



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