITATIONS OF THE CITY ORD. DEPRIVES US OF REASONABLE USE OF THIS LOT BASED ON IT'S IRREGULAR SIZE (50'X50'). WITHOUT THE REQUESTED VARIANCES, THERE IS NO WAY TO BUILD AN APPROPRIATE DWELLING. RESULTING IN ANOTHER VACANT LOT VOID OF A DWELLING.

7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property

THE VARIANCES WOULD ALLOW US TO BUILD AN APPROPRIATE STRUCTURE THAT WOULD ADD VALUE TO THE NEIGHBORHOOD AS WELL AS TAXABLE CONTINUE THE DIVERSE ARCHITECTURAL LEGACY OF THE CATHEDRAL DISTRICT.

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
November 3, 2016**

The Bismarck Board of Adjustment met on November 3, 2016 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Marback presided.

Members present were Jennifer Clark, Chris Seifert, Ken Hoff, Michael Marback and Rick Wohl.

Member absent was Ken Heier.

Staff members present were Jenny Wollmuth – City Planner, Brady Blaskowski – Building Official, Jason Hammes – Assistant City Attorney and Hilary Balzum – Community Development Administrative Assistant.

VARIANCES FROM SECTIONS 14-04-03(4); 14-04-03(7); AND 14-04-03(9) OF THE CITY CODE OF ORDINANCES (R5 – RESIDENTIAL)(LOT AREA/FRONT YARD/REAR YARD) – THE NORTH 50 FEET OF THE WEST 1/3 OF LOT 3, BLOCK 5, NORTHERN PACIFIC ADDITION (717 NORTH MANDAN STREET)

Chairman Marback stated the applicant, Anne Cleary, is requesting variances to allow the construction of a single-family dwelling on a lot platted prior to 1953, that is less than 5,000 square feet; to reduce the front yard setback along the west side of the property adjacent to North Mandan Street from twenty-five (25) feet to ten (10) feet; and to reduce the required rear yard setback located along the east side of the property from twenty (20) feet to five (5) feet.

Ms. Wollmuth gave an overview of the request, including the following findings:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R5-Residential zoning classifications.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Chairman Marback said the written statement of hardship provided with this request states other homes nearby are setback anywhere from ten to twenty and asked if that is accurate.

Ms. Wollmuth said formal surveys of adjacent lots have not been provided, but aerial photos show some might be as little as six feet and the pump house that was on the property previously was set back approximately 16 feet.

Mr. Hoff asked how long the pump house sat unused before it was torn down. Ms. Wollmuth said she believes it was demolished around 2012 and she does not have any history on how long it was unused prior to that.

Anne Cleary provided the Board of Adjustment with pamphlets and case study information.

Mr. Hoff asked why this design concept is preferred by the owner. Ms. Cleary said she is a local business owner, works downtown and loves how eclectic the neighborhood is. She said she does not desire to live beyond her means and many of the existing homes she looked at with her realtor were too big for one person. She said she can build this home for under \$200,000 and be able to live comfortably and within her means.

Mr. Wohl asked if she was advised on the limitations of the lot when she purchased it. He said the goal should be to build a house that is both suitable for this lot and also appropriate for the neighborhood.

Chairman Marback asked if there will also be a car port and covered porch on the home. Ms. Cleary said that is correct and that they will be set back the same as the pump house was, with the porch being set back just slightly closer.

Ms. Clark asked what the setback would be without the covered porch. Chairman Marback said it would be set back 15 feet without the porch.

Chairman Marback opened the public hearing.

Tom Mayer, 612 North Mandan Street, said he lives one block south of this property and is opposed to the requests. He said the proposed house would be no bigger than the meeting room they are in now and when a house on Avenue C was destroyed by a fire the owners wanted to rebuild but were told they could not because their lot was too small. He said the proposed house is also not in accordance with the architectural footprint of the Cathedral District. Mr. Mayer's comments are attached as Exhibit A.

Logan Greeley, 715 North Mandan Street, said he is opposed to the requests and feels construction of the proposed home would negatively impact adjacent property values. He said a well-established tree would have to be cut down and the owner has made no efforts to contact the

neighborhood, with the exception of one couple. Mr. Greeley's comments are attached as Exhibit B.

Mr. Hoff asked Mr. Greeley when he moved into his home. Mr. Greeley said he moved in last summer, right before a meeting took place at the Heritage Center regarding development of this lot. He said he did contact the owner to state his interest in purchasing the lot and would rather see it turned into a community garden.

Susan Holland, 222 West Avenue C, said the statement made by the neighborhood is driven by aesthetics and that all of the homes have their own uniqueness. She said she fully supports the tiny-house movement but all she sees when she looks at the concept of this house is California and it just will not fit the neighborhood.

Gene Lehr, 122 West Avenue C, said a portion of his lot was purchased many years ago when a pump house was needed. He said he contacted the City when it came for sale and went through the bidding process. He said he did not have the highest bid but was also told the lot was not buildable and he is opposed to any construction on the lot.

Ms. Clark asked Mr. Lehr how far his house is set back on his lot. Mr. Lehr said it is approximately six feet in both the front and the back. Ms. Clark asked if he would be ok with the proposed house having the same setbacks as him. Mr. Lehr said he would maybe be ok with that, but he does not want to see any of the properties nearby lose their value either.

Bonnie Palecek, 704 Mandan Street, said there has been a lack of transparency that has created a lack of trust in the local government. She said she wants to see more positive efforts to bring this neighborhood together and she does not wish ill will on Ms. Cleary, but construction of this home will negatively impact the aesthetics of the neighborhood. Ms. Palecek's comments are attached as Exhibit C.

Stacy Bullinger, 722 North Mandan Street, said she only received about a weeks' notice about these requests and immediately visited with her neighbors and formed a petition spanning two blocks. She said 70% of those surveyed ended up signing the petition. She said the self-guided tour of the cathedral district should also be taken into consideration. Ms. Bullinger's petition and self-guided tour map are attached as Exhibit D.

Mr. Hoff asked if a neighbor's home burned down and they wanted to rebuild, would anybody be okay with new construction then. Ms. Wollmuth said the ordinance was revised to state a building destroyed 50% or more does have to be rebuilt on the same footings and be the same size as the original structure, or smaller.

Pete Neigum, 723 North Mandan Street, said he also tried to buy this lot through the bidding process but never received a call back when he asked about it. He said he feels angles are being worked and he is definitely opposed to the requests. He said his house is set back 14 feet or more on his property.

Dan Eastgate, 3006 Eastgate Drive, said he is in favor of the requests as Ms. Cleary's friend and realtor. He said she grew up on East Avenue A and completely understands the integrity of this neighborhood. He said none of the houses look the same and construction of the proposed home would be a tremendous improvement to both the vacant lot and the neighborhood.

Amy Sakariassen, 603 North Mandan Street, said she is significantly invested in the Historical District and lives in an infill property built in 1938. She said almost all houses in the neighborhood are roughly the same distance from the sidewalk, which is one of the great contributing factors of the Cathedral District. She said the trees on the boulevard are listed on National and State registries and are protected by laws that would not allow them to be removed without going through a process.

Ashley Champion, 13817 Saddlehorn Drive, said she is in favor of the variance requests and the main point is that it is the reduction of the required setbacks that needs to be focused on. She said all of the houses in the neighborhood were built over several decades and the proposed house will not stand out significantly from the existing ones. She said it might seem like a small lot for the house but it is not a 'tiny house' and will fit fine.

Paul Picha, 700 North Mandan Street, said his observation is that any decision made here needs to be defensible and there is an ample number of reasons that the requests should be denied.

Blake Preszler, Plainview Design, said the drawing provided in the handout is merely a concept. He said the home would be 50 feet by 50 feet, the same as that of one nearby that has a zero foot setback. He said they are being as conservative as they can with the design and either way, they should be able to work around the established tree, whether they place the house somewhere else on the lot or not.

Mr. Greeley asked the Board of Adjustment to please hold off on further consideration of these requests until the proposed Infill and Redevelopment Plan is complete. He said not every lot needs a house on it and allowing this would allow too many undesirable things in the future.

Tanner Reidman, 510 North Mandan Street, said he works with Mr. Preszler and also lives in this neighborhood. He said his home is the only one that is not two stories and there are others that do not necessarily fit with the aesthetics of the neighborhood but all are on 50 foot wide lots.

Ms. Cleary said she was not aware the tree is considered historical until after the house plans were drawn. She said she will change the plans to accommodate the tree, as they are only draft plans at this point and are essentially just the general concept of what would be built. She said she has no intention of building her home completely out of character of the neighborhood and it will be very simple so as to not draw adverse attention. She said it would not be a 'tiny house' and she has no attachment to the covered porch, so she would be willing to remove that as well in order to minimize the needed variance.

Additional comments on this request are attached as Exhibits E-L.

There being no further comments, Chairman Marback closed the public hearing.

Ms. Clark asked where the Infill and Redevelopment Plan is at in the process. Ms. Wollmuth said the open house on the plan was scheduled for today as that was the only time that worked for Planning. She said it has not been presented to the Planning and Zoning Commission or the City Commission yet. She said the Plan is scheduled for a public hearing at the November 16, 2016 of the Planning and Zoning Commission.

Ms. Clark asked how this request would fit into that plan. Ms. Wollmuth said the plan was not created solely for this request. She said the plan and processes associated with the proposed infill are still susceptible to being modified, as they have not been presented to the Planning and Zoning Commission or the Bismarck City Commission.

Chairman Marback asked how many infill projects the plan would address. Ms. Wollmuth said it would address infill within City limits which could include large scale projects or small scale projects.

Ms. Clark asked if development of this site will meet some Historical District building limitations or any other hurdles further down the road. Ms. Wollmuth said there are not provisions in the zoning ordinance in place at this time pertaining to historical preservation.

Mr. Seifert asked if there have been any other 2,500 square foot lots developed recently. Ms. Wollmuth said she is not aware of any new construction on lots less than 5,000 square feet.

Mr. Hoff asked how big the lot was for a variance for an addition to an existing house that was previously granted on North 13th Street and West Avenue B. Ms. Wollmuth said it was approximately 3,900 square feet.

Mr. Seifert asked if this request would have further consideration by another Board. Ms. Wollmuth said if the variance is approved, the owner could start construction and if it is denied an appeal can be submitted to the City Commission.

Mr. Hoff asked if they will be required to stay within the variance granted if they are allowed to build this house. Ms. Wollmuth said that is correct, that they would be limited to the variance granted with the motion.

Mr. Clark said this proposal is consistent with the setbacks of some adjacent properties, especially if the cover is taken off the porch, but she has concerns with the perception that the purchase of the property was not fair. She said if it is denied and appealed then those better suited to hear that information will consider it.

Mr. Seifert said many of the houses in that neighborhood were built before any setback requirements were in place and he has a problem with a new structure on such a small lot.

Chairman Marback said he likes the concept of the house but agrees that some elected officials should make a final decision that know how the bidding and purchase process played out.

Mr. Wohl said the things that need to be considered are the minimal setbacks and that the lot is less than 5,000 square feet. He said not only do the setbacks need to fit but there are also no other lots this size in that area.

MOTION: A motion was made by Ms. Clark to deny the variances to allow the construction of a single-family dwelling on a lot platted prior to 1953, that is less than 5,000 square feet; to reduce the front yard setback along the west side of the property adjacent to North Mandan Street from twenty-five (25) feet to ten (10) feet; and to reduce the required rear yard setback located along the east side of the property from twenty (20) feet to five (5) feet on the North 50 feet of the West 1/3 of Lot 3, Block 5, Northern Pacific Addition (717 North Mandan Street). The motion was seconded by Mr. Seifert and with Board Members Clark, Hoff, Marback, Seifert and Wohl voting in favor of the motion, the motion was approved and the variance was denied.

Hilary Balzum

From: Planning - General Mailbox
Sent: Thursday, October 27, 2016 8:48 AM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings
Subject: FW: Anne Cleary request for variances

From: Tom Mayer [mailto:████████████████████]
Sent: Wednesday, October 26, 2016 5:39 PM
To: Planning - General Mailbox
Subject: Anne Cleary request for variances

Anne Cleary's request for variances regarding a "house" planned at 717 N. Mandan Street should be denied.

A park model trailer with a small deck would be about the same as her proposal.

The structure would be unsightly and entirely out of keeping with the rest of the homes in the area. It would look like a kid's fun house on the postage stamp size lot in question.

Anne clearly I assume is a straw woman for Venture Realty which came up with this hare-brained idea in the first place. The two neighbors on each side should each buy half of the lot. But I assume the owner would stiff them, which is why it hasn't happened. .

Tom Mayer
612 N. Mandan St.
Bismarck, ND 58501



This email has been checked for viruses by Avast antivirus software.
www.avast.com

Hilary Balzum

From: Planning - General Mailbox
Sent: Monday, November 07, 2016 1:39 PM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings
Subject: FW: Correction

From: Tom Mayer [mailto:████████████████████]
Sent: Friday, November 04, 2016 1:51 PM
To: Planning - General Mailbox
Subject: Correction

I want to correct a statement I made when testifying Nov. 3, 2016, regarding Item 4 on the Bismarck Board of Adjustment agenda. I was referring to a similar sized small lot on which a house had been destroyed by fire but the city did not allow the owner to rebuild. I stated it was at 212 Avenue C West; I should have said 212 Avenue C East (about two and one-half blocks east of the lot in question). That lot is now the backyard to the west of the house on the corner at 700 Third Street N. My point is that there shouldn't be a disparate result on similar sized lots.

Tom Mayer
612 N Mandan St.
Bismarck, ND 58501



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www.avast.com

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, November 02, 2016 3:14 PM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings
Subject: FW: Neighbor opposed to VAR2016-023

From: logan greeley [mailto:████████████████████]
Sent: Wednesday, November 02, 2016 3:12 PM
To: Planning - General Mailbox
Subject: Neighbor opposed to VAR2016-023

I'm writing in regards to the variance request for project number VAR2016-023, The 50' X 50' lot at 717 North Mandan Street.

I am the homeowner of 715 North Mandan Street and share a property line with the currently vacant lot. I am opposed to the current variance request. As a homeowner in the Bismarck Cathedral Area Historic District (BCAHD) I can say that a large part of my decision to purchase in the location that I did was based on the charm that an older home would provide as well as the surrounding homes. If there was a new home on this block, I would not have purchased in this location. I believe future potential buyers would be shopping with a similar thought process. A home designed as proposed in VAR2016-023 would most definitely be a deterrent to potential buyers thus reducing the value of my home.

In addition to the desirability of the neighborhood I would be lying if I didn't claim pride simply in maintaining ownership of a home within an area listed on the National Register of Historic Places. I recognize that I live near the edge of the BCAHD. I am aware that the boundaries of the BCAHD have increased as well as decreased over time. I am concerned that a home built in this manner could potentially give reason the remove this block from the internal boundaries of the BCAHD. This too would be a deterrent to potential buyers thus reducing the value of my home.

Anne Cleary stated in her variance request that the homes of this community have a majority setback of 10' and that she would be conforming to what already exists. While this may be true of other blocks, it is not true of the 700 block of North Mandan Street. The plan does not match the existing context of the 700 block of North Mandan Street nor does it match the "Simple Formula" as provided on page 34 of Bismarck's own draft Infill and Redevelopment Plan.

The current request would require the removal of a large old growth tree which is attractive and provides shade to my home during the summer months. Removal of this tree will decrease the attractiveness of the street reducing property value as well as increase the cost to cool my home.

As the adjacent property owner I have seen this lot go unmaintained. The current owner has occasionally cut the lawn but in large part I have maintained it. I worry that this development is only an attempt to turn a profit. I worry that this will become a rental property, again reducing the desirability of the area and value of my home. I don't believe that this development is in the best interest of the community. At no point has the current land owner attempted to contact neighbors for input on the lot. I believe that the current land owner was fully aware of the variances needed to develop this lot prior to acquiring ownership of this lot. Any due diligence on her part in researching this parcel would have provided her the knowledge that this lot is essentially unbuildable.

There is a place in this this world for infill but this 50' X 50' lot is not it. The question needs to be asked, "where do we stop?" If the variances were granted for this lot which has already been a sensitive topic (http://bismarcktribune.com/news/local/historic-cathedral-district-group-rallies-residents/article_9b2cf89c-ae3-574e-8bb5-ffbcfadcb170.html) , it opens the doors for developers to develop any lot they want.

The home's design plan deviates from Bismarck's draft infill plan.

"Traditional Neighborhoods

The traditional neighborhoods are located on the original grid, which was platted between 1877 and the 1940s. The street layout creates a repeating pattern of 300x300 foot blocks, which is an ideal environment for safe and pleasant walking and biking. The proximity to downtown and the State Capitol complex offers a high level of convenience to job centers and institutional amenities. The wide historic range and style of architecture and the abundance of mature trees are distinct amenities. **Any infill and redevelopment of this area should be modest in scale and aligned with the general form of its surroundings.**" Pg. 15

4 | Preservation and Enhancement of Architectural and Historical Character

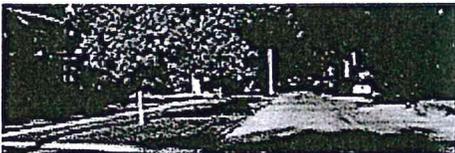
The buildings, trees, and public spaces that have been built, planted, and installed over the years in Bismarck contribute to the uniqueness of the community, remind us of our past, and represent significant investments of resources. There is a strong case for protecting these assets. At the same time, Bismarck has been evolving since it was founded and neighborhoods have always been dynamic and open to new ideas.

Infill and redevelopment should strike a balance between preserving the character of the past while remaining open to the possibility of the future. The style and character of any Bismarck neighborhood is greater than the sum of its parts. Everything from the street widths to the layout of buildings and architectural details of individual buildings contributes to the overall character of the area. Infill and redevelopment should respect the people who already live and work in that place, and contribute to its character rather than distract from it.

- Design Objectives:**
- Rehabilitation of buildings attempts to restore, repair or replace elements as necessary (in that order). Elements that are not compatible are removed.
 - The character of the existing neighborhood is respected with use of complementary:
 - Shape, Form and Height
 - Texture / Materials
 - Open Space / Setbacks
 - Color Palette (in some cases).
 - New trees and shrubs of similar species are planted in anticipation of the death of aging vegetation.

pg. 20

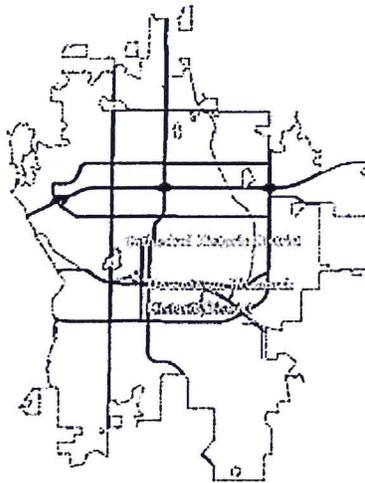
5 | Allow Creation of Historic Design Standards for Neighborhoods



Districts in the National Register of Historic Places are federally recognized as worthy of preservation. There are currently two historic districts in Bismarck, the Downtown Bismarck Historic District and the Cathedral Area Historic District, although others may be eligible upon application and approval.

Special design standards are in place for downtown that assist with the preservation of historic structures, but no other historic preservation standards currently exist outside of downtown, either through City ordinance or private covenants. There is a broad spectrum of possible historic preservation provisions that may be utilized, from simple prohibitions on demolition of contributing structures to precise regulations for all building alterations to maintain historical accuracy.

There are costs and benefits to imposing historic preservation standards, and primarily these costs are incurred by and the benefits accrued to the residents of these districts. Therefore, this plan does not make a recommendation regarding further extension of historic standards, but rather sets a posture of openness and assistance if the majority of the property owners of any recognized neighborhood wish to impose rules upon themselves.



Strategy: Allow and assist with the creation of district-specific historic preservation design standards for any area listed on the National Register of Historic Places upon petition from at least half of all property owners in the district.

-Logan Greeley



704 Mandan Street
Bismarck, ND

Board of Adjustment
Baker Meeting Room
November 3, 2016

Members of the Board:

My name is Bonnie Palecek, and for the last 42 years I have lived at 704 Mandan Street, directly across the street from 717 Mandan Street, the lot being considered for a variance today. I say this knowing that I risk being stereotyped as an old person resisting change, claiming special entitlement simply because I have occupied a certain small space for a long time.

I don't believe that occupying space, in its own right, gives one special entitlements. On the other hand, I do believe that to build a strong community, we must pay respectful attention to those who feel and express personal stakes in the issue at hand. For me, one of the most defining and binding aspects of a healthy community is a sense of place.

Many of us in the Cathedral District experience that sense of place in part through the green space and mature trees that surround us. This proposed variance would directly threaten both.

I worry all the time about losing more trees. And since "development" and "infill" plans were announced a year and a half ago for the green space across the street, I have daily grieved the potential loss of two magnificent trees I have lived with for the last four decades. There are only two original elms left on that side of the street. Those on our side have been mutilated to make way for power lines.

It takes a long time to grow a tree in North Dakota, and much care, and then much vigilance to protect them. Our family was involved in a campaign to save the elms on Avenue C years ago, and more recently, to a lesser extent, to maintain a respectful, aesthetically acceptable thoroughfare when Washington Street was widened.

For some reason, many believe that trees and green space are expendable. We don't always realize how interrelated we are, how much we have been given, and how fragile it all is. As someone has said, "We are not the only species on the earth, we just act like it." In our arrogance, and I believe at our peril, we often act as though all that matters is our immediate needs – for a street, a house, bigger garages for more vehicles.

Thank you for creating this forum in which to listen to people from a neighborhood which still values itself enough to talk to each other and officials like you to try to find mutually acceptable solutions to the challenges change inevitably brings.

A sense of community is an increasingly rare reality. Once lost, it is almost impossible to retrieve. Building trust can only grow in the soil of mutual respect. And that takes time, just like growing a tree. Please don't minimize or dismiss the deeply felt hurts and fears of those who speak here today – on all sides. What we perceive as a lack of transparency and collusion by those with power is no small thing. Large parts of our daily, lived experiences in the neighborhood in which we live rest with you in a very tangible way.

Thank you for hearing us and responding in a meaningful way.



Bonnie Palecek

The following petition is being signed by home owners in the Cathedral Neighborhood who are not in favor of having the variances granted related to the constructing of a single-family home, to be located on the South 50 feet of the West 1/3 of Lot 4, Block 5, Northern Pacific Addition (717 North Mandan Street).

The proposed Variances and a copy of the map showing the location involved in the request and a site plan are attached.

The following individual property owners are NOT in favor of the Community Development Department approving the requested Variances:

Name: Address: Telephone:

- Hacy Bullinger 722 N. Mandan St. Bismarck 701-630-9009
- Eric Bullinger 722 N. Mandan St. Bismarck (701) 955-4889
- Connie Nugum 723 N. Mandan St. Bismarck. 701-258-9612
- Steve DeGarmo 723 N. Mandan St. 701-258-9612
- Mike Deary 719 N. Mandan St. 223-1863
- Mike Deary 719 N. Mandan St. 223-1863
- Logan Greeley 715 N Mandan St. 708-289-9318
- Veronica Orzco 715 N Mandan St 6305127012
- Tommy 714 MANDAN ST 701-220-068
- Travis 714 MANDAN ST 763-527-3565
- Donnie & Fred Palumbo 704 Mandan St 701-202-7396
- Tom & Jan Mayer 612 Mandan St. 723-6218
- Eugene R Lebr 122 W. Ave. C 491-5892

Hilary Balzum

From: Planning - General Mailbox
Sent: Monday, October 31, 2016 8:51 AM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings
Subject: FW: Variance Request for 717 N. Mandan Street

-----Original Message-----

From: Lori Orser [mailto:██]
Sent: Saturday, October 29, 2016 3:57 PM
To: Planning - General Mailbox
Subject: Variance Request for 717 N. Mandan Street

My sister owns the home at 801 N. Mandan Street and I lived in it for many years. We are preparing it for sale. We feel that the proposed variance and home at 717 will make Mandan Street appear overcrowded and ugly, and will reduce the value of the home we own. The proposed building is within the Cathedral Historic District but in no way resembles a historic home. It violates the theme of the district. We are completely opposed to approval of the variance, or of any building on that property. A small park for neighborhood children would be much more appropriate. I cannot attend the hearing because of a recent injury, but I hope that my comments will be considered.

Sincerely,
Lori Orser

Sent from my iPhone

Hilary Balzum

From: Planning - General Mailbox
Sent: Tuesday, November 01, 2016 9:40 AM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings
Subject: FW: Comments Associated with Variance Request for 717 North Mandan Street

From: Ben Ehreth [mailto:████████████████████]
Sent: Monday, October 31, 2016 4:58 PM
To: Planning - General Mailbox
Subject: Comments Associated with Variance Request for 717 North Mandan Street

Greetings,

My wife and I are property owners at 108 W Ave C in Bismarck, ND. We have received notification from the City of Bismarck regarding a variance request for a reduction of front and rear yard setbacks at the 717 North Mandan Street property. We have reviewed the site plan for the proposed development and we are supportive of the subject variance requests.

We appreciate the notification of this proposal and for the opportunity to comment.

Sincerely,
Ben Ehreth

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, November 02, 2016 9:27 AM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings
Subject: FW: variance from setback Mandan St.

From: Jeff Frohlich [mailto:
Sent: Wednesday, November 02, 2016 8:37 AM
To: Planning - General Mailbox
Subject: variance from setback Mandan St.

November 2, 2016

My name is Jeff P. Frohlich. I have lived on Mandan St. for over 30 years. I am a Professional Land Surveyor and know the importance of following the city ordinances concerning setbacks and lot sizes. It is my understanding that this small lot was originally part of the lot located directly south of this parcel. The city purchased this small tract and constructed a small brick building (pumping station). Recently the building was removed. It is my opinion that this small tract should be placed back into the lot it came from. Anybody who purchased this lot with the intent of getting variances and changing city setback laws **should not** be allowed to do so.

Jeff P. Frohlich

Hilary Balzum

From: Planning - General Mailbox
Sent: Thursday, November 03, 2016 1:52 PM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings
Subject: FW: Variance Hearing for 717 N Mandan Street

From: Gordon Nygard [mailto:████████████████████]
Sent: Thursday, November 03, 2016 1:46 PM
To: Planning - General Mailbox
Subject: Variance Hearing for 717 N Mandan Street

I am appalled that there even is a hearing over this variance request, what with the area being designated as a historical area.

How does one person/entity think that they have the right to uproot all the time, effort, and resources that went into the designation in order to preserve the charm and ubiquity of the area? It appears the requestor is very self-serving in nature and has no regard for others who live in the area and take great pride in owning and living in that area.

I had the privilege of growing up on Mandan Street in one of those historic homes. Mine was built in 1929 and still holds a special place in my heart.

Please vote no on this variance request.

Thank you,

Gordy Nygard

Hilary Balzum

From: Planning - General Mailbox
Sent: Thursday, November 03, 2016 12:50 PM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings
Subject: FW: No to variance request for 717 Mandan Street

From: vnwood.vtec [mailto:████████████████████]
Sent: Thursday, November 03, 2016 12:20 PM
To: Planning - General Mailbox
Subject: No to variance request for 717 Mandan Street

This email is in reference to the hearing today for the variances requested for the property at 717 N. Mandan Street. I strongly object to such variances being granted, especially since the proposed design is so at odds with the architecture and setting for this historic neighborhood.

It seems a shame to have invested city and human resources in designating and promoting an entire area as historical and then consider allowing this dwelling to be built on said property. Many homeowners proudly restore, paint, add features and maintain their homes in keeping with their historic registry. The proposed design is not in harmony with the preservation efforts of those homeowners.

I not only grew up on Mandan Street, I also bought my own home in this same neighborhood. I sincerely hope you will deny this request for variances.

Virginia Nygard Wood
Sent from my Verizon, Samsung Galaxy smartphone

Hilary Balzum

From: Planning - General Mailbox
Sent: Thursday, November 03, 2016 12:50 PM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings
Subject: FW: Opposition to the proposal for variance for 717 Mandan Street

From: judy broekemeier [mailto:██]
Sent: Thursday, November 03, 2016 11:48 AM
To: Planning - General Mailbox
Subject: Opposition to the proposal for variance for 717 Mandan Street

Having grown up on Mandan Street and now being part owner of my childhood home, I am compelled to email my objection to the upcoming proposed variances for 717 Mandan Street. These variance requests should be denied as they are vastly different from any other single family dwellings along that street and would greatly alter the neighborhood. Additionally, the design is not aesthetically in keeping with this specially designated historic district. Please consider the people and work that has gone into this historic and charming neighborhood and deny the request before you.
Thank you. Judy Nygard Broekemeier 808 Mandan Street



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: November 8, 2016
FROM: Carl D. Hokenstad, AICP, Director of Community Development
ITEM: Vacation of a Part of Ottawa Street Right of Way

REQUEST

Two landowners have petitioned to vacate the east 35 feet of the Ottawa Street right of way adjacent to Lots 19 - 22, Block 1, Wutzke's 2nd Subdivision, leaving a remainder of 80 feet of right of way for Ottawa Street.

Please place this item on the November 8, 2016 City Commission meeting.

BACKGROUND INFORMATION

Vacation of public right of way requires a public hearing, preceded by four weeks of legal ads.

RECOMMENDED CITY COMMISSION ACTION

Call for a public hearing to vacate the east 35 feet of the Ottawa Street right of way adjacent to Lots 19 - 22, Block 1, Wutzke's 2nd Subdivision, leaving a remainder of 80 feet of right of way for Ottawa Street.

STAFF CONTACT INFORMATION

Please contact Daniel Nairn, AICP the planner in our office assigned to this request, at 355-1854 or dnairn@bismarcknd.gov, or Kim L. Lee, AICP, Planning Manager, at 355-1846 or klee@bismarcknd.gov. Planning Manager Kim Lee will present this item at the meeting.



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

November 8, 2016

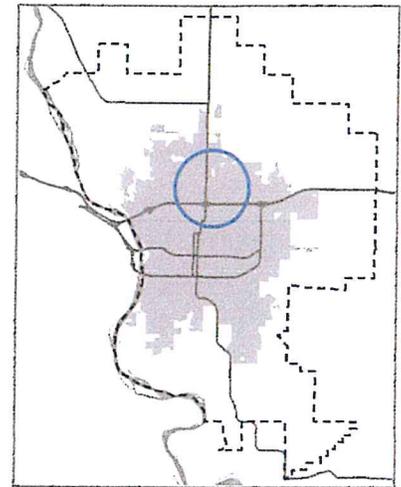
Application for: Plat Modification – Right of Way Vacation
Plat Modification – Right of Way Vacation

TRAKiT Project ID: PLMD2016-009

TRAKiT Project ID: PLMD2016-010

Project Summary

Title:	Vacation of a portion of Ottawa Street
Status:	Board of City Commissioners - Consideration
Owner(s):	Bergen Real Estate LLC Boustead Enterprises LLC
Project Contact:	Toni Haider, PE, SEH Engineering Daniel Nairn, AICP, City of Bismarck
Location:	In North Bismarck, west of US Highway 83 and north of 43 rd Avenue NW.
Project Size:	A 35' strip of the Ottawa Street right of way for a length of 500 feet, more or less.
Request:	Schedule a public hearing to vacate the east 35' of the Ottawa Street right of way adjacent to Lots 19-22, Block 1, Wutzke's 2 nd Subdivision, leaving a remainder of 80' of right of way for Ottawa Street.



Staff Analysis

In 2011, portions of the Ottawa Street right of way that were no longer needed for public use were vacated throughout Sonnet Heights Subdivision and Wutzke's Subdivision. Two property owners of lots in Wutzke's 2nd Subdivision are now petition to vacate a similar portion of the Ottawa Street right of way adjacent to their property, essentially extending the previous vacation further to the south and additional 500 feet.

The proposed vacation is adjacent to a previous vacation of an access roadway that was approved by the City Commission in 1997.

If the vacation is approved, the right of way of Ottawa Street would be reduced to 80 feet. The street is a local road that functions as a "backage" roadway to US Highway 83. A right of way of 80 feet conforms to current design standards for a roadway of this classification.

North Dakota Century Code requires four weeks of legal ads before a public hearing to vacate public right of way. If the Board of City of Commissioners wishes to proceed with this hearing, the ads will be placed and the hearing would be scheduled for December 13, 2016. A draft of the resolution to vacate is attached. However this resolution would not be signed until after the hearing is held and a decision is made.

A city water main exists on the east side of Ottawa Street in the approximate location being proposed for vacation. The resolution would maintain an easement over any existing utilities after the vacation takes effect.

Required Findings of Fact

1. The right-of-way proposed to be vacated does not substantially contribute to the function or

(continued)

safety of the overall roadway network in the area;

2. The right-of-way proposed to be vacated is not needed by the City of Bismarck or any affiliated entities for public utilities, and/or easements have been granted for any existing utility infrastructure in use within the right-of-way;
3. The proposed vacation of right-of-way would not adversely affect property in the vicinity;
4. The proposed vacation of right-of-way is consistent with the general intent and purpose of the zoning ordinance;
5. The proposed vacation of right-of-way is consistent with the master plan, other adopted plans, policies and accepted planning practice; and

6. The proposed vacation of right-of-way would not adversely affect the public health, safety and general welfare.

Staff Recommendation

Based on the above findings, staff recommends calling for a public hearing to vacate the east 35' of the Ottawa Street right of way adjacent to Lots 19-22, Block 1, Wutzke's 2nd Subdivision, leaving a remainder of 80' of right of way for Ottawa Street.

Attachments

1. Draft Resolution
2. Location Map
3. Excerpt from plat
4. Exhibit of Changes
5. Petitions

Staff report prepared by: Daniel Nairn, AICP, Planner
701-355-1854 | dnairn@bismarcknd.gov

RESOLUTION

VACATION OF RIGHT-OF-WAY

WHEREAS, the owner of property described as Lot 19, Block 1, Wutzkes 2nd Subdivision and the owner of the property described as Lots 20-22, Block 1, Wutzkes 2nd Subdivision, both adjoining and contiguous to the right-of-way described as Ottawa Street, have heretofore joined in petitions requesting that the portion of the right-of-way contiguous to these lots be vacated and setting forth the facts and reason for said vacation. Said petitions were verified by oath of at least one petitioner and was accompanied by a plat of said right-of-way to be vacated.

WHEREAS, the Board of City Commissioners of the City of Bismarck, North Dakota, deemed it expedient that said matter be preceded with, ordered said petition to be filed in the office of the City Administrator.

WHEREAS, the Board of City Commissioners ordered that notice be given on hearing the aforesaid petitions and the same was so given by publication in the official newspaper of said City on November 11, November 18, November 25 and December 2, 2016, in accordance with law. The Board of City Commissioners at the time appointed, investigated and considered the matter and heard testimony of the persons interested therein.

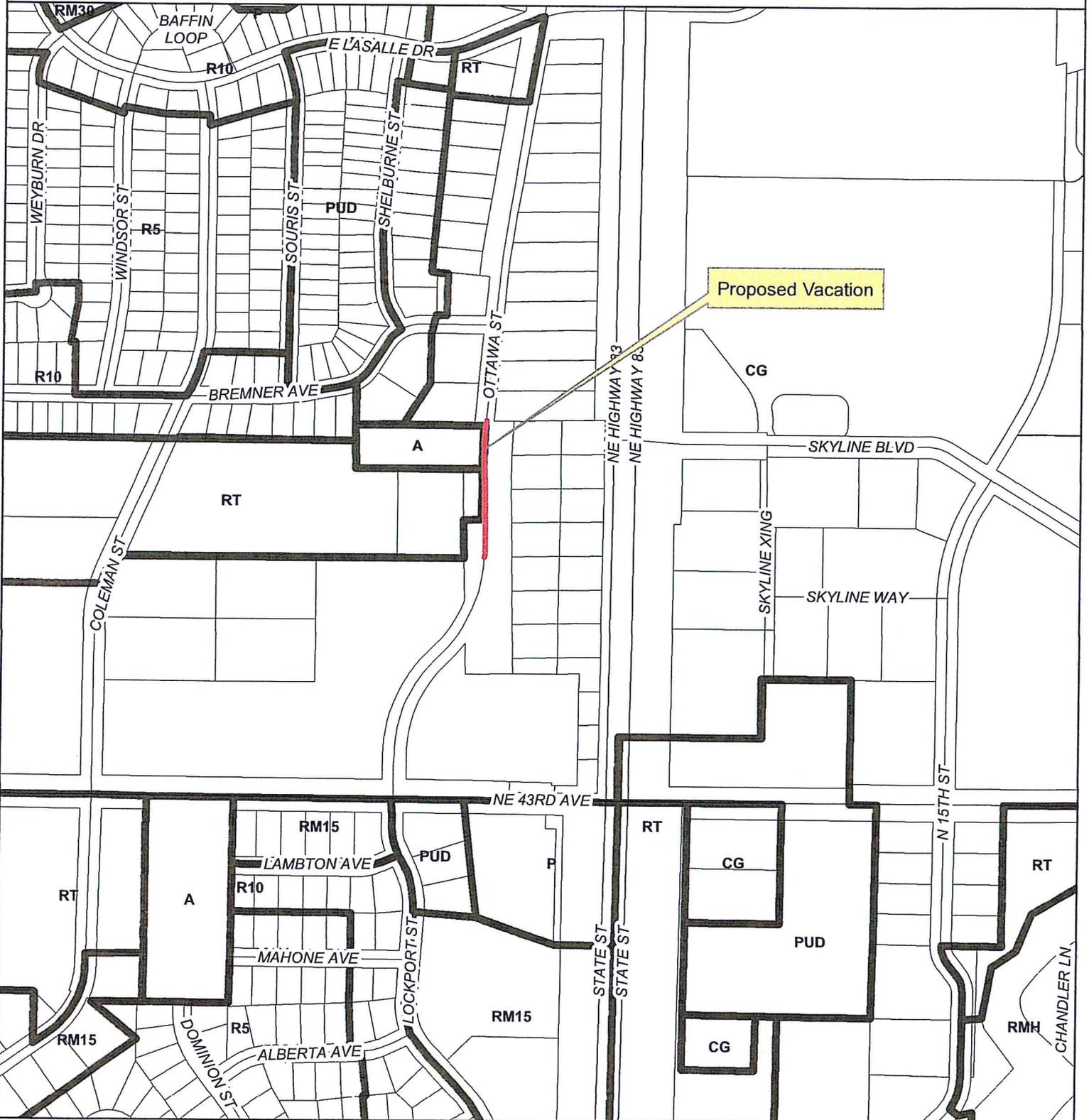
NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota:

1. Petitions heretofore described praying for the vacation of that portion of the right-of-way described as the east 35 feet of Ottawa Street adjacent to Lots 19-22, Block 1, Wutzke's 2nd Subdivision and all previously vacated right of way adjacent to said lots in the City of Bismarck, North Dakota, is in all things allowed and granted.
2. That said right-of-way is hereby declared vacated, subject to a utility easement over the entire width of the vacated right-of-way to preserve the rights of any public or private utility or franchise, their successors and assigns, heretofore granted by the City of Bismarck or another party and not heretofore waived or abandoned and subject to a grading and slope easement in favor of the City of Bismarck to grade and shape the easement area to match the future urban section of the right-of-way.
3. That the City Administrator be and is hereby authorized to publish this resolution in the manner prescribed by law and file a transcript thereof for record in the office of the County Recorder, Burleigh County, North Dakota.

Adopted this 13th day of December, 2016.

Proposed Right-of-Way Vacation

Part of Ottawa Street adjacent to Lots 19-22, Block 1 Wutzke's 2nd Subdivision

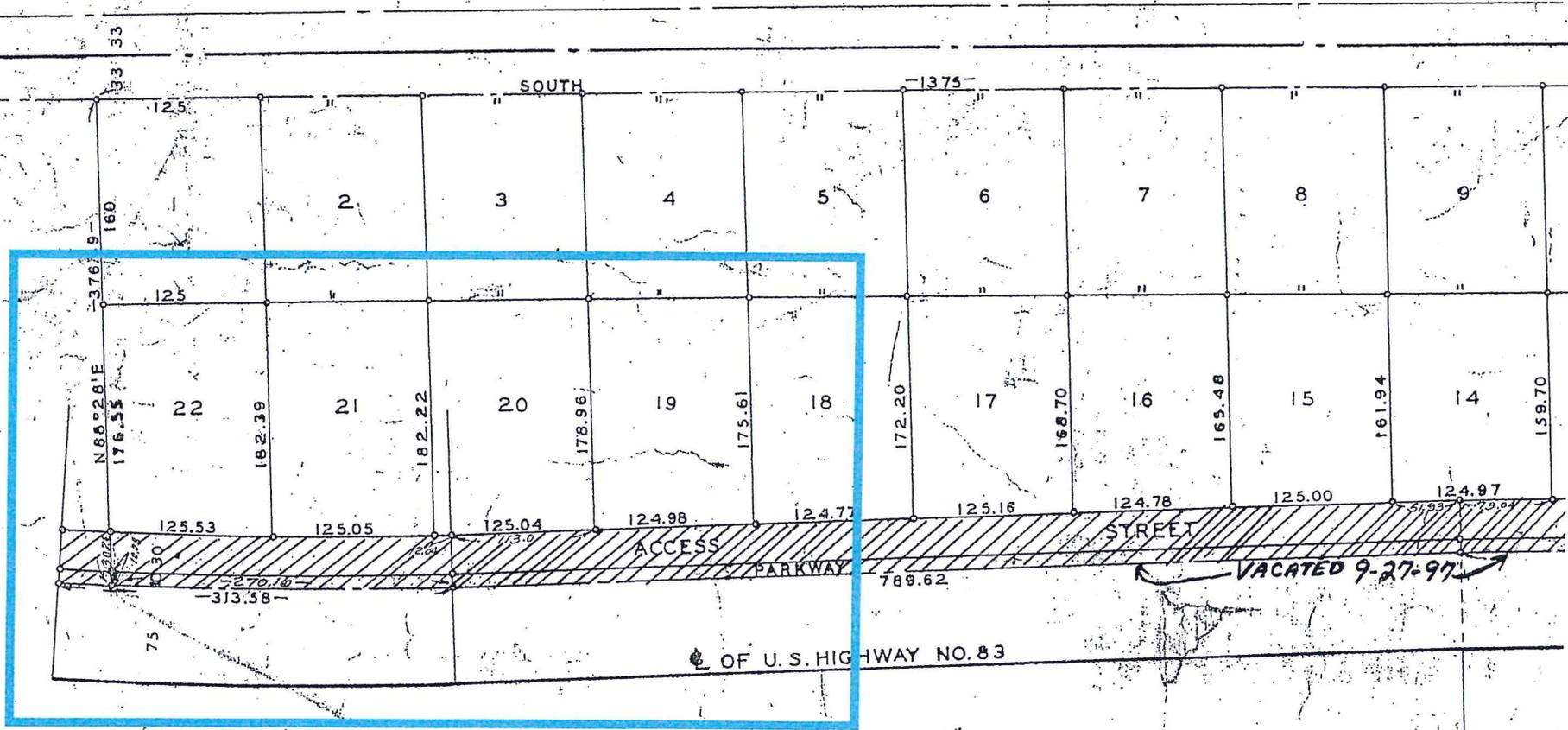


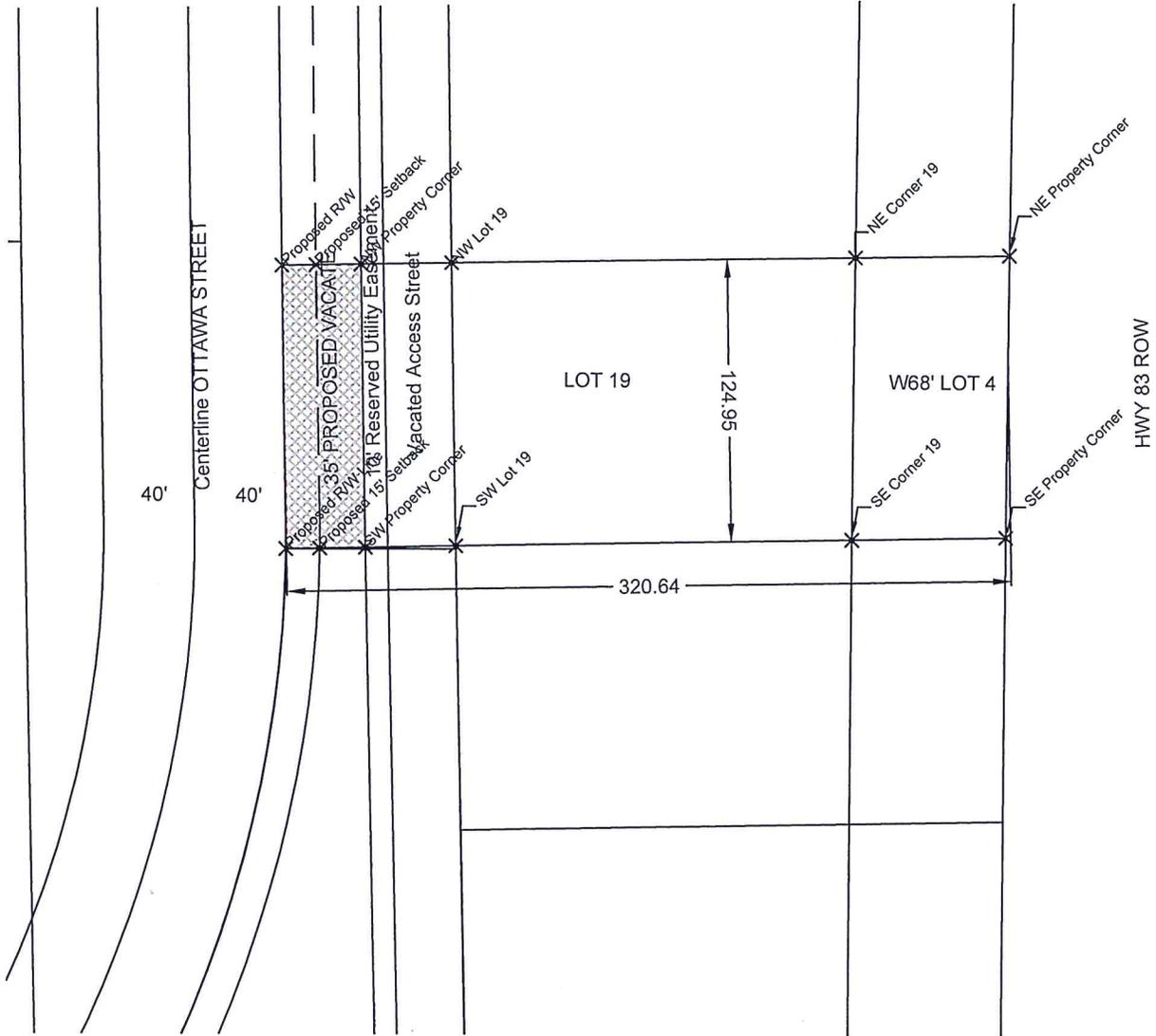
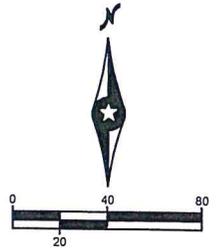
October 31, 2016 (hlb)

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 hereon.



Excerpt from
Wutzke's
Second
Subdivision





P:\A\BIBOUSEY\138996\9-survey\92-CAD\15-dwg\BDRY.dwg 10/19/2016 10:26 AM mgall



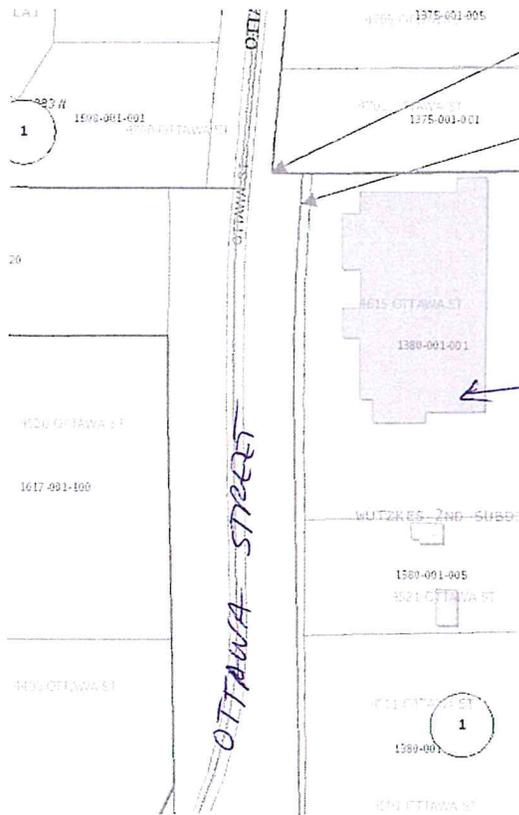
SEH
 PHONE: 701.354.7121
 4719 SHELburnE ST, SUITE 6
 BISMARCK, ND 58503-5677
 www.sehinc.com

LOT SURVEY
 EXHIBIT

4521 OTTOWA ST
 LOT 19, BLOCK 1,
 WUTZKE'S 2ND
 SUBDIVISION

FILE NO. 138996
DATE 10/19/16
DRAWN BY: MSG CHECKED BY: RMI SURVEYED BY: LMA

RECEIVED
OCT 31 2010



Vacated Right of way in 2011

Not vacated yet Right of way

OUR NORTH LOT
owner Bergen Real Estate

PLANT PERFECT GARDEN CENTER
owner Bergen Real Estate

This application is filed complete with the required information as outlined in the attached submission checklist. If a subdivision plat application: because of scheduling and calendar considerations, your subdivision plat may not be finally approved within 30 days as per NDCC Section 40-48-21. I hereby waive said requirements in return for expeditious consideration of my application by the City. If an annexation application: the City will post legal notice of public hearing on behalf of the applicant rather than the applicant as specified in NDCC Section 40-51.2-05. I understand the regulations of the Bismarck Zoning Ordinance and the NDCC as they pertain to this request(s). I certify that all property owners have signed or ratified this application. I hereby request favorable consideration of the above described development application.

Mara A Bergen
 (Applicant's Signature) *owner*

10/26/2016
 (Date)

 (Owner's Signature, if different)

 (Date)

 (Additional Owner's Signature, if applicable)

 (Date)

 (Additional Owner's Signature, if applicable)

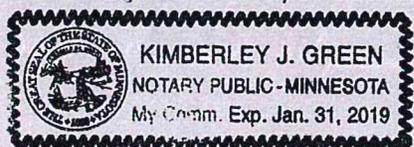
 (Date)

VERIFICATION FOR PLAT MODIFICATION REQUESTS:

The oath of at least one petitioner is required for **plat modification requests only**
 (vacation of street/alley, release of non-access line or release of easement)

Minnesota
 STATE OF NORTH DAKOTA)
 : SS
 COUNTY OF BURLEIGH)
Becker

On this *26th* day of *October*, 20*16* before me, a notary public in and for said county and state, appeared *Mara Bergen*, known to be personally to be the same person described in and whom executed the above instrument, and severally acknowledged that he/she executed the same.



Kimberley J. Green
 Notary Public
 Burleigh County, State of North Dakota

Submission Deadlines: *Becker County, State of MN*

The Planning and Zoning Commission regularly meets on the fourth Wednesday of each month. All development applications - except for variances, lot modifications and plat modifications - are due at 12:00 noon on the Friday that is 33 calendar days prior to the meeting.

The Board of Adjustment regularly meets on the first Thursday of each month. All development applications for variances are due at 5:00 p.m. on the Monday that is 17 calendar days prior to the meeting.

The Board of City Commissioners regularly meets on the second and fourth Tuesdays of each month. All development applications for plat modifications (street/alley vacation, non-access line release, easement release) are due at 5:00 p.m. on the Tuesday that is 14 calendar days prior to the meeting.

Development applications for lot modifications are processed administratively and may be submitted at any time.



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
Anton Sattler, Environmental Health Administrator, 701-355-3401, 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 8th 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 1st and ending ~~December~~ March 31st of ~~each~~ the following year. All ~~permits licenses~~ licenses expire on ~~December~~ March 31st of each year. In the event a ~~permit license~~ license is issued during a ~~permit license~~ license period, the ~~permit license~~ 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 1st through March 31st 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 1st and ending ~~December~~ March 31st of ~~each~~ the following year. All ~~permits~~ licenses expire on ~~December~~ March 31st 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 1st 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 31st 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 ~~permitter~~ 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 ~~permitter~~ 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 ~~permitter~~

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.



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
Anton Sattler, Environmental Health Administrator, 701-355-3401, 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 8th 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. 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 1st of each year from the director of public health, and is valid until March 31st 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.



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
Anton Sattler, Environmental Health Administrator, 701-355-3401, 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 8th 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. 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.



PUBLIC WORKS – UTILITY OPERATIONS

DATE: December 7, 2016
FROM: Michelle Klose, Director of Utility Operations *MK*
ITEM: 2017 Chemical Bids for Water/Wastewater Treatment

REQUEST

Consider the request to award bids of chemicals for calendar year 2017.

The bid opening was scheduled for 4:00 p.m. on Tuesday, December 6, 2016; however, due to the unforeseen closing of City offices, bids will be publicly opened and reviewed at four (4:00) o'clock p.m., on Wednesday, December 7, 2016.

Bid tab and recommendation will be provided at the commission meeting.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

Bulk supply of pebbled quicklime, phosphate corrosion inhibitor, chlorine gas, sulfur dioxide gas, ferric chloride, fluorosilicic acid, liquid ammonium sulfate and liquid carbon dioxide for calendar year 2017 water/wastewater treatment.

RECOMMENDED CITY COMMISSION ACTION

Consider and approve the award of bids for chemicals for the 2017 calendar year.

STAFF CONTACT INFORMATION

Michelle Klose, Director of Utility Operations, 355-1700, mklose@bismarcknd.gov



AIRPORT

DATE: December 5, 2016
FROM: Gregory B. Haug, Airport Director
ITEM: Agenda Item for December 13, 2016

A handwritten signature in blue ink, appearing to be "G. Haug".

REQUEST

Consider a Reimbursable Agreement with Federal Aviation Administration (FAA) for navigation aid flight checks associated with Runway 13/31 reconstruction (Phase 2).

BACKGROUND INFORMATION

On September 21, 2016 the Board approved actions for the first year of construction of Runway 13/31 reconstruction. This reimbursable agreement pays the FAA for flight checks for temporary relocations of Precision Approach Path Indicators (PAPI), Runway End Identifier Lights (REIL) during construction phasing and permanent positioning of the PAPI at the end of this phase. FAA requires the agreement and prepayment in place before scheduling the flight checks.

The Reimbursable Agreement will be funded through the summer by the approved airport spending plan. Staff will apply for the next Federal Aviation Administration (FAA) grant in August/September and the next state grant in May as part of the project funding package.

RECOMMENDED CITY COMMISSION ACTION

1. Approve the reimbursable agreement with FAA for \$56,479.95 at enclosure 1.

STAFF CONTACT INFORMATION

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

Enclosures:

1. Reimbursable agreement

ON December 13, 2016
AGENDA

CONTRACT REVIEW FORM

AIP ELIGIBLE

DEPARTMENT

Contract between the City of Bismarck and FAA

Purpose of Contract: REIMBURSABLE AGREEMENT FOR FLIGHT CHECKS OF NAVIGAS
(PART OF RWY 13/31 RECONSTRUCTION)

Contract Amount: \$ 56,479.95

Contract Period: INDEF

Funding Source: FINANCE PLAN FOR RWY 13/31 RECONSTRUCTION

Project Number: (If needed, send copy to Fiscal) .

Comments: MAY BE PART OF NEXT AIP GRANT OR RECOVERED IN PFC #7

After Mayor's Signature, route to: AIRPORT

Date:

Department Head Signature:

Date:

CITY ATTORNEY

Comments:

City Attorney Signature:

Date:

FINANCE

Comments:

Director of Finance Signature:

Date:

ADMINISTRATION

City Administrator Signature:

Date:

GRANTS COORDINATOR: _____

Please send copy of completed contracts to Administration.

NON-FEDERAL REIMBURSABLE AGREEMENT

BETWEEN

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

AND

**CITY OF BISMARCK
BISMARCK, ND**

WHEREAS, the Federal Aviation Administration (FAA) can furnish directly or by contract, material, supplies, equipment, and services which the **City of Bismarck** (Sponsor) requires, has funds available for, and has determined should be obtained from the FAA;

WHEREAS, it has been determined that competition with the private sector for provision of such material, supplies, equipment, and services is minimal; the proposed activity will advance the FAA's mission; and the FAA has a unique capability that will be of benefit to the Sponsor while helping to advance the FAA's mission;

WHEREAS, the authority for the FAA to furnish material, supplies, equipment, and services to the Sponsor upon a reimbursable payment basis is found in 49 U.S.C. § 106(l)(6) on such terms and conditions as the Administrator may consider necessary;

NOW THEREFORE, the FAA and the Sponsor mutually agree as follows:

ARTICLE 1. Parties

The Parties to this Agreement are the FAA/Flight Program Operations, and **City of Bismarck**.

ARTICLE 2. Type of Agreement

This Agreement is an "other transaction" authorized under 49 U.S.C. § 106(l)(6). It is not intended to be, nor will it be construed as, a partnership, corporation, joint venture or other business organization.

ARTICLE 3. Scope

A. The purpose of this Agreement between the FAA and the Sponsor is to provide **four separate special flight inspections of the PAPIs and REILs on Rwy 31 at Bismarck Municipal Airport (KBIS) Bismarck, ND**. This Agreement provides funding for the FAA to establish these services.

Therefore, this project is titled:

City of Bismarck, Bismarck, ND

- B. The FAA will perform **four separate special flight inspections of the PAPIs and REILs on Rwy 31 at Bismarck Municipal Airport (KBIS) Bismarck, ND.**
- C. The Sponsor will perform the following activities:
1. Provide funding as estimated in Article 7.
 2. Upon signature and payment of agreement, contact James Field at 405-954-9318 or james.d.field@faa.gov and inform him when the site is ready for inspection. You may call the Oklahoma City Service Center if you have any questions at 405-954-9780.
- D. **This agreement is in whole or in part funded with funding from an AIP grant [] Yes [x] No. If Yes, the grant date is: N/A and the grant number is: N/A. If the grant information is not available at the time of agreement execution, the Sponsor will provide the grant information to the FAA when it becomes available.**

ARTICLE 4. Points of Contact

A. FAA:

1. Flight Program Operations will perform the Scope of Work included in this Agreement. Robert Loveland is the Manager, Flight Inspection Scheduling Subteam, and liaison with the Sponsor for any Flight Inspection issues and can be reached at 405-954-3955. The Flight Program Operations Agreement Administrator, Kadi Barrett, can be reached at 405-954-7568. These liaisons are not authorized to make any commitment, or otherwise obligate the FAA, or authorize any changes which affect the estimated cost, period of performance, or other terms and conditions of this Agreement.
2. FAA Contracting Officer: The execution, modification, and administration of this Agreement must be authorized and accomplished by the Contracting Officer, Avis Franklin, who can be reached at 405-954-7836.

B. Sponsor Point(s) of Contact

**Sponsor: City of Bismarck
Attention: Mr. Tim Thorsen, Assistant Airport Director
Address: Bismarck Airport
PO Box 991
Bismarck, ND 58502**

Phone: (701) 355-1808
E-mail: tthorsen@bismarcknd.gov

ARTICLE 5. Non-Interference with Operations: [RESERVED]

ARTICLE 6. Property Transfer [RESERVED]

ARTICLE 7. Estimated Costs

A. The estimated FAA costs associated with this Agreement are as follows:

DESCRIPTION OF REIMBURSABLE ITEM	ESTIMATED COST
LABOR	
NA	\$0
NON-LABOR	
Flight Inspection	\$52,785.00
Non-Labor Overhead (7%)	\$3,694.95
Total Non-Labor	\$56,479.95
TOTAL ESTIMATED COST	\$56,479.95

Detailed Estimate:

Flight Inspection Estimated Cost

<i>Challenger Rate \$3,519/hr</i>	Type	Hours	Inspections	Estimated Cost
PAPIs and REILs on Rwy 31 at KBIS	Special	12	4	\$52,785.00
			7% Administrative Overhead	<u>\$3,694.95</u>
			Total Estimated Cost	\$56,479.95

B. The FAA- Flight Program Operations reserves the right to determine which aircraft will be used for flight inspections. Flight hour rates will be adjusted automatically according to the most current edition of FAA Order 2500.36, Application of Flight Hour Rates. The **estimates** are based on rates in effect at the time this Agreement is signed.

C. Estimated costs contained herein are for planning purposes only and can vary depending on the actual aircraft used, and actual flight hours expended to reach the facility and to accomplish the inspection. As required by regulation, the final bill submitted to the customer will reflect **actual** hours and costs to Flight Program Operations.

- D. **Sponsor** will be notified of any necessary deviations or changes to the instrument flight procedure and agrees to negotiate with the FAA to resolve additional reimbursement issues exceeding 10% of the cost estimate, in accordance with Article 9.
- E. FAA flight inspection aircraft may be delayed from scheduled itineraries for unanticipated reasons such as a National Airspace System priority, weather, or unscheduled aircraft maintenance. FAA is not responsible for any additional cost the Sponsor may incur if an inspection must be rescheduled.

ARTICLE 8. Period of Agreement and Effective Date

The effective date of this Agreement is the date of the last signature. This Agreement is considered complete when the final invoice is provided to the Sponsor and a refund is sent or payment is received as provided for in Article 9, Section D of this Agreement. Under no circumstances will this Agreement extend five years beyond its effective date.

ARTICLE 9. Reimbursement and Accounting Arrangements

- A. The Sponsor agrees to prepay the entire estimated cost of the Agreement. The Sponsor will send the Agreement to the FAA Agreement Coordinator for FAA signature and advance payment to the Accounting Division listed in Section C of this Article. The advance payment will be held as a non-interest bearing deposit. Such advance payment by the Sponsor must be received before the FAA incurs any obligation to implement this Agreement. Upon completion of this Agreement, the final costs will be netted against the advance payment and, as appropriate, a refund or final bill will be sent to the sponsor. Per U.S. Treasury guidelines, refunds under \$1.00 will not be processed. Additionally, FAA will not bill the sponsor for amounts less than \$1.00.
- B. The Sponsor certifies that arrangements for sufficient funding have been made to cover the estimated costs of the Agreement.
- C. The Accounting Division is identified by the FAA as the billing office for this Agreement. The Sponsor will send a copy of the executed Agreement to the Agreement Coordinator and submit the full advance payment to the Accounting Division. The sponsor can either mail the payment to the address shown below or submit payment (via check or credit card) electronically via pay.gov. All payments must include the Agreement number, Agreement name, Sponsor name, and project location.

The mailing address is:

FAA – Mike Monroney Aeronautical Center
ATTN: AMK-323, Reimbursable Project Team
P.O. Box 25082
Oklahoma City OK 73125

The overnight mailing, address is:

DOT/FAA/Mike Monroney Aeronautical Center
AMK-323 Reimbursable Project Team
6500 S. MacArthur Blvd.
Oklahoma City OK 73169
Telephone: (405) 954-7849

The Sponsor hereby identifies the office to which the FAA will render bills for the project costs incurred as:

City of Bismarck
Attn: Mr. Tim Thorsen, Assistant Airport Director
Bismarck Airport
PO Box 991
Bismarck, ND 58502
(701) 355-1808
tthorsen@bismarcknd.gov

- D. The cost estimates contained in Article 7 are expected to be the maximum cost associated with this Agreement, but may be modified to recover the FAA's actual cost. If during the course of this Agreement, actual costs are expected to exceed the estimated costs, the FAA will notify the Sponsor immediately. The FAA will also provide the Sponsor a modification to the Agreement which includes the FAA's additional costs. The Sponsor agrees to prepay the entire estimated cost of the modification. The Sponsor will send a copy of the executed modification to the Agreement to the FAA-Mike Monroney Aeronautical Center with the additional advance payment. Work identified in the amendment cannot start until receipt of the additional advance payment. In addition, in the event that a contractor performing work pursuant to the scope of this Agreement brings a claim against the FAA and the FAA incurs additional costs as a result of the claim, the Sponsor agrees to reimburse the FAA for the additional costs incurred whether or not a final bill or a refund has been sent.

ARTICLE 10. Changes and Modifications

Changes and/or modifications to this Agreement will be formalized by a written modification that will outline in detail the exact nature of the change. Any modification to this Agreement will be executed in writing and signed by the authorized representative

of each party. The parties signing this Agreement and any subsequent modification(s) represent that each has the authority to execute the same on behalf of their respective organizations. No oral statement by any person will be interpreted as modifying or otherwise affecting the terms of the Agreement. Any party to this Agreement may request that it be modified, whereupon the parties will consult to consider such modifications.

ARTICLE 11. Termination

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date, by giving the other party at least thirty (30) days prior written notice of termination. Payment of amounts due and owing may include all costs reimbursable under this Agreement, not previously paid, for the performance of this Agreement before the effective date of the termination; the total cost of terminating and settling contracts entered into by the FAA for the purpose of this Agreement; and any other costs necessary to terminate this Agreement. Upon receipt of a notice of termination, the receiving party will take immediate steps to stop the accrual of any additional obligations which might require payment. All funds due after termination will be netted against the advance payment and, as appropriate, a refund or bill will be issued.

ARTICLE 12. Order of Precedence [RESERVED]

ARTICLE 13. Legal Authority

This Agreement is entered into under the authority of 49 U.S.C. § 106(l)(6), which authorizes the Administrator of the FAA to enter into and perform such contracts, leases, cooperative agreements and other transactions as may be necessary to carry out the functions of the Administrator and the Administration on such terms and conditions as the Administrator may consider appropriate. Nothing in this Agreement will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

ARTICLE 14. Disputes

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any dispute through good faith negotiations, the dispute will be resolved by alternative dispute resolution using a method to be agreed upon by the parties. The outcome of the alternative dispute resolution will be final unless it is timely appealed to the Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see 49 U.S.C. § 46110).

ARTICLE 15. Warranties

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

ARTICLE 16. Insurance

The Sponsor will arrange by insurance or otherwise for the full protection of itself from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by the Sponsor, its employees, or contractors, or any third party acting on its behalf.

ARTICLE 17. Limitation of Liability

To the extent permitted by law, the Sponsor agrees to indemnify and hold harmless the FAA, its officers, agents and employees from all causes of action, suits or claims arising out of the work performed under this Agreement. However, to the extent that such claim is determined to have arisen from the act or omission by an officer, agent, or employee of the FAA acting within the scope of his or her employment, this hold harmless obligation will not apply and the provisions of the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., will control. The FAA assumes no liability for any losses arising out of any action or inaction by the Sponsor, its employees, or contractors, or any third party acting on its behalf. In no event will the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE 18. Civil Rights Act

The Sponsor will comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in federally assisted programs.

ARTICLE 19. Protection of Information

The parties agree that they will take appropriate measures to identify and protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

ARTICLE 20. Security [RESERVED]

ARTICLE 21. Entire Agreement

This document is the entire Agreement of the parties, who accept the terms of this Agreement as shown by their signatures below. In the event the parties duly execute any

modification to this Agreement, the terms of such modification will supersede the terms of this Agreement to the extent of any inconsistency. Each party acknowledges participation in the negotiations and drafting of this Agreement and any modifications thereto, and, accordingly that this Agreement will not be construed more stringently against one party than against the other. If this Agreement is not executed by the Sponsor within 100 calendar days after the FAA transmits it to the Sponsor, the terms contained and set forth in this Agreement shall be null and void.

AGREED:

**FEDERAL AVIATION
ADMINISTRATION**

CITY OF BISMARCK

SIGNATURE _____
NAME Avis Franklin
TITLE Contracting Officer

DATE _____

SIGNATURE _____
NAME Michael C. Seminary
TITLE President, Board of City
 Commissioners

DATE _____

Bismarck

AIRPORT

DATE: December 5, 2016
FROM: Gregory B. Haug, Airport Director
ITEM: Agenda Item for December 13, 2016



REQUEST

Consider an engineering services agreement with KLJ for the second year design Runway 13/31 reconstruction (Phase 3).

BACKGROUND INFORMATION

Airport staff has been working with the Board for several years preparing for reconstruction of the primary runway 13/31. On March 11, 2014, the Board approved KLJ work on an engineering design report for runway 13/31 that completed required planning steps to answer FAA questions and prove the need for reconstruction. On May 15, 2015, the Board approved work on an airport drainage study to determine drainage needs impacting the runway. On November 12, 2015, the Federal Aviation Administration (FAA) approved the environmental action (Categorical Exclusion or CATX) for runway 13/31. On February 23, 2016 the Board approved an agreement with KLJ to design the first year of construction of this three year project. On September 21, 2016 the Board approved actions for the first year of construction.

This contract is for design of the second year of work for the runway 13/31 reconstruction project (enclosure 1). The engineer shall complete the detailed design of approximately 5,400 feet of the center of runway 13-31, including taxiway C-3 and C-4. A Construction Engineering and Inspection contract for the second year will be brought to the Board in a separate agreement later next year.

A scope of work and tasks for the engineering design contract was developed and approved by the FAA. This scope was used to solicit an independent fee review from TKDA Engineering in Minneapolis, Minnesota. The independent fee review was then used to assist in negotiating a contract with KLJ. KLJ proposes a cost not to exceed \$761,681.19 for all work completed (Enclosure 1). Our independent fee review calculated total engineering fees of \$781,610.15. KLJ's proposed fees are 2.5% (\$19,928.96) below the independent fee review and are deemed

to be reasonable. The Engineering Agreement will be funded through the summer by the approved airport spending plan. Staff will apply for the next Federal Aviation Administration (FAA) grant in August/September and the next state grant in May. Airport staff is following the approved project budget and continues to work with City Finance Director, Sheila Hillman refining the overall plan to finance the project to completion.

RECOMMENDED CITY COMMISSION ACTION

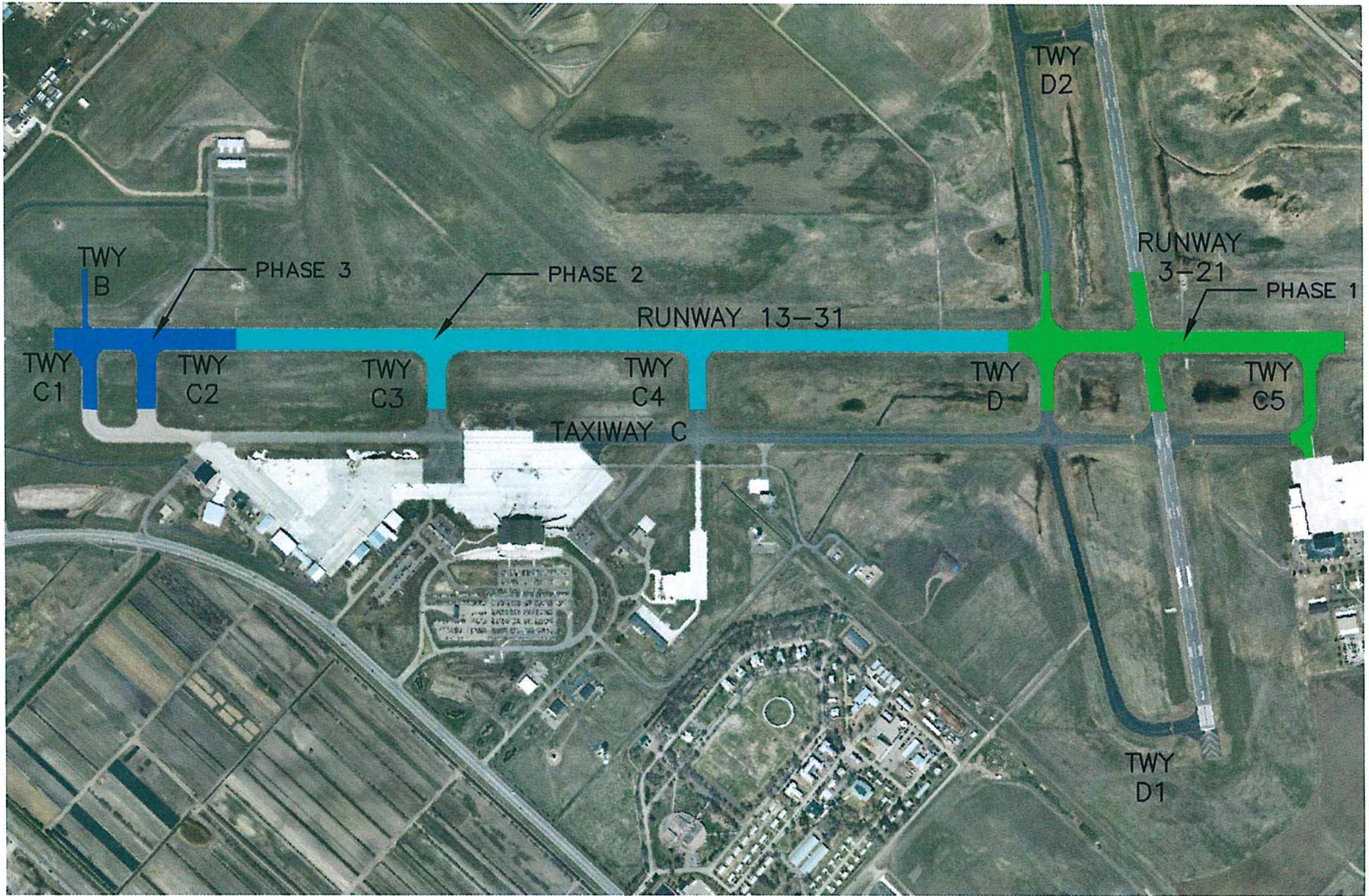
1. Approve KLJ's design engineering services agreement for \$761,681.19 at enclosure 1.

STAFF CONTACT INFORMATION

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

Enclosures:

1. Construction Phase diagram
2. KLJ design agreement



DRAFTED BY: A.M.L.
 REVIEWED BY: T.J.N.
 PROJECT NO: 1516702
 REVISED DATE: 02/17/2016

RUNWAY 13-31 RECONSTRUCTION
 BISMARCK AIRPORT – CITY OF BISMARCK (OWNER)
 BISMARCK, NORTH DAKOTA



CONTRACT REVIEW FORM

DEPARTMENT

Contract between the City of Bismarck and KLJ

Purpose of Contract: RUNWAY 13/31 RECONSTRUCTION (PHASE 3) DESIGN (SECOND CONSTRUCTION YEAR)

Contract Amount: \$761,681.19

Contract Period: DESIGN COMPLETE (MINUS BIDDING) WITHIN 190 DAYS OF NOTICE TO PROCEED. ENDS 90 DAYS AFTER BIDDING OF PROJECT COMPLETE

Funding Source: SEE PROJECT FINANCE PLAN / BUDGET INCLUDES AIP GRANT

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

Comments: GRANT NOT YET KNOWN LIKEY AIP 58

After Mayor's Signature, route to: AIRPORT

Date:

Department Head Signature:

Date:

CITY ATTORNEY

Comments:

City Attorney Signature:

Date:

FINANCE

Comments:

Director of Finance Signature:

Date:

ADMINISTRATION

City Administrator Signature:

Date:

GRANT'S COORDINATOR: _____

Please send copy of completed contracts to Administration.

ENCL 2

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made this 13th of December, 2016, by and between the City of Bismarck, having an address of 2301 University Drive, P.O. Box 991, Bismarck, ND 58502, hereinafter referred to as the "OWNER", and Kadrmass, Lee & Jackson, Inc., having an address of 4585 Coleman Street, Bismarck, ND 58503, hereinafter referred to as the "ENGINEER".

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

I. GENERAL DESCRIPTION OF WORK TO BE PERFORMED.

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

- A. Runway 13-31 Reconstruction (Phase 3) Design
KLJ 1517700 Task 2 Preliminary and Design Services

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

II. PERIOD OF SERVICE

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

III. COMPENSATION.

Compensation on this project shall be broken into separate and independent forms of compensation. The first form of compensation shall be lump sum compensation. The second form of compensation shall be cost plus fixed fee compensation. The third form of compensation shall be hourly rate compensation. Following the description of the compensation method below, a chart details the items which will be compensated on lump sum basis, cost plus fixed fee basis, and hourly rate basis. Generally speaking, those items compensated on a cost plus fixed fee are items that are currently not possible to be estimated accurately. These include, for instance, construction observation and project records phases, which are dependent upon the Contractor who is doing the construction work and the year in which it is constructed. Compensation under an hourly rate basis is typically used when the scope of services is open-ended, unknown and / or not definable. In this case, the ENGINEER shall only bill the cost and fixed fee that is used for that task. Previously audited overhead and general/administrative overhead at 172.98% shall apply to this agreement. The cost of facilities rate of 1.09% and fixed fee rate of 15% shall apply to this agreement.

A. Lump Sum Compensation.

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

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

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

Task Item	Total Compensation
Preliminary and Design Services (Task 2)	\$761,681.19

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

B. Cost Plus Fixed Fee Compensation.

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

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

Task Item	Fixed Fee Payment	Total Compensation
NA	NA	NA

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

C. Hourly Rate Compensation.

The OWNER shall compensate the ENGINEER for services on an actual cost plus overhead and fixed fee basis. The actual costs will consist of salary costs, overhead expenses, and direct

non-salary expenses as defined in the latest edition of FAA Advisory Circular 150/5100-14. All direct salary costs and expenses may be verified by auditing at the conclusion of this project. The fixed fee shall be included in the hourly rate. The table below includes the description of services and the total estimated compensation for this service.

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

Table C Hourly Rate Compensation	
Task Item	Total Compensation
NA	NA

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

D. GENERAL

The total compensation for all agreement costs, based on the estimated costs put forth in Attachment B shall not exceed \$ 761,681.19. The fixed payment for all phases, based upon the estimated costs put forth in Table B shall be a lump sum amount of \$0. For any form of compensation listed above, the individual compensation amounts shall not exceed the maximum amount shown unless approved in writing by the OWNER.

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

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

V. OWNER'S RESPONSIBILITY.

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

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

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

regulation, ordinance, code or order applicable to their furnishing and performing the work.

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

VI. COMPLETION TIME.

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

VII. TERMS AND CONDITIONS.

A. Ownership of Drawings and Contract Documents.

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

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

B. Standard of Care.

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

C. Limitations of Responsibility.

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

D. Opinions of Probable Construction Cost.

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

E. Termination.

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

F. Dispute Resolution.

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

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

G. Successors and Assigns.

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

H. Indemnification.

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

I. Hazardous Materials.

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

J. Controlling Law.

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

K. Construction Phase Services.

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

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

L. Compliance Requirements.

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

M. Insurance.

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

N. Affirmative Action.

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

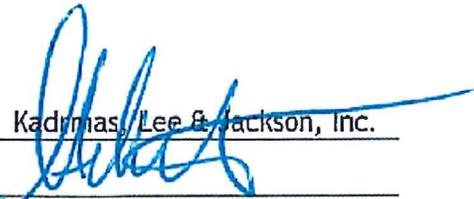
VIII. FEDERAL CONTRACT PROVISIONS.

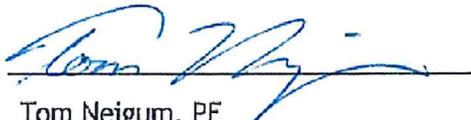
If this Agreement is to be financed in part by Federal funds, certain federally-required, contract provisions must be incorporated. These federally-required, contract provisions, included as ATTACHMENT C, are hereby incorporated herein and made a part of this Agreement. The ATTACHMENT C incorporated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

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

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

Attest _____
Name Keith J. Hunke
Title City Administrator

Engineer Kadymas, Lee & Jackson, Inc.
Signed 
Name Steve Synhorst, PE
Title Division Leader
Date 12/2/2016

Attest 
Name Tom Neigum, PE
Title Aviation Services Manager

CERTIFICATION OF ENGINEER

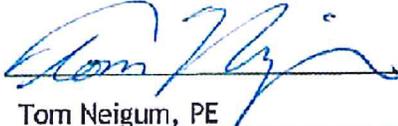
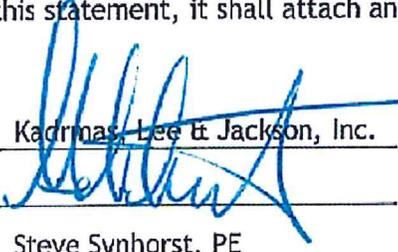
I hereby certify that I am the Division Leader (title) and duly authorized representative of Kadmas, Lee & Jackson, Inc., whose address is 4585 Coleman Street, Bismarck, ND 58503, and that neither I nor the firm I here represent has:

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

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

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

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

Engineer	<u>Kadmas, Lee & Jackson, Inc.</u>	Attest	
Signed		Name	<u>Tom Neigum, PE</u>
Name	<u>Steve Synhorst, PE</u>	Title	<u>Aviation Services Manager</u>
Title	<u>Division Leader</u>		
Date	<u>12/2/2016</u>		



Attachment A
Detailed Scope of Services
Runway 13-31 Reconstruction (Phase 3) Design
Bismarck Airport, Bismarck, North Dakota
AIP Project # 3-38-0003-XXX-2017
KLJ# 1517700

EXECUTIVE SUMMARY

For this project, there is one major task to be completed as part of this Detailed Scope of Services. The Engineer shall complete the detailed design of Runway 13-31, starting from a point approximately 1,100 feet from Runway 13, then proceeding south a distance 5,500 feet from this point. The design area includes Taxiway C3 and Taxiway C4.

PROJECT DESCRIPTION

General. The work is to occur at the Bismarck Airport in Bismarck, North Dakota, under the terms and conditions of the Agreement for Professional Services (Agreement) between the City of Bismarck (Owner) and KLJ (Engineer).

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

For this project, Runway 13-31 Reconstruction (Phase 1) has been completed as part of a separate Agreement. Runway 13-31 Reconstruction (Phase 1) consisted of topographic survey of Runway 13-31 and Runway 3-21 (approximately 60 acres), soils borings on Runways 13-31 and 3-21, preliminary runway profiles, preliminary Engineering Design Report, and Airport Drainage Study.

Runway 13-31 Reconstruction (Phase 2) has also been completed as part of a separate Agreement. The work items for this project is as follows:

- Reconstruction of the south 2,200 feet of Runway 13-31.
- Reconstruction of Taxiway D west and east connecting to Runway 13-31 a distance beyond the Runway 13-31 RSA to complete the tie in. Taxiway D will be constructed of Portland cement concrete pavement out to a distance of approximately 300 feet from the Runway 13-31 centerline in both directions, then will be a hot mix asphalt tie in to the existing asphalt pavement.
- Reconstruction of Runway 13-31 / Runway 3-21 intersection a distance beyond the Runway 13-31 RSA to complete the tie in. Runway 3-21 will be constructed of Portland cement concrete pavement out to a distance of approximately 300 feet from the Runway 13-31 centerline in both directions, then will be a hot mix asphalt tie in to the existing asphalt pavement.
- Reconstruction of Taxiway C5 connecting to Runway 13-31 a distance beyond the Runway 13-31 RSA to complete the tie in. Taxiway C5 will be constructed of Portland cement concrete pavement out to a distance of approximately 300 feet from the Runway 13-31 centerline, then will be a hot mix asphalt tie in to the existing asphalt pavement.
- Reconstruction of the NDANG taxiway that connects from their apron to Taxiway C / C5 in order to meet the new elevation of Taxiway C / C5. This taxiway will be constructed of Portland cement concrete pavement.
- Reconstruction of Runway 31 blast pad. The new Runway 13-31 blast pad will be constructed to a dimension of 200 feet by 200 feet and will be Portland cement concrete pavement.
- Installation of edge drain and storm sewer to install as part of the affected area.
- Installation of Runway 13-31 High Intensity Runway Lighting System within the affected area.

- Installation of mandatory instruction signs, location signs, boundary signs, destination signs, information signs, and runway distance remaining signs.
- Adjust the following FAA owned facilities:
 - Runway 31 glideslope / ILS / localizer / shelter
 - Runway 31 threshold bar
 - Runway 31 MALSR

For the Runway 13-31 Reconstruction (Phase 3) project, the work items in the Detailed Scope of Services for this project are as follows:

- Runway 13-31 Reconstruction (Phase 3), which includes:
 - The Engineer is basing this Detailed Scope of Services on the premise that Runway 13-31 will be reconstructed to its current dimensions of 8,794 feet in length by 150 feet in width, and that redesign of the dimensions will not be undertaken. The Engineer is also basing this Detailed Scope of Services on tying into all connecting taxiways at their current pavement widths. The Engineer shall design Taxiways C3 and C4 per the below information. Any changes to this shall be addressed per Section IV and Section V, Item P, of the Agreement.
 - Design of the third phase of Runway 13-31 to be reconstructed. At this time, it is anticipated that this will include the following:
 - Detailed design of the northerly 5,500 feet of Runway 13-31, starting from a point approximately 1,100 feet from Runway 13 and commencing south of this point. Design shall also include a pavement transition section from the existing pavement to the new concrete pavement on Runway 13-31.
 - Detailed Design of Taxiway C3 a distance beyond the Runway 13-31 RSA to complete the tie in, with a design profile meeting FAA standards and providing an adequate pavement transition from the proposed pavement section to the existing pavement section. The Engineer shall design the new taxiway concrete pavement section per FAA ADG 4 and TDG 5 standards, then construct an asphalt transition section to tie into the current taxiway pavement width. The length of the asphalt transition will depend on the taxiway profile grade, as well as the length required to transition from the new pavement section depth the existing pavement section depth to minimize differential movement.
 - Detailed Design of Taxiway C4 a distance beyond the Runway 13-31 RSA to complete the tie in, with a design profile meeting FAA standards and providing an adequate pavement transition from the proposed pavement section to the existing pavement section. The Engineer shall design the new taxiway concrete pavement section per FAA ADG 3 and TDG 4 standards, then construct an asphalt transition section to tie into the current taxiway pavement width. The length of the asphalt transition will depend on the taxiway profile grade, as well as the length required to transition from the new pavement section depth the existing pavement section depth to minimize differential movement.
 - Detailed design of edge drain and storm sewer to install as part of the affected area. The Engineer shall determine if impacts from the 2015 BIS Drainage Study solution (ongoing project) need to be included with this phase, or if those improvements will be undertaken as part of a separate project. If incorporation of drainage improvements is required in this project phase, the Engineer will add only what is required to construct the Runway 13-31 reconstruction project (Phase 3) and stay within the limits of what is cleared environmentally as part of this project.
 - Detailed design of Runway 13-31 High Intensity Runway Lighting System within the affected area, with consideration of how to tie to the existing lighting system.
 - Detailed design of mandatory instruction signs, location signs, boundary signs, destination signs, information signs, and runway distance remaining signs.
 - Complete the Construction Safety Phasing Plans. It is anticipated that construction of this section of Runway 13-31 will occur in one phase.
 - It is anticipated that the FAA Modifications to Standards have been completed as part of the Phase 2 Preliminary and Design Services, and these FAA Modifications to Standards will not be required to be resubmitted to the FAA as the ones approved for the Phase 2 Preliminary and Design Services apply for the entire runway reconstruction project.

- At present, it's anticipated that FAA owned facilities will be impacted by this project phase. There are existing FAA circuits that will need to be rewired, and the Engineer anticipates coordinating with FAA Technical Operations on the utilities impacted as part of construction.

Completion Time. The Engineer shall complete the Design Services (minus the Bidding Services) within 190 calendar days of the Owner issuance of the Notice to Proceed. A detailed project schedule can be found on page 13 of this Detailed Scope of Services. This schedule allows for ten (10) weeks review by the FAA for the Detailed Scope of Services and a maximum of two (2) weeks review by the FAA for plans / specifications. The Engineer and Owner intend to meet with the FAA in person at the FAA Bismarck ADO to discuss these items in person, as well as discuss FAA comments and concerns.

The Bidding Services shall be completed within the timeframe set forth by the Owner's requirements to bid and state law bidding practice. The Engineer shall complete the total contract within 90 days after bidding is completed and the final invoice has been paid by the Owner. Schedule and fee is based on FAA funding for the project being approved for construction in 2017. If funding does not become available for 2017 construction, timelines may be revised accordingly.

PROJECT ADMINISTRATION

Project Scoping Meeting with Owner. The Engineer shall attend one (1) meeting to discuss project scoping, FAA Pre-Application and airport capital improvements plan with the Owner at the Bismarck Airport. The Engineer staff attending the meeting shall include:

- Project Manager (Engineer V)

Prepare Project Scope of Services and Schedule. The Engineer shall prepare a Detailed Scope of Services and preliminary schedule based on the information obtained during the Owner Scoping Meeting. Engineer shall submit the Detailed Scope of Services and schedule to the Owner for review and make applicable modifications as agreed upon.

Project Detailed Scope of Services Review with FAA. The Engineer shall present the final Detailed Scope of Services for review and approval. Per FAA recommendation, the Engineer and Owner shall meet with the FAA at the FAA Bismarck ADO to discuss each comment and provide feedback. The Engineer shall then update the Detailed Scope of Services per applicable FAA comments, and then resubmit the Detailed Scope of Services to the Owner for review and comment. It is anticipated that the following design staff members shall attend the meeting:

- Project Manager (Engineer V)

Engineering Scope and Hour Negotiations. Upon Detailed Scope of Services approval from the FAA, the Engineer shall prepare a detailed hour breakdown with the associated fees for review by the Owner.

Independent Fee Document Preparation. The Engineer shall prepare the appropriate documents for the independent fee review based on the completed fee negotiations. The Owner shall follow FAA AC 150/5100-14E.

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

Prepare and Coordinate Subconsultant Agreements. The Engineer does not anticipate any coordination of subconsultant agreements as part of this Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

PROJECT MANAGEMENT

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

Project Startup Meeting. The Engineer shall conduct an internal kickoff meeting with the design staff consisting of all design team members.

Project Budget Setup. The Project Manager shall coordinate with the internal Accounting staff to establish the internal budgets.

Bi-weekly Budget Review / Projections. The Project Manager shall review budgets and budget projections on a bi-weekly basis and coordinate any known issues with the Owner.

Monthly Invoicing. The Project Manager and shall prepare monthly billings of project accounting.

Periodic Internal Meetings. The Project Manager and lead designers shall conduct a bi-weekly status meeting to review schedule and outstanding issues encountered.

Develop Quality Control Plan. The Engineer shall develop an internal Quality Control Plan for the project. The plan shall include project instructions, milestone checking, and peer review procedures at each phase of the project.

FAA Grant Coordination / Reimbursement Processing. The Engineer shall prepare the FAA Pre-Application for Federal Assistance per FAA SOP guidance information for submittal.

Monthly Status Reports. The Engineer shall prepare and submit monthly status reports to the Owner noting project progress, issues encountered and action requirements by the Owner.

FAA Quarterly Reports. The Engineer shall prepare and submit the quarterly FAA reports.

DBE Reporting. The Engineer shall prepare a Disadvantaged Business Enterprise (DBE) annual reporting forms as applicable to the project. The Owner has an approved DBE plan that shall be utilized for the project.

PROJECT PRE-DESIGN

Pre-Design Meeting. The Engineer shall coordinate for a pre-design meeting to be held at the Bismarck Airport with the Owner and Engineering design team to define the project requirements and schedule. The Engineer shall attempt to include appropriate Federal and State agency representatives either in person or by teleconference, depending on the project scope. It is anticipated that the following design staff members shall attend the meeting:

- Project Manager (Engineer V)
- Electrical Engineer (Engineer IV)
- Senior Engineering Technician (Engineering Technician IV)
- Assistant Project Manager (Engineer III)

FAA Safety Management System (SMS) Meeting. The Engineer does not anticipate the requirement of an FAA SMS Meeting as part of this Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Assist with Preliminary FAA Reimbursable Agreement. At this time, an FAA Reimbursable Agreement is not anticipated to be required. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Site Visit, Investigations and Data Collection. The Engineer shall investigate existing conditions through site visits and as-built drawings supplied by the Owner to determine scope of work and effects on design construction. The Engineer shall compile existing data, including existing and proposed utility data, required to develop the project current conditions and to form the basis for design. It is assumed that the Engineer shall not perform any subsurface investigations to verify the locations of underground utilities. The utility investigation shall be based on as-built documentation provided by the Owner, plus topographic survey information of surface features previously gathered by the Engineer. The Engineer shall advise the Owner as to the necessity of obtaining additional information related to the site, necessary for purposes of design.

Preliminary Soils Investigation. The preliminary soils investigation was completed as part of a previous Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Preliminary Survey & Base Map Preparation. The Engineer shall conduct additional topographic ground survey of the project area for additional utilities that are identified, as well as for additional detailed topographic information required as part of this project. It is anticipated that an additional 40 hours of topographic survey by a 2-man survey crew will be required to pick up additional topographic information necessary as the design of this project progresses.

Develop Project Justification. The development of project justification was completed as part of a previous Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Develop and Submit Environmental Checklist. Preparation of a Categorical Exclusion (CATEX) was completed as part of a previous Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Analysis of FAA Standards. The Engineer shall analyze and design the Taxiway C3 connection to meet FAA ADG 4 and TDG 5 standards. The Engineer shall analyze the Taxiway C4 connection to meet FAA ADG 3 and TDG 4 standards. The Engineer shall prepare exhibits to present to the FAA ADO for approval and eligibility determination. Once this meeting has been undertaken and the Owner concurs, the Engineer shall move forward with design of these features.

Complete Pavement Design / Cost Analysis. The preliminary pavement design and cost analysis was completed as part of a previous Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Engineering Design Report. The Engineering Design Report has been completed as part of a previous Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Prepare Preliminary Opinion of Cost and Update Airport Capital Improvement Plan (ACIP). The Engineer shall prepare a preliminary estimate of construction costs. Construction costs shall be developed based on historical local bid documentation, local suppliers and material availability. Updates shall be made to the ACIP as necessary.

Update Airport Layout Plan (ALP) Drawings. The Engineer has not included an update to the current Bismarck Airport ALP drawings in this Detailed Scope of Services. The Owner is currently proceeding with a Master Plan / ALP update.

Develop DBE Plan. The Disadvantaged Business Enterprise (DBE) Plan shall be prepared by the Owner. The Engineer shall utilize the DBE information provided by Owner.

Pre-Design Internal Document Review. The Engineer shall conduct a review of pre-design documents to verify findings are consistent with the pre-project assumptions and notify the Owner of any areas of concern or with any necessary Detailed Scope of Services revisions required.

PRELIMINARY PLANS AND SPECIFICATIONS

Assist with Final FAA Reimbursable Agreement. At this time, an FAA Reimbursable Agreement is not anticipated to be required. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Coordination with FAA Technical Operations Personnel. This work will include coordination with FAA Technical Operations on their facilities at BIS, defining impacts to these facilities, coordination of obtaining FAA drawings and specifications required to be included in the plan set to bid the project. In addition to the meetings specified in this Detailed Scope of Services, the Engineer anticipates up to two (2) meetings with FAA Technical Operations personnel to coordinate and obtain information required to complete this work. It is anticipated the following staff members shall attend the meetings:

- Project Manager (Engineer V)
- Electrical Engineer (Engineer IV)
- Assistant Project Manager (Engineer III)

Complete Pavement Design. The majority of the pavement design was completed as part of a previous Agreement. However, the Engineer anticipates the requirement to design pavement transition sections to tie to the existing pavement on Runway 13, Taxiway C3, and Taxiway C4 to match the anticipated pavement sections at these locations.

Develop Project Geometrics. Development of the preliminary horizontal and vertical geometry evaluations for the airfield improvements was completed as part of a previous Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Prepare Subsurface Drainage Design. The Engineer shall evaluate subsurface drainage options and incorporate them into the design as applicable.

Develop Site Grading Plan. The Engineer shall develop the site grading plan and evaluate borrow or waste source locations as applicable.

Prepare Storm Drainage Design. The Engineer shall review existing drainage studies developed for the Airport and surrounding area to evaluate existing drainage patterns and systems. The Engineer shall conduct required analysis for the design of drainage improvements associated with the project in accordance with FAA AC 150/5320-5D Airport Drainage Design and applicable local drainage design requirements. The area is limited to the area as shown in the attached exhibit as Approximate Detailed Design Limits.

Prepare Erosion Control Plan. The Engineer shall prepare an erosion control plan for the proposed construction. The Engineer shall investigate the requirements and include applicable local permitting requirements.

Prepare Airfield Lighting and Signage Design. The Engineer shall complete the preliminary airfield electrical layout design to include high intensity runway lights, mandatory instruction signs, location signs, boundary signs, destination signs, information signs, and runway distance remaining signs. The Engineer shall complete the preliminary electrical layout design.

Prepare Utility Solicitation / Utility Coordination. The utility solicitation and coordination has been completed as part of a previous Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Preliminary Plan Sheets. The Engineer shall prepare a plan set to address the necessary improvements and to depict the preliminary design elements. The plan set to include the following drawings:

- Cover Sheet
- Sheet Index
- Project Work Description & Basis of Estimate
- Construction Safety and Phasing Plans, Details and Notes (1 phase anticipated)
- Erosion Control Plan and Details
- Existing Utility Plan
- Project Plan Notes
- Runway 13-31
 - Demolition Plan and Notes
 - Typical Pavement Sections
 - Centerline Plan and Profile
 - Cross Sections
 - Concrete Joint Details
 - Concrete Joint Layout Plan
 - Concrete Joint Grading Plan
 - Concrete Pavement Grooving Plan and Details
 - Grading and Drainage Plan
 - Storm Sewer Plan and Profile, Layouts and Details
 - Underdrain Layouts and Details
 - Paving Layouts and Details
 - Temporary Marking Plans
 - Temporary Marking Details
 - Permanent Marking Plan
 - Permanent Marking Details
 - Electrical Demolition Plan
 - Electrical Temporary Lighting Plans
 - Electrical Lighting Plan
 - Electrical Signing Plan
 - Electrical Details
 - Electrical Plan Notes
- Taxiway C3
 - Demolition Plan and Notes
 - Typical Pavement Sections
 - Centerline Plan and Profile
 - Cross Sections
 - Concrete Joint Details
 - Concrete Joint Layout Plan
 - Concrete Joint Grading Plan
 - Grading and Drainage Plan
 - Storm Sewer Plan and Profile, Layouts and Details
 - Underdrain Layouts and Details
 - Paving Layouts and Details
 - Permanent Marking Plan
 - Permanent Marking Details
 - Electrical Demolition Plan
 - Electrical Temporary Lighting Plans
 - Electrical Lighting Plan
 - Electrical Signing Plan
 - Electrical Details
 - Electrical Plan Notes
- Taxiway C4
 - Demolition Plan and Notes
 - Typical Pavement Sections
 - Centerline Plan and Profile
 - Cross Sections

- o Concrete Joint Details
- o Concrete Joint Layout Plan
- o Concrete Joint Grading Plan
- o Grading and Drainage Plan
- o Storm Sewer Plan and Profile, Layouts and Details
- o Underdrain Layouts and Details
- o Paving Layouts and Details
- o Permanent Marking Plan
- o Permanent Marking Details
- o Electrical Demolition Plan
- o Electrical Temporary Lighting Plans
- o Electrical Lighting Plan
- o Electrical Signing Plan
- o Electrical Details
- o Electrical Plan Notes

Subconsultant Coordination. The Engineer does not anticipate any subconsultant coordination as part of this Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Prepare Preliminary Contract Documents. The Engineer shall prepare preliminary contract documents. The Owner shall provide a legal review of the Agreement Between Owner and Contractor template that is provided by the Engineer to make sure that it complies with local, state, and federal law. The Engineer shall use contract provisions prepared for the Owner and modify as applicable for this project. Documents to include consist of the following:

- Advertisement for Bids
- Instruction to Bidders
- Bid Proposal
- Agreement between Owner and Contractor
- Buy American Guidance
- Wage Rate Determinations
- DBE Guidance and Forms
- Environmental Permitting Documents
- Notice of Award
- FAA General Provisions
- Local and State Special Provisions
- Safety Plan Compliance Document
- Final Review and Acceptance Document

Prepare Technical Specifications. The Engineer shall prepare preliminary technical specifications for the identified items of work. Specifications to be used shall reference Advisory Circular 150/5370-10G, Standards for Specifying Construction of Airports and any applicable FAA Regional Guidance.

Prepare Modification to Standards Request. It is anticipated that the FAA Modifications to Standards have been completed as part of the Phase 2 Preliminary and Design Services, and these FAA Modifications to Standards will not be required to be resubmitted to the FAA as the ones approved for the Phase 2 Preliminary and Design Services apply for the entire runway reconstruction project. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Prepare Preliminary Estimate of Construction Cost. The Engineer shall prepare a preliminary estimate of construction costs. Construction costs shall be developed based on research of local suppliers, material availability, and recent bid tabulations for similar work in the region.

Prepare Preliminary Construction Schedule. The Engineer shall prepare a preliminary schedule of construction activities based on the preliminary phasing plan with construction durations based on average production rates for completion of the major project work elements.

Update Signage and Marking Plan. The Engineer shall develop the preliminary signing and pavement markings for the project and prepare the applicable modifications to the Signage and Marking Plan as applicable for submittal to the Owner and FAA.

Preliminary Internal Plans and Specifications Review. The Engineer shall conduct an internal preliminary plans and specifications review of the design completed in the Preliminary Engineering Phase of the project.

Preliminary Design Review Meeting with Owner. The Engineer shall conduct a preliminary design review at the 30% design completion stage with the Owner to obtain comments on the preliminary design. The Engineer shall attempt to include appropriate Federal and State agency representatives either in person or by teleconference, depending on the project scope. The Engineer shall schedule an inspection of the project site with the Owner to review elements of the design. It is anticipated the following staff members shall attend the meeting:

- Project Manager (Engineer V)
- Electrical Engineer (Engineer IV)
- Senior Engineering Technician (Engineering Technician IV)
- Assistant Project Manager (Engineer III)

Periodic Owner Meetings. It is anticipated that the Engineer shall attend four (4) meetings to coordinate preliminary design activities and issues with the Owner. It is anticipated the following staff members shall attend the meetings:

- Project Manager (Engineer V)
- Electrical Engineer (Engineer IV)
- Senior Engineering Technician (Engineering Technician IV)
- Assistant Project Manager (Engineer III)

Periodic Agency Meetings. It is anticipated that the Engineer shall attend monthly agency meetings to coordinate preliminary design activities and issues with the Owner and Agencies. The time for this effort has been included in the Detailed Scope of Services for the Runway 13-31 Reconstruction (Phase 2) Construction Administration, Construction Observation, and Project Closeout Report services.

FINAL PLANS AND SPECIFICATIONS

Prepare Engineer's Responses to Review Comments. The Engineer shall provide a written statement summarizing the review comments to include justification for items to remain and the applicable action on areas of design modification.

Prepare Final Plans. The Engineer shall complete the development of the plans to 90% completion, which is intended to be a complete set in pending final review and approval by the Owner and FAA.

Prepare Final Contract Documents / Technical Specifications. The Engineer shall complete the development of the specifications to 90% completion, which is intended to be a complete set in pending final review and approval by the Owner and FAA.

Prepare Final Construction Safety and Phasing Plan. The Engineer shall finalize the Construction Safety Phasing Plans to include landside and airside traffic control plan and submit the plan to the FAA for review and approval.

Update Final Quantities and Construction Cost Estimate. The Engineer shall update the opinion of construction costs and determine the bid schedule of work.

Prepare Engineering Design Report Supplement. The Engineering Design Report has been completed as part of a previous Agreement. As a result, the Engineer has not included additional work on this item as part of this Detailed Scope of Services.

Update Construction Schedule. The Engineer shall finalize the construction schedule for use in the contract documents.

FAA Plans and Specifications Review. The Engineer will submit and coordinate with the FAA ADO on a review of the 90% plans and specifications. The Engineer and Owner intend to meet with the FAA in person at the FAA Bismarck ADO to go through the plans and specifications, as well as discuss FAA comments and concerns. It is anticipated the following staff members shall attend the meeting:

- Project Manager (Engineer V)
- Electrical Engineer (Engineer IV)
- Assistant Project Manager (Engineer III)

Final Internal Plans and Specifications Review. The Engineer shall conduct an internal final plans and specifications review of the design completed in the Final Engineering Phase of the project.

Final Plans and Specifications Revisions. The Engineer shall complete the development of the final plans and specifications to 100% completion, which is intended to be a complete set pending final review and approval by the Owner.

Final Design Review Meeting with Owner. The Engineer shall conduct a final design review at the 90% design completion stage with the Owner to obtain comments on the final design. The Engineer shall attempt to include appropriate Federal and State agency representatives either in person or by teleconference, depending on the project scope. The Engineer shall schedule an inspection of the project site with the Owner to review elements of the design. It is anticipated the following staff members shall attend the meeting:

- Project Manager (Engineer V)
- Electrical Engineer (Engineer IV)
- Senior Engineering Technician (Engineering Technician IV)
- Assistant Project Manager (Engineer III)

Periodic Owner Meetings. It is anticipated that the Engineer shall attend five (5) meetings to coordinate final design activities and issues with the Owner. It is anticipated the following staff members shall attend the meetings:

- Project Manager (Engineer V)
- Electrical Engineer (Engineer IV)
- Senior Engineering Technician (Engineering Technician IV)
- Assistant Project Manager (Engineer III)

Periodic Agency Meetings. It is anticipated that the Engineer shall attend monthly agency meetings to coordinate preliminary design activities and issues with the Owner and Agencies. The time for this effort has been included in the Detailed Scope of Services for the Runway 13-31 Reconstruction (Phase 2) Construction Administration, Construction Observation, and Project Closeout Report services.

BIDDING SERVICES

Print and Distribute Plans and Specifications. The Engineer shall print and issue the Bid Documents to prospective bidders. The documents shall also be made available to prospective bidders utilizing an on-line service.

Bid Invitations and Advertisement. The Engineer shall coordinate with the Owner on the placement of the Advertisement for Bids in the appropriate local legal publication as well as regional trade organizations.

Attend Pre-Bid Conference and Site Visit. Prepare the pre-bid agenda and conduct the pre-bid conference in the Bismarck Airport Administrative Conference Room. The detailed discussion of the project to include:

- Construction safety and phasing plan
- Discussion of contract requirements
- Contractor staging and access
- Local and federal bidding requirements
- Description of work to include
 - Technical specification
 - Materials
 - Pavement requirements
- Conduct site visit
- Answer Contractor questions

It is assumed that the following Engineering staff members shall attend the pre-bid conference:

- Project Manager (Engineer V)
- Electrical Engineer (Engineer IV)
- Senior Engineering Technician (Engineering Technician IV)
- Assistant Project Manager (Engineer III)

Document and Respond to Contractor Questions. The Engineer shall maintain a record of Contractor requests and questions along with the corresponding response.

Create and Maintain Planholders List. The Engineer shall maintain a planholders list as plans and specifications are issued to Contractors.

Issue Addenda. The Engineer shall issue written addenda as appropriate to interpret, clarify or expand the bidding documents. The Engineer shall send the written addenda to all planholders whom received plans and specifications from the Engineer. Any addendum that would change FAA standards or require additional environmental action shall be reviewed by the FAA.

Attend Bid Opening. The Engineer shall perform the bid opening at the Bismarck City / County Building. It is anticipated the following staff members shall attend the meeting:

- Project Manager (Engineer V)
- Assistant Project Manager (Engineer III)

Prepare Bid Tabulation. The Engineer shall prepare a bid tabulation following the bid opening.

Bidder Contractual Requirements Review. The Engineer shall review bidder responsiveness, responsibility and completeness of submittal. The Engineer shall advise the Owner when an issue may need the review of the Owner's legal representative.

Prepare Recommendations of Award. The Engineer shall advise the Owner as to the acceptability of subcontractors, DBE subcontractors, and other persons and organizations proposed by the prime Contractor(s) for those portions of the work as to which such acceptability is required by the bidding documents. The Engineer shall make recommendations for award for up to two (2) contracts.

Prepare and Submit FAA Grant Application. The Engineer shall prepare the Application for Federal Assistance and State Funding Applications.

Prepare Award and Construction Contract Documents. The Engineer shall prepare the awarding contracts for construction, materials, equipment and services for up to two (2) contracts. Items shall include a written Notice of Award, coordination of the Agreement Between Owner and Contractor and Notice to Proceed for submittal and approval by the Owner. The Owner shall provide a legal review of the Agreement Between Owner and Contractor that is provided by the Engineer to make sure that it complies with local, state, and federal law.

CONSTRUCTION ADMINISTRATION

Construction Administration has not been included in this Detailed Scope of Services and shall be covered in a separate Agreement for Professional Services.

CONSTRUCTION OBSERVATION

Construction Observation has not been included in this Detailed Scope of Services and shall be covered in a separate Agreement for Professional Services.

AERONAUTICAL SURVEY SERVICES

Aeronautical Survey Services has not been included in this Detailed Scope of Services and shall be covered in a separate Agreement for Professional Services.

FAA PROJECT CLOSEOUT REPORT

The FAA Project Closeout Report has not been included in this Detailed Scope of Services and shall be covered in a separate Agreement for Professional Services.

OWNER'S RESPONSIBILITIES

Project Representative. The Owner shall designate a Project Representative with authority to administer the Engineer's consultant contract. All requests for information or a decision by the Owner on any aspect of the work shall be directed to the Owner's Project Representative.

Submittal Reviews. The Owner shall review submittals by the Engineer and provide prompt decisions and responses to questions in order to minimize delay in the progress of the Engineer's work. The Owner shall also be responsible for coordination of timely responses by Agencies.

Outlay Reviews. The Owner shall review and approve outlays and other information submitted by the Engineer in a prompt manner.

Historical Information. The Owner shall furnish the Engineer one copy of as-built drawings, maps, records, surveys, reports, preliminary designs, utility locates, etc. that are pertinent to the project.

Agreement Between Owner and Contractor. The Owner shall provide a legal review of the Agreement Between Owner and Contractor template that is provided by the Engineer to make sure that it complies with local, state, and federal law.

DBE Plan. The Owner has an approved DBE Plan and shall make determinations on accomplishments and participation.

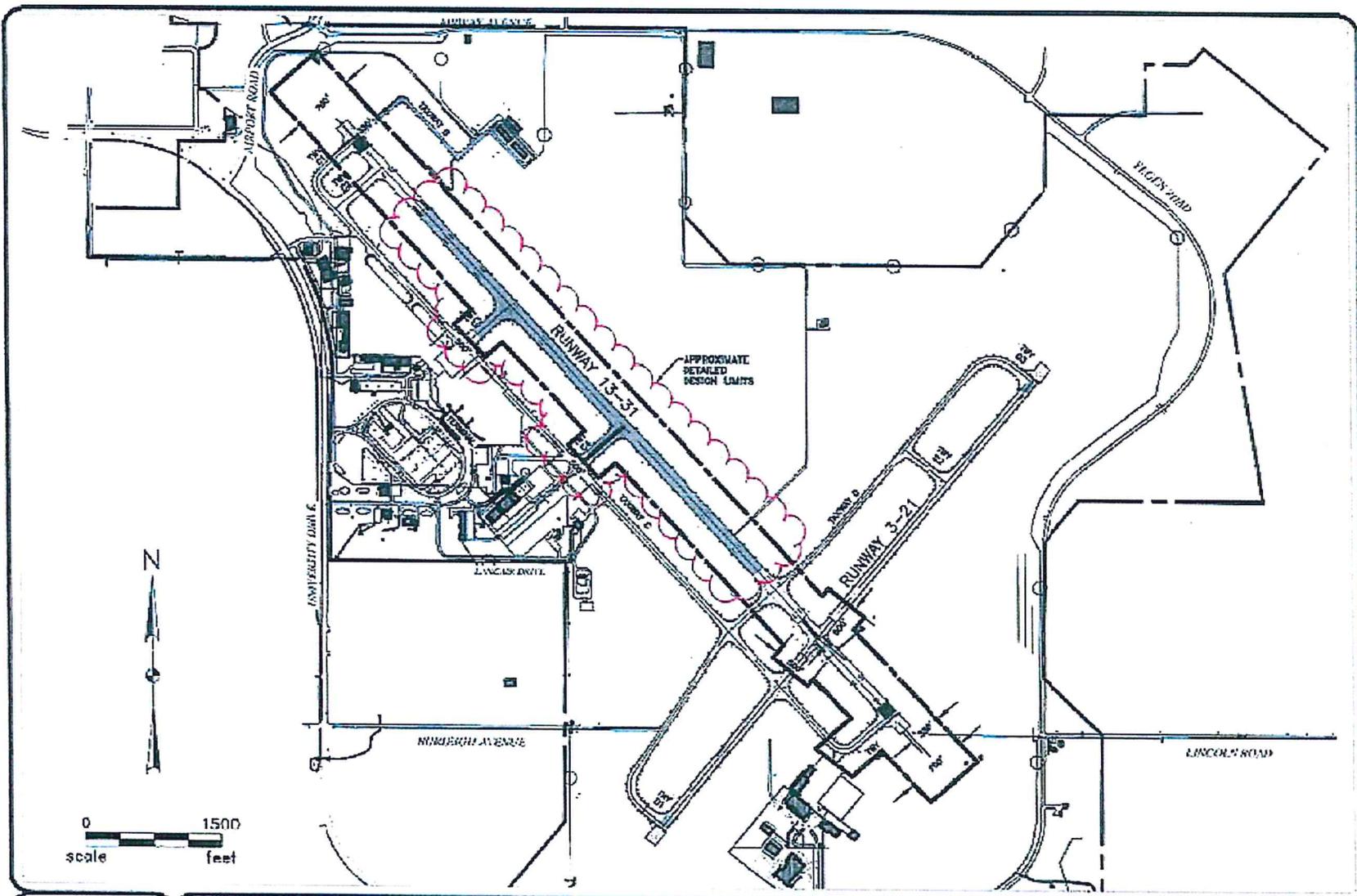
Coordination with FAA Technical Operations Personnel. If required, the Owner shall assist the Engineer in coordination with FAA Technical Operations on their facilities at BIS, defining impacts to these facilities, coordination of obtaining FAA drawings and specifications required to be included in the plan set to bid the project.

BISMARCK AIRPORT
 RUNWAY 13-31 RECONSTRUCTION (PHASE 3)
 KEY TASKS AND MILESTONES

<i>Task</i>	<i>Deadline</i>
Develop draft Detailed Scope of Services	July 15, 2016
Owner requests FAA Reimbursable Pre-Engineering Agreement	N/A
Submit draft Detailed Scope of Services to BIS	July 22, 2016
Comments on draft Detailed Scope of Services received from BIS	July 29, 2016
Make revisions and submit draft Detailed Scope of Services to FAA	August 5, 2016
Comments on Detailed Scope of Services received by FAA (10 weeks utilized)	October 19, 2016
Detailed Scope of Services Refined by KLJ and resent to Owner after Owner / FAA review meeting	October 31, 2016
Owner reviews and approves Detailed Scope of Services	November 1, 2016
IFR information sent to Independent Consultant	November 2, 2016
IFR received by Owner (1 week allotted)	November 9, 2016
Scope and Hours negotiated Between Owner and Engineer	November 16, 2016
Agreement Signed	December 13, 2016
Owner issues Notice to Proceed to Engineer	December 14, 2016
Pre-Design Meeting with Owner	December 20, 2016
SMS Meeting with FAA, State, Owner, and Stakeholders	N/A
Preliminary design (internal deadline only) (4 weeks allotted)	January 13, 2017
30% Design (6 weeks allotted)	February 24, 2017
30% Internal KL&J Review Meeting	February 24, 2017
30% Design Refinement	March 3, 2017
30% External Meeting with Stakeholders	March 10, 2017
30% Design Refinement of CSPP	March 17, 2017
CSPP Submittal to FAA	March 24, 2017
90% Design (8 weeks allotted)	May 5, 2017
Design - Preliminary General and Civil Specifications	May 12, 2017
Submit 90% Plans and Specifications to FAA for Review	May 19, 2017
90% Plans and Specifications Comments due back from FAA Review (2 weeks allotted)	June 2, 2017
Internal KL&J Review and External BIS Review (completed by date)	June 9, 2017
Design - Final Plans and Specifications	June 23, 2017
Advertise for Bids	July 6, 13, 20 of 2017
Pre-Bid Meeting	July 27, 2017
Bid Opening	August 7, 2017
Project Award	August 22, 2017
Submit FAA Application for Federal Assistance	August 25, 2017
Issue Notice of Award to Contractor	September 15, 2017
Start Construction	April 2018
End Construction	November 2018

Questions / Comments:

- ~~FAA Reimbursable Agreement and timeline needs to be defined by FAA~~
- Airlines typically need at least 6 months to plan accordingly with their schedules.
- When Runway 3-21 is the only runway available to airlines, this will eliminate Allegiant MD-80 series aircraft from operating at BIS.



DRAFTED BY: AME
REVIEWED BY: TJE
PROJECT NO: 1517792
REVISED DATE: 7/13/2016

RUNWAY 13-31 RECONSTRUCTION (PHASE 3)
CITY OF BISMARCK
BISMARCK, NORTH DAKOTA



Jul 13, 2016 - 2:00pm - D:\Projects\NEPB\Bismarck\Projects\1516702\CA\01517792_design_limits_2015.dwg (Design Limits.dwg)

Attachment B
Bismarck Airport
 Bismarck, ND
 KLJ #1517700, AIP #3-36-0003-000-2017
 Hourly Rate and Cost Breakdown



PHASE: Preliminary and Design Services
Runway 13-31 Reconstruction (Phase 3)

KLJ Title	Engineer VI	Engineer V	Engineer IV	Engineer III	Engineer II	Engineering Technician IV	CADD Technician III	Environmental Planner II	Planner IV	Survey IV	Surveyor III	Surveyor I	Project Assistant III	Project Assistant II	Task Direct Labor Cost
Project Administration															
Project Scoping Meeting with Owner		2													\$ -
Prepare Project Detailed Scope of Services and Schedule		24	4	16		4			1				8		3,090.00
Project Detailed Scope of Services Review with FAA															-
Meeting Preparation		2													-
Conduct Meeting (Including travel time)		4												1	160.00
Prepare Minutes / File Meeting Records		1													272.00
Engineering Detailed Scope of Services and Hour Negotiations		4			2									1	92.00
Independent Fee Document Preparation	1	4			2										441.00
Engineering Agreement		4			2			1					1		424.50
Prepare and Coordinate Subconsultant Agreements	1	2						2					4		355.00
Subtotal															\$ 5,010.50
Project Management															
Develop Project Management Plan		8	2	8						1					\$ -
Project Startup Meeting		4	4	4		4	4	4	4	2				1	1,106.00
Project Budget Setup		2												1	1,456.00
Bi-Weekly Budget Review / Projections		18											8		354.00
Monthly Invoicing		9											9		1,471.50
Periodic Internal Meetings		36	36	36	36	36	36	36		8			9		1,075.50
Develop Quality Control Plan		4			8								4		11,248.00
FAA Grant Coordination / Reimbursement Processing		2		2		8							2		795.00
Monthly Status Reports		9												2	344.00
FAA Quarterly Reports		4												9	828.50
DRE Reporting		2												7	320.00
Subtotal													4	8	\$ 418.00
Project Pre-Design															
Pre-Design Meeting															\$ -
Meeting Preparation		1	1	2		2	2								-
Conduct Meeting (Including travel time)		4	4	4		4								1	422.00
Prepare Minutes / File Meeting Records				1											908.00
FAA Safety Management System (SMS) Meeting (1 meeting)														1	69.00
Meeting Preparation															-
Conduct Meeting (Including travel time)															-
Prepare Minutes / File Meeting Records															-
ASST with Preliminary FAA Reimbursement Agreement															-
Site Visit, Investigations and Data Collection		4		8			24							1	2,000.00
Preliminary Site Investigation															-
Preliminary Survey and Base Map Preparation		2		4		8		16		4	40	40			4,184.00
Develop Project Justification															-
Develop and Submit Environmental Checklist															-
Analysis of FAA standards (Includes 1 meeting with FAA ADD)		6		4				8		2					992.00
Complete Reimbursement Design Cost Analysis															-
Engineering Design Report Preparation															-
Meeting Preparation															-
Conduct Meeting (Including travel time)															-
Prepare Minutes / File Meeting Records															-
Prepare Preliminary Opinion of Cost and Update AIP		2			8										-
Update Airport Layout Plan (ALP) Drawings															496.00

Attachment B
Bismarck Airport
Bismarck, ND
KLJ #1517700, AIP #3-38-0003-xxxx-2017
Hourly Rate and Cost Breakdown



PHASE: Preliminary and Design Services
Runway 13-31 Reconstruction (Phase 3)

KLJ Title	Engineer VI	Engineer V	Engineer IV	Engineer III	Engineer II	Engineering Technician IV	CADD Technician III	Environmental Planner II	Planner IV	Survey IV	Surveyor III	Surveyor I	Project Assistant II	Project Assistant I	Task Direct Labor Cost	
Develop O&B Plan		1												2	116.00	
Pre-Design Internal Document Review		2	2	2		2			2					1	602.00	
Subtotal															5	9,786.00
Preliminary Plan & Specifications																
Coordination with Final FAA Reimbursable Agreement															5	-
Meeting Preparation		2	2	2												342.00
Conduct Meeting (including travel time)		4	4	4												684.00
Prepare Minutes / File Meeting Records				2												114.00
Complete Pavement Design		3		9		3		6						1	921.00	
Develop Project Geometrics																-
Prepare Subsurface Drainage Design		4		12		8	12	8								2,036.00
Develop Site Grading Plan		4		8		10	10	12								1,952.00
Prepare Storm Drainage Design		4	40	40		24	24	16								7,112.00
Prepare Erosion Control Plan		2		8		8	8	8								1,496.00
Prepare Airfield Lighting and Signage Design		2	8			16	2	16								1,816.00
Prepare Utility Facilities / Utility Coordination																-
Preliminary Plan Sheets:																-
Cover Sheet		1				1	1	4								298.00
Sheet Index		1				1	1	8								436.00
Project Work Description and Basis of Estimate		1				2	2	8								528.00
Construction Safety and Phasing Plan, Details and Notes		4		16		8	16	40		4				2	3,884.00	
Erosion Control Plan and Details		1				2	2	8								528.00
Existing Utility Plan		1	2	4		2	4	8								936.00
Project Plan Notes		2		24		4	8	4						4	2,036.00	
Runway 13-31:																-
Demolition Plan and Notes		1				2	4	8								640.00
Typical Pavement Sections		1		8		2	2	16								1,168.00
Centerline Plan and Profile		4				12	24	16								2,584.00
Cross Sections		6				24	80	40								7,104.00
Concrete Joint Details		1				2	2	8								528.00
Concrete Joint Layout Plan		2		8		4	4	16								1,416.00
Concrete Joint Grading Plan		4				12	12	32								2,472.00
Concrete Pavement Grooving Plan and Details		1				2	2	8								528.00
Grading and Drainage Plan		4	4			8	24	8								2,400.00
Storm Sewer Plan and Profile, Layouts and Details		6	4			16	40	24								4,264.00
Underdrain Layouts and Details		4				4	8	16								1,416.00
Paving Layouts and Details		1		4		2	2	8								708.00
Temporary Marking Plans		2		4		8	12	40								2,660.00
Temporary Marking Details		1		2		2	2	12								758.00
Permanent Marking Plan		2		4		8	8	32								2,156.00
Permanent Marking Details		1		2		4	4	16								1,078.00
Electrical Demolition Plan		1	8			16	4	16								1,860.00
Electrical Temporary Lighting Plans		1	12			24	4	24								2,614.00
Electrical Lighting Plan		1	16			32	4	40								3,708.00
Electrical Signage Plan		1	12			16	4	24								2,372.00
FAA Adjustment Plan																-
FAA Threshold Lighting Plan and Details																-
FAA MALSR Adjustment Plan and Details																-
Electrical Details		1	4			8	4	24								1,636.00
Electrical Plan Notes		1	4			8	4	16								1,356.00

Attachment B
 Bismarck Airport
 Bismarck, ND
 KLJ #1517700, AIP #3-38-0003-000-2017
 Hourly Rate and Cost Breakdown



PHASE: Preliminary and Design Services
 Runway 13-31 Reconstruction (Phase 3)

KLJ Title	Engineer VI	Engineer V	Engineer IV	Engineer III	Engineer II	Engineering Technician IV	CADD Technician III	Environmental Planner II	Planner IV	Survey IV	Surveyor III	Surveyor I	Project Assistant III	Project Assistant II	Task Direct Labor Cost
Taxiway C3:															
Demolition Plan and Notes		1			2	2	4								388.00
Typical Pavement Sections		1		8	2	2	8								888.00
Centerline Plan and Profile		2			4	8	12								1,140.00
Cross Sections		4			16	20	20								2,636.00
Concrete Joint Details		1			1	1	2								228.00
Concrete Joint Layout Plan		2		8	8	4	12								1,412.00
Concrete Joint Grading Plan		4			4	8	24								1,696.00
Grading and Drainage Plan		2			4	8	12								1,140.00
Storm Sewer Plan and Profile, Layouts and Details		2	4		8	8	12								1,508.00
Underdrain Layouts and Details		2			2	2	8								594.00
Paving Layouts and Details		1		4	2	2	8								705.00
Permanent Marking Plan		1		4	4	4	16								1,168.00
Permanent Marking Details		1		4	4	4	16								1,078.00
Electrical Demolition Plan		1	4		4	4	16								1,220.00
Electrical Temporary Lighting Plan		1	4		4	4	16								1,108.00
Electrical Lighting Plan		1	8		16	2	16								1,748.00
Electrical Signing Plan		1	2		8	2	8								848.00
Electrical Details		1	2		4	2	6								642.00
Electrical Plan Notes		1	2		4	2	4								572.00
Taxiway C4:															
Demolition Plan and Notes		1			2	2	4								388.00
Typical Pavement Sections		1		8	2	2	8								888.00
Centerline Plan and Profile		2			4	8	12								1,140.00
Cross Sections		4			16	20	20								2,636.00
Concrete Joint Details		1			1	1	2								228.00
Concrete Joint Layout Plan		2		8	8	4	12								1,412.00
Concrete Joint Grading Plan		4			4	8	24								1,696.00
Grading and Drainage Plan		2			4	8	12								1,140.00
Storm Sewer Plan and Profile, Layouts and Details		2	4		8	8	12								1,508.00
Underdrain Layouts and Details		2			2	2	8								594.00
Paving Layouts and Details		1		4	2	2	8								705.00
Permanent Marking Plan		1		4	4	4	16								1,168.00
Permanent Marking Details		1		4	4	4	16								1,078.00
Electrical Demolition Plan		1	4		4	4	16								1,220.00
Electrical Temporary Lighting Plan		1	4		4	4	16								1,108.00
Electrical Lighting Plan		1	8		16	2	16								1,748.00
Electrical Signing Plan		1	2		8	2	8								848.00
Electrical Details		1	2		4	2	6								642.00
Electrical Plan Notes		1	2		4	2	4								572.00
Subcontractor Coordination															
Prepare Preliminary Contract Documents		4		8										8	824.00
Prepare Technical Specifications		4	16	40										16	3,384.00
Prepare Modification to Standards Request															
Prepare Preliminary Estimate of Construction Cost		2		16										2	904.00
Prepare Preliminary Construction Schedule		2		8										2	844.00
Update Signage and Marking Plan		2		4	4	4	16								1,236.00
Preliminary Internal Plans and Specifications Review		8	8	0	8	8			2					2	2,240.00
Preliminary Design Review Meeting with Owner															
Meeting Preparation		1	1	2		2	2								
Conduct Meeting (including travel time)		4	4	4		4								1	422.00
Prepare Minutes / File Meeting Records				1											69.00

Attachment B
 Bismarck Airport
 Bismarck, ND
 KLJ #1517700, AIP #3-36-0003-xxx-2017
 Hourly Rate and Cost Breakdown



PHASE: Preliminary and Design Services
 Runway 13-31 Reconstruction (Phase 3)

KLJ Title	Engineer VI	Engineer V	Engineer IV	Engineer III	Engineer II	Engineering Technician IV	CADD Technician III	Environmental Planner II	Planner IV	Survey IV	Surveyor III	Surveyor I	Project Assistant III	Project Assistant II	Task	Direct Labor Cost	
Periodic Owner Meetings (4)																	
Meeting Preparation		1	1	1		1											
Conduct Meeting (including travel time)		5	3	3		3										908.00	
Prepare Minutes / File Meeting Records				1												1,816.00	
Periodic Agency Meetings (6)																	
Meeting Preparation		It is anticipated that the Engineer shall attend monthly agency meetings to coordinate preliminary design activities and issues with the Owner and Agencies. The time for this effort has been included in the Detailed Scope of Services for the Runway 13-31 Reconstruction (Phase 2) Construction Administration, Construction Observation, and Project Closeout Report services.															
Conduct Meeting (including travel time)																	
Prepare Minutes / File Meeting Records																	
Subtotal															5	125,500.00	
Final Plans and Specifications																	
Prepare Engineer's Responses to Review Comments		4		3		3											
Prepare Final Plans:															1	5	1,104.00
Cover Sheet						1		1		2							150.00
Sheet Index						1		1		1							230.00
Project Work Description and Basis of Estimate		1				1		1		1							250.00
Construction Safety and Phasing Plan, Details and Notes		2			3	4		8		20					2		1,952.00
Erosion Control Plan and Details		1				1		1		1							298.00
Existing Utility Plan		1	1		2	1		2		4							502.00
Project Plan Notes		1			12	2		4		2					2		1,016.00
Runway 13-31:																	
Demolition Plan and Notes		1				1		2		4							354.00
Typical Pavement Sections		1			4	1		1		8							616.00
Centerline Plan and Profile		2				6		12		8							1,292.00
Cross Sections		3				12		40		20							3,520.00
Concrete Joint Details		1				1		1		4							298.00
Concrete Joint Layout Plan		1			4	2		2		8							708.00
Concrete Joint Grading Plan		2				6		6		16							1,236.00
Concrete Pavement Grooving Plan and Details		1				1		1		4							298.00
Grading and Drainage Plan		2		2		4		12		4							1,200.00
Storm Sewer Plan and Profile, Layouts and Details		3		2		8		20		12							2,132.00
Underdrain Layouts and Details		2				2		4		8							708.00
Paving Layouts and Details		1			2	1		1		4							388.00
Temporary Marking Plans		1			2	4		6		20							1,330.00
Temporary Marking Details					1	1		1		6							340.00
Permanent Marking Plan		1			2	4		4		16							1,078.00
Permanent Marking Details		1			1	2		2		8							573.00
Electrical Demolition Plan		1		4		5		2		8							954.00
Electrical Temporary Lighting Plans		1				6		12		2							1,356.00
Electrical Lighting Plan		1				8		16		2							1,888.00
Electrical Striping Plan		1				6		8		2							1,220.00
FAA-Adjustment-Plan																	-
FAA-Threshold Lighting Plan and Details																	-
FAA-WAASR-Adjustment-Plan and Details																	-
Electrical Details		1		2		4		2		12							852.00
Electrical Plan Notes				2		4		2		8							644.00
Taxiway C3:																	
Demolition Plan and Notes		1				1		1		2							228.00
Typical Pavement Sections		1			4	1		1		4							478.00
Centerline Plan and Profile		1				2		4		6							570.00
Cross Sections		2				8		10		10							1,318.00
Concrete Joint Details		1				1		1		2							193.00

Attachment B
Bismarck Airport
Bismarck, ND
KLJ #1517700, AIP #3-35-0003-xxx-2017
Hourly Rate and Cost Breakdown



PHASE: Preliminary and Design Services
Runway 13-31 Reconstruction (Phase 3)

KLJ Title	Engineer VI	Engineer V	Engineer IV	Engineer III	Engineer II	Engineering Technician IV	CADD Technician III	Environmental Planner II	Planner IV	Survey IV	Surveyor III	Surveyor I	Project Assistant III	Project Assistant II	Task Direct Labor Cost
Concrete Joint Layout Plan		1		4	4	2	6								726.00
Concrete Joint Grading Plan		2			2	4	12								848.00
Grading and Drainage Plan		1			2	4	5								570.00
Storm Sewer Plan and Profile, Layouts and Details		1	2		4	4	6								754.00
Underdrain Layouts and Details		1			1	1	4								292.00
Paving Layouts and Details		1		2	1	1	4								388.00
Permanent Marking Plan		1		2	2	2	8								618.00
Permanent Marking Details		1		1	2	2	8								573.00
Electrical Demolition Plan		1	2		2	2	8								644.00
Electrical Temporary Lighting Plan		1	2		2	1	8								588.00
Electrical Lighting Plan		1	4		8	1	8								908.00
Electrical Signing Plan		1	1		4	1	4								458.00
Electrical Details		1	1		2	1	3								355.00
Electrical Plan Notes			1		2	1	2								252.00
Taxway C4c															
Demolition Plan and Notes		1			1	1	2								228.00
Typical Pavement Sections		1		4	1	1	4								478.00
Centerline Plan and Profile		1			2	4	6								570.00
Cross Sections		2			8	10	10								1,318.00
Concrete Joint Details		1			1	1	1								192.00
Concrete Joint Layout Plan		1		4	4	2	6								706.00
Concrete Joint Grading Plan		2			2	4	12								848.00
Grading and Drainage Plan		1			2	4	6								570.00
Storm Sewer Plan and Profile, Layouts and Details		1	2		4	4	6								754.00
Underdrain Layouts and Details		1			1	1	4								292.00
Paving Layouts and Details		1		2	1	1	4								388.00
Permanent Marking Plan		1		2	2	2	8								618.00
Permanent Marking Details		1		1	2	2	8								573.00
Electrical Demolition Plan		1	2		2	2	8								644.00
Electrical Temporary Lighting Plan		1	2		2	1	8								588.00
Electrical Lighting Plan		1	4		8	1	8								908.00
Electrical Signing Plan		1	1		4	1	4								458.00
Electrical Details		1	1		2	1	3								355.00
Electrical Plan Notes			1		2	1	2								252.00
Prepare Final Contract Documents/Technical Specifications		6	16	40											257.00
Prepare Final Construction Safety and Phasing Plan		1		4									8		3,464.00
Update Final Quantities and Construction Cost Estimate		4		8	8	8	8							4	248.00
Reprepare Engineering-Design-Report-Supplement															1,960.00
Meeting Preparation															
Conduct Meeting (including travel time)															
Prepare Minutes / File Meeting Records															
Update Construction Schedule		1		2											
Final Internal Plans and Specifications Review		8	8	8	8	8	8			2				1	182.00
FAA Final Plans and Specifications Review														2	2,260.00
Meeting Preparation		1	1	1											
Conduct Meeting (including travel time)		6	6	6										1	195.00
Prepare Minutes / File Meeting Records				1											
Final Plans and Specifications Revisions		8	8	16	16	16	32							1	1,026.00
Final Design Review Meeting with Owner														8	4,480.00
Meeting Preparation		1	1	1											
Conduct Meeting (including travel time)		4	4	4			4							1	321.00
Prepare Minutes / File Meeting Records				1										1	908.00

Attachment C

Federal Contract Provisions

Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors

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

A1 Access To Records And Reports.....2

A2 Affirmative Action Requirement.....2

A3 Breach Of Contract Terms.....3

A4 Buy American Preference.....4

A5 Civil Rights - General.....4

A6 Civil Rights - Title Vi Assurance.....4

A7 Clean Air And Water Pollution Control6

A8 Contract Workhours And Safety Standards Act Requirements.....7

A9 Copeland "Anti-Kickback" Act.....7

A10 Davis-Bacon Requirements8

A11 Debarment And Suspension..... 13

A12 Disadvantaged Business Enterprise..... 13

A13 Distracted Driving..... 14

A14 Energy Conservation Requirements 14

A15 Equal Employment Opportunity (E.E.O.) 14

A16 Federal Fair Labor Standards Act (Federal Minimum Wage)..... 19

A17 Lobbying And Influencing Federal Employees 20

A18 Prohibition Of Segregated Facilities 20

A19 Occupational Safety And Health Act Of 1970..... 21

A20 Procurement Of Recovered Materials..... 21

A21 Right To Inventions 22

A22 Seismic Safety..... 22

A23 Termination Of Contract..... 23

A24 Trade Restriction Certification 24

A25 Veteran's Preference 25

A1 ACCESS TO RECORDS AND REPORTS

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

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

A2 AFFIRMATIVE ACTION REQUIREMENT

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

Applicability

Contracts Exceeding \$10,000

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

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

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

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

Contract Types -

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

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

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

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

CONTRACT CLAUSE

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

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

Timetables

Goals for minority participation for each trade:	.4%
Goals for female participation in each trade:	6.9%

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

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

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

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

A3 BREACH OF CONTRACT TERMS

Source: 2 CFR § 200 Appendix II(A)

Applicable to Contracts Exceeding \$150,000

BREACH OF CONTRACT TERMS

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

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

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

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

A4 BUY AMERICAN PREFERENCE

Source: Title 49 USC § 50101

Applicability

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

BUY AMERICAN PREFERENCE

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

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

A5 CIVIL RIGHTS - GENERAL

Source: 49 USC § 47123

GENERAL CIVIL RIGHTS PROVISIONS

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

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

A6 CIVIL RIGHTS - TITLE VI ASSURANCE

Source: 49 USC § 47123; FAA Order 1400.11

Title VI Compliance with Nondiscrimination Requirements

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

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

Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

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

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

A7 CLEAN AIR AND WATER POLLUTION CONTROL

Source: 2 CFR § 200, Appendix II(G)

Applicable to Contracts Exceeding \$150,000

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

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

A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

Source: 2 CFR § 200, Appendix II(E)

Applicability

Contracts Exceeding \$100,000

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

1. Overtime Requirements.

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

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

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

3. Withholding for Unpaid Wages and Liquidated Damages.

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

4. Subcontractors.

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

A9 COPELAND "ANTI-KICKBACK" ACT

Source: 2 CFR § 200, Appendix II(D)

Applicability

Contracts Exceeding \$2,000

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

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

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

CONTRACT CLAUSE

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

A10 DAVIS-BACON REQUIREMENTS

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

Applicability

Contracts Exceeding \$2,000

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

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

CONTRACT CLAUSE

1. Minimum Wages

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

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

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

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

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

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

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

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

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

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

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

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

2 Withholding.

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

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

3. Payrolls and basic records.

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

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

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

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

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

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

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

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

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

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

4. Apprentices and Trainees.

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

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

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

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

5. Compliance with Copeland Act Requirements.

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

6. Subcontracts.

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

7. Contract Termination: Debarment.

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

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

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

9. Disputes Concerning Labor Standards.

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

10. Certification of Eligibility.

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

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

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

A11 DEBARMENT AND SUSPENSION

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

Applicable to Contracts Exceeding \$25,000

CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

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

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

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

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

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

A12 DISADVANTAGED BUSINESS ENTERPRISE

Source: 2 CFR part 26

DISADVANTAGED BUSINESS ENTERPRISES

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

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

A13 DISTRACTED DRIVING

Source: Executive Order 13513; DOT Order 3902.10

Applicable to Contracts Exceeding \$3,500

TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/11/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

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

A14 ENERGY CONSERVATION REQUIREMENTS

Source: 2 CFR § 200, Appendix II(H)

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

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

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

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

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

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

Contract Types -

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

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

Professional Services - The sponsor must include contract and specification language into all professional service agreements as required above. Property - The sponsor must include contract and specification language into all

land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

CONTRACT CLAUSE

EQUAL OPPORTUNITY CLAUSE

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

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

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

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

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

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

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

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

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

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

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

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

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

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

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

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

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

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

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

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

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

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

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

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

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

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

A16 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

Source: U.S.C. § 201, et seq

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

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

A17 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

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

Applicable to Contracts Exceeding \$100,000

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

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

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

A18 PROHIBITION of SEGREGATED FACILITIES

Source: CFR § 60

Applicable to Contracts Exceeding \$10,000

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

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

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

A19 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Source: CFR part 1910

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

A20 PROCUREMENT OF RECOVERED MATERIALS

Source: 2 CFR § 200.322; 40 CFR part 247

Applicability

Contracts Exceeding \$10,000

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

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

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

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

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

CONTRACT CLAUSE

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

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

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

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

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

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

A21 RIGHT TO INVENTIONS

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

Applicability

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

CONTRACT CLAUSE

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

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

A22 SEISMIC SAFETY

Source: 49 CFR part 41

Applicability

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

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

CONTRACT CLAUSE

Seismic Safety (Design)

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

A23 TERMINATION OF CONTRACT

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

Applicable to Contracts Exceeding \$10,000

Termination for Convenience

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

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

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

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

Termination for Default

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

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

- a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
 2. Make adequate progress so as to endanger satisfactory performance of the Project;
 3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

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

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

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

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

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:
1. Defaults on its obligations under this Agreement;

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

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

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

A24 TRADE RESTRICTION CERTIFICATION

Source: 49 USC § 50104; 49 CFR part 30

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

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

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

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

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

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

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

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

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

A25 VETERAN'S PREFERENCE

Source: 49 USC § 47112(c)

Applicability

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

CONTRACT CLAUSE

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

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



ENGINEERING DEPARTMENT

DATE: December 7, 2016
FROM: Gabe Schell, PE I City Engineer 
ITEM: Sewer Improvement District No. 16-571

REQUEST

Resolution Creating District SE16-571 and Ordering Preparation of the Preliminary Report
Resolution Approving Preliminary Report and Directing Preparation of Plans and Specifications.
Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

Sewer Improvement District No. 16-571 is a local storm water project to construct storm sewer improvements in the S 12th Street right of way and in a storm sewer easement along the private drive of 6th Avenue. These improvements will address flooding in the Bismarck Expressway and S 12th Street rights of way and the adjoining properties. Apex Engineering Group is under contract to perform the design services as per this Board's October 25, 2016 approval.

Unit No. 1

S 12th Street - Bismarck Expressway to 6th Avenue (private drive, public storm water easement)
6th Avenue – S 12th Street to the South Bismarck Stormwater Drainage Channel

Project Schedule

Authorization to Advertise:	March 14, 2017
Receipt and Opening of Bids:	April 10, 2017
Award:	April 11, 2017
Project Completion:	October 31, 2017

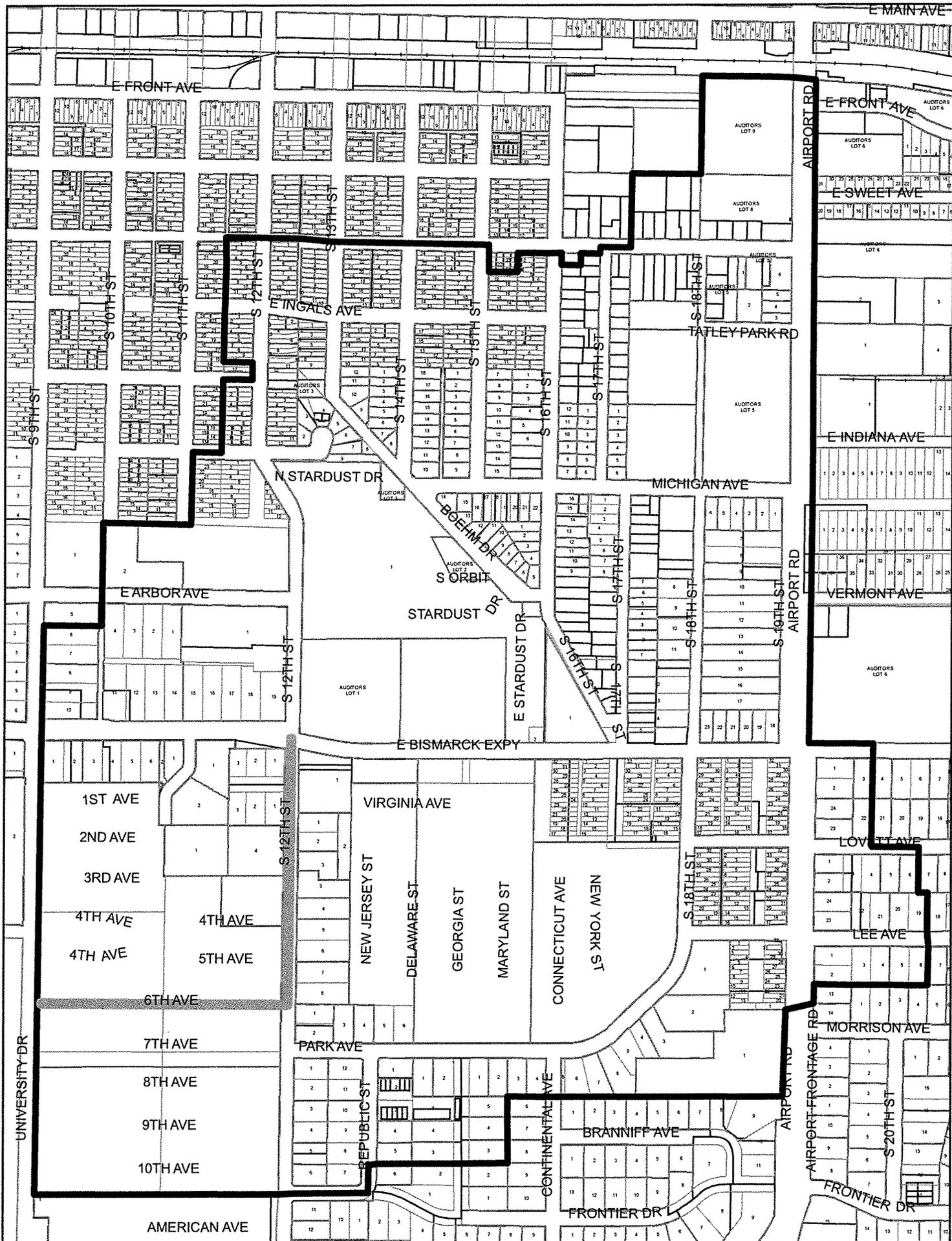
RECOMMENDED CITY COMMISSION ACTION

Consider request for approval of Creating District SE16-571, Ordering Preparation of the Preliminary Report, Approving Preliminary Report, Directing Preparation of Plans and Specifications.

STAFF CONTACT INFORMATION

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

SE 571 - UNIT 1





ENGINEERING DEPARTMENT

DATE: December 7, 2016
FROM: Gabe Schell, PE, City Engineer 
ITEM: Engineering Consultant Services - Fiber Optic Network System Study

REQUEST

Approval of consultant services with Kadrmas, Lee & Jackson (KLJ) relating to fiber optic communication planning study.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The Engineering Department developed a request for proposals from qualified consulting engineering firms to conduct a fiber optic communication planning study. The project goals will be to prepare a fiber optic network development study, including an assessment of existing conditions, development of operational concepts, development of an implementation plan and deployment strategy and preparation of a final report. Proposals were received by five consulting engineering firms. The selection committee reviewed the proposals and makes the recommendations to award the study to KLJ.

Public Works Service Operations is providing the funding for this project and was included in the 2016 CIP. The contract is hourly not to exceed \$74,880.

RECOMMENDED CITY COMMISSION ACTION

Approval contract with Kadrmas, Lee & Jackson (KLJ)

STAFF CONTACT INFORMATION

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

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR STUDY AND REPORT
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of December 13 , 2016 (“Effective Date”) between

City of Bismarck; 221 N. 5th Street, P.O. Box 5503; Bismarck, ND 58503-5503 (“Owner”) and

Kadrmass, Lee & Jackson, Inc.; 4585 Coleman Street; Bismarck, ND 58503 (“Engineer”).

Engineer's services under this Agreement are generally described as follows:

Prepare a fiber optic network development study, including an assessment of existing conditions, development of operational concepts, development of an implementation plan and deployment strategy, and preparation of a final report. (“Assignment”).

If Engineer's services under this Agreement are a part of a more extensive project of the Owner, such project is generally identified as follows: Fiber Optic Network Development Study (“Project”)

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall pay Engineer as set forth in Article 4.
- B. Owner shall provide Engineer with all criteria and full information as to Owner’s requirements for the Assignment, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any anticipated funding sources and budgetary limitations.
- C. Owner shall furnish to Engineer all existing studies, reports, and other available data pertinent to the Assignment, obtain or authorize Engineer to obtain or provide additional reports and data as required, and furnish to Engineer such services of others as may be necessary for the performance of Engineer’s services.
- D. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

- E. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, instructions, reports, data, and other information Owner-furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of this Article. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make payments due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. Engineer will be entitled to interest on all amounts due and payable at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

4.03 Payment for Basic Services (Direct Labor Costs Times Factor, Plus Reimbursables)

- A. Using the procedures set forth in Paragraph 4.01, Owner shall pay Engineer a for Basic Services as follows:

1. An amount equal to Engineer's Direct Labor Costs times a factor for services of Engineer's employees engaged on the Project, plus reimbursable expenses, and Engineer's Consultants' charges, if any.
2. Direct Labor Costs means salaries and wages paid to employees but does not include payroll related costs or benefits.
3. The total compensation for services and reimbursable expenses is estimated to be \$74,880.00.

4.04 *Payment for Additional Services*

- A. For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged to providing the Additional Services under the Assignment by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's Consultants' charges, if any. Engineer's standard hourly rates and reimbursable expenses schedule are set forth in Exhibit C.

4.05 *Disputed Invoices*

- A. If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because of the limited and preliminary nature of the Assignment, and because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator.

5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same

time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

- B. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- C. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- D. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- E. Engineer shall not have any construction-related duties under this Agreement. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

6.02 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Assignment or Project is completed. Owner shall not rely, in any way, on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance, by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such procedures shall be set forth in an exhibit to this Agreement.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise during storage or transmittal, the party receiving electronic files agrees that it will perform acceptance tests or procedures within ten days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any data deficiencies detected within the ten-day acceptance period will be corrected, if possible, by the party delivering the electronic files.

- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents solely for Owner's information and reference in connection with the specific subject matter of the Documents, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use by Owner unless completed by Engineer; (2) the Documents are instruments of study and report services only, and are not final design or construction documents, (3) no Document shall be altered, modified, or reused by Owner or any third party for any purpose except with Engineer's express written consent; (4) any use, reuse, alteration, or modification of the Documents, except as authorized in this Agreement or by Engineer's written consent, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (5) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any unauthorized use, reuse, alteration, or modification of the Documents; and (6) nothing in this paragraph shall create any rights in third parties.

6.03 *Insurance*

- A. Engineer will maintain insurance coverage for Workers' Compensation, General Liability, Professional Liability, and Automobile Liability and will provide certificates of insurance to Owner upon request. The insurance required by this paragraph shall include the specific coverage and be written for not less than the limits of liability and coverage as hereinafter provided, or required by law, whichever is greater.
 - 1. Workers' Compensation: Statutory Limits
 - 2. Commercial General Liability: \$1,000,000 per occurrence; \$2,000,000 general aggregate
 - 3. Professional Errors and Omissions: \$1,000,000 per claim; \$2,000,000 general aggregate

6.04 *Termination*

- A. *Termination for Cause:* The obligation to continue performance under this Agreement may be terminated:
 - 1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

2. By Engineer:

- a. upon seven days written notice if Engineer believes that Engineer is being required by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- b. upon seven days written notice if the Engineer's services are delayed for more than 90 days for reasons beyond Engineer's control.
- c. Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 6.04.A.2.

3. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 6.04.A.1. if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

- B. *Termination for Convenience:* Owner may terminate the Agreement for Owner's convenience effective upon the Engineer's receipt of written notice from Owner.
- C. The terminating party under Paragraphs 6.04.A or 6.04.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. In the event of any termination under Paragraph 6.04, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

6.05 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the subject matter of the Assignment is located.

6.06 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or

transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, or other individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party. Any and all Documents prepared by Engineer, including but not limited to the Report to be prepared pursuant to Exhibit A, are prepared solely for the use and benefit of Owner, unless expressly agreed otherwise by Engineer.

6.07 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.08 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.

- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.09 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Assignment or Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations. In addition, to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, Consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Assignment or Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, consultants, employees, or others retained by or under contract to the Owner with respect to this Assignment or to the Project.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- E. *Mutual Waiver*: To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Assignment or Project.

6.10 *Limitation of Engineer's Liability*

- A. To the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, members, employees, agents, and Consultants, or any of them, to Owner and anyone claiming by, through, or under Owner, for any and all injuries, losses, damages and expenses whatsoever arising out of, resulting from, or in any way related to the Assignment, this Agreement, or the Project from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, members, employees, agents, or Consultants, or any of them, shall not exceed ~~the total amount of \$500,000 or the total compensation paid to Engineer under this Agreement, whichever is greater.~~ Engineer's liability insurance coverage under Section 6.03 available at the time of settlement or judgement.

6.11 *Miscellaneous Provisions*

- A. *Notices*: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of completion of the Assignment.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:

1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A of this Agreement.
2. *Agreement* – This written contract for study and report professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
6. *Construction Cost* – The cost to Owner of the construction of a recommended solution presented in the Report furnished by Engineer under Exhibit A, or of a specific portion of the Project for which Engineer has agreed to provide opinions of cost. Construction Cost includes the cost of construction labor, services, materials, equipment, insurance, and bonding, but does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
7. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Assignment as Engineer’s independent professional associates and consultants, subcontractors, or vendors.
8. *Documents* – Data, studies, reports (including the Report referred to in Exhibit A), and other deliverables, whether in printed or electronic media format, provided or furnished by Engineer to Owner pursuant to this Agreement.
9. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
10. *Engineer* – The individual or entity named as such in this Agreement.

11. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
12. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
13. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed.
14. *PCBs* – Polychlorinated biphenyls.
15. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
16. *Project* – The total study, design, and construction to be carried out by Owner through its employees, agents, design professionals, consultants, contractors, and others, of which the Assignment is a preliminary part.
17. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
18. *Site* – Lands or areas where the subject matter of the Assignment or the Project is located.
19. *Total Project Costs* – The total cost of study, design, and construction of the Project, including Construction Cost and all other Project construction labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer and other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Reserved. ***Not Included.***
- C. Exhibit C, Compensation Schedule.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the Assignment and the responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: _____
City of Bismarck

Engineer: _____
Kadmas, Lee & Jackson, Inc.

By: _____

By: W. Lee Jackson

Title: _____

Title: Dir., Surface Transportation

Date _____

Date _____

Signed: _____

Signed: 12/5/2016

Witness: _____

Title: _____

Address for giving notices:

City of Bismarck

221 N 5th St PO Box 5503

Bismarck ND 58506-5503

Address for giving notices:

Kadmas, Lee & Jackson, Inc.

4585 Coleman Street

Bismarck, ND 58503

Designated Representative (Paragraph 8.03.A):

Name: Mark Borg

Title: Traffic Engineer

Phone Number: 355-1505

E-Mail Address: mborg@bismarcknd.gov

Designated Representative (Paragraph 8.03.A):

Name: Jennie Krause

Title: Project Manager

Phone Number: 701.355.8776

E-Mail Address: jennie.krause@kljeng.com

This is **EXHIBIT A, Engineer's Services**, referred to in and part of the **Agreement between Owner and Engineer for Study and Report Professional Services** dated December 13, 2016.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

Engineer shall provide Basic and Additional Services as set forth below.

1. OBJECTIVE

The purpose of this scope of services is to describe the scope of work and responsibilities required to complete the fiber optic network development study. Services include: existing conditions assessment, operational concept development, implementation plan and deployment strategy. A final report will be prepared to illustrate the system inventory, operational concepts and the final recommended implementation plan and deployment strategy.

Kadrmass, Lee & Jackson (KLJ) will be the prime consultant and will perform all services on this project.

The following assumptions were made in preparing the scope of services:

- The City will provide detailed information on the existing conditions, including existing cabling infrastructure, existing connectivity and existing signal system inventory.

2. BASIC SERVICES

Task 1.1: Existing Conditions Assessment

The first task related to the study will be the development of an Existing Conditions Assessment. The primary deliverable for Task 1.1 will be a concise compilation of the existing conditions related to the cabling and signaling infrastructure that serves the City of Bismarck today. KLJ envisions the following elements will be included in the Existing Conditions Assessment:

- Existing Cabling Infrastructure
 - Fiber, including date placed, number of strands and cable type and makeup;
 - Copper, including date placed, number of strands and cable type and makeup;
 - Duct, including date placed and duct type, size and makeup.
- Existing Municipal Facilities & Connectivity
 - Identify and outline existing communication systems and connectivity needs for existing municipal facilities (i.e. sanitary lift stations, water storage facilities, city buildings and define other municipal structures).
- Existing Signal System Inventory
 - System wide overview of current signal system; including a including a conditions assessment of traffic signal cabinets;
 - Inventory of current traffic related ITS and traffic detection systems;
 - Summary of system connectivity.

Task 1.2: Operational Concept Development

Following completion of Task 1.1, KLJ will work with the City's designated Study Advisory Team (SAT) to develop a range (2 to 3) of operational concepts (Alternatives) for how the future signal system and communications infrastructure is expanded and upgraded to meet projected needs. Each operational concept will be evaluated based on its ability to achieve desired outcomes envisioned by the City of Bismarck primarily for its signal system, and secondarily for its overall communication network. As part of the operational concept development, consideration will be given to:

- Ownership of the system (City-owned versus public/private partnership opportunities);
- Evaluate the cost/benefit of a significant signal system hardware (i.e. cabinets) replacement versus more gradual rehabilitation and spot upgrades.
- Planning level costs estimate, including opinions of capital costs (construction) as well as ongoing operation and maintenance costs to support the proposed system.

Each operational concept/alternative will be evaluated based on a series of technical metrics which will assist in determining positive and negative impacts of each. The operational concept/alternatives analysis will assist in screening and refining alternatives based upon the following attributes: system functionality, operability, redundancy, and expandability.

Task 1.3: Implementation Plan & Deployment Strategy

Following the selection of an operational concept (Task 1.2) KLJ will work with the SAT to develop an implementation and deployment strategy. This task is two tiered:

- 1) The *implementation plan* will entail a general overview of the technical needs and requirements related to the gradual implementation of the preferred operational concept.
- 2) The *deployment strategy* will look at the timing and phasing of system build out. The deployment strategy will include a planning level assessment of costs for various major system components. KLJ envisions developing both a short-, mid- and long-term deployment element.

Task 1.4: Project Management & Coordination

KLJ will manage the project and provide overall coordination of the work completed by the project team. This work shall consist of managing work assignments, internal team meetings, client and SAT coordination, project budget and schedule.

KLJ will meet periodically with City Staff and at least three times with the SAT. The SAT will meet at major milestone points in the process. The SAT will be appointed by the City of Bismarck. KLJ anticipates attending three (3) meetings with City Staff and six (6) meetings with the designated SAT.

Task 1.5: Final Report Preparation

At the completion of the process, KLJ will prepare a final report which rolls together interim deliverables discussed herein. The final report will be both a verbal and illustrative representation of overall system inventory, operational concepts and the final recommended deployment and implementation plan. The final report will be delivered electronically in pdf format to the City and four (4) hard copies will be printed and bound for the City.

3. SCHEDULE

- Notice to Proceed: December 13, 2016 (moved back from October 25, 2016 originally)
- SAT Meeting #1: Project Kick Off and Draft Existing Conditions Assessment Review – Early January 2017
- SAT Meeting #2: Final Existing Conditions Assessment and Operational Concept Development Review – Early-Mid February 2017
- SAT Meeting #3: Preliminary Review of Alternatives – Mid-Late March 2017
- SAT Meeting #4: Final Review of Alternatives and Preliminary Review of Implementation and Deployment Strategy – Late April 2017
- SAT Meeting #5: Review Draft Report – Mid May 2017
- One (1) remaining SAT meeting will be left open for use as needed during the study.
- Final Report Deliverable Due: May 31, 2017

4. DELIVERABLES PROVIDED BY KLJ

- Final Report

5. SERVICES NOT INCLUDED IN THIS SCOPE

- Field work to identify locations and condition of existing infrastructure
- Detailed design of the fiber optic network

This is **EXHIBIT C, Compensation Schedule**, referred to in and part of the Agreement Between Owner and Engineer for Study and Report Professional Services dated December 13, 2016.

Compensation Schedule

See attached compensation summary.

Project Name: Fiber Optic Network Study

Project Number: 1416115



Task Code	Description	Engineer IV	Engineer III	Engineer III	Engineer I	Planner IV	Planner II	Planner I	TASK TOTAL
1	Study/Report								
1.1	Existing Conditions Assessment								\$ 15,240.00
	Existing Communications Infrastructure	16				2			
	Existing Municipal Facilities & Connectivity	16				2			
	Existing Signal System Inventory	4		8	32	4	16	16	
1.2	Operational Concept Development								\$ 14,844.00
	Alternatives Development (2-3)	12	4	8	8	12		8	
	Fatal Flaws Analysis	16	4	12	8	8		4	
1.3	Implementation Plan & Deployment Strategy								\$ 18,984.00
	Draft Report with Alternatives/Concepts	4		8		8		8	
	Implementation Plan	20	4	12	8	8		8	
	Deployment Strategy	8	4	12	8	8		8	
1.4	Project Management & Coordination								\$ 20,064.00
	PM & Coordination		32			2			
	City Meetings (3)	8	16	4		16			
	Study Advisory Team Meetings (6)	12	24			16			
1.5	Final Report Preparation								\$ 5,748.00
	Final Report Preparation	4	8		12	8		16	
	Subtotal of Task 1	120	96	64	76	94	16	68	\$ 74,880.00



ENGINEERING DEPARTMENT

DATE: December 7, 2016
FROM: Gabe Schell, PE | City Engineer 
ITEM: Main Avenue 3-Lane Opinion of Costs for Improvements

REQUEST

Present Opinion of Costs for Permanent Improvements to Main Avenue as a 3-Lane Roadway

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The following information is in response to the request of the Board on November 22, 2016 for additional cost information for improvements to Main Avenue.

Permanent Pavement Marking and West-end Transition Configuration

Concepts were previously developed for the west transition from a four-lane undivided roadway to the three-lane roadway section. These concepts focus on opportunities to develop a gateway treatment to help physically and visually introduce the lane transition. The transition was located near the current 40 to 25 mph speed transition, west of Washington Street. All striping costs assume a preformed patterned grooved marking. The striping costs include the entire corridor from the western starting point to 7th Street. Opinion of costs for these concepts range from \$121,000 for solely striping to \$329,500 for striping, a raised median, plantings and monuments at the west end transition.

Signal System Improvements

The 3-lane roadway initial demonstration period noted improved progression in the corridor and protected/permissive left turn phasing as improvements the public has requested.

To improve progression in the corridor, additional detection of pedestrian and vehicular traffic could optimize phasing of the traffic signals. This detection would be accomplished by pedestrian

pushbuttons and a video detection system. Our analysis indicates that the existing traffic signal controllers and cabinets would need to be replaced to allow for vehicular and pedestrian actuation. Please note improved progression could also be achieved by removing signals at lower volume intersections.

The addition of protected/permissive left turn phasing would require new signal heads and either a mast arm extension or a new mast arm for east/west traffic. Previous analysis indicated the existing signal poles and foundations were adequately sized for a longer mast arm. Our analysis indicates that the existing traffic signal controllers and cabinets are adequate to handle pre-timed protected/permissive left turn phasing but any vehicular actuation or flashing yellow arrows used on Bismarck Expressway and University Drive among other locations would require a new traffic signal controller and cabinet.

The costs are listed per location or per intersection and assume the existing foundation and pole do not need replacement. No modifications to the 7th Street traffic signal are recommended.

- New Traffic Signal Controller and Cabinet: required to accommodate vehicle and pedestrian actuation and/or flashing yellow arrow implementation (\$20,000 per intersection; 4 locations, Main Avenue/2nd Street would be adequate)
- Vehicular Actuation: Video detection system for vehicular traffic (\$35,000 per location; 4 locations, Main Avenue/2nd Street has vehicular actuation currently)
- Pedestrian Actuation: pedestrian pushbuttons (\$10,000 per location; 4 locations, Main Avenue/2nd Street has pedestrian actuation currently)
- Protective-Permissive: signal heads centered over lane with a five (5) foot mast arm extension and left signal head (\$6,500 per location; 10 locations)
- Protective-Permissive: signal heads centered over lane with a new mast arm and left signal head (\$10,000 per location; 10 locations)

Main Avenue – 8th Street Sign Structure

Based on the proposed striping configuration, the existing Main Avenue overhead sign structure located at approximately 8th Street is recommended to be removed/modified. This is also in response to the NDDOT *Signing on Main Avenue/I-94 Business Loop* memorandum, dated January 21, 2009.

Other overhead signs along Main Avenue (east of 9th Street) and 7th Street (north of Main Avenue) were not impacted by the proposed 4-lane to 3-lane conversion and thus are not included.

- Remove Structure and Signing (\$7,500)
- Retrofit Structure and Replace Signing (\$12,500); will need to conduct a structural analysis to determine feasibility of this alternative.
- Remove Structure and add a New Structure with signing (\$75,000)
- Remove Structure and add a New Structure with Dynamic Message Signing (\$215,000)

Broadway Avenue Conversion to Two-Way Traffic

Convert Broadway Avenue to two-way traffic from 4th Street to 6th Street will require a revision to the traffic signal at 5th Street, restriping the diagonal parking along the north side of Broadway and signage

- Traffic signal revision, stripping and signage (\$20,000)

Summary

The cost for permanent improvements could range from \$121,000 for striping only; to \$481,000 for striping and signal improvements; to \$924,500 for striping, signal improvements, overhead sign replacement and Broadway Ave conversion. Many of these improvements are scalable and not mutually exclusive. The Board could elect appropriate options at the higher volume intersections and maintain the existing system configuration at lower volume intersections along Main Avenue if you so choose.

RECOMMENDED CITY COMMISSION ACTION

Receive opinion of costs for permanent improvements to Main Avenue as a 3-Lane Roadway

STAFF CONTACT INFORMATION

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