ENGINEERING DEPARTMENT

DATE: October 18, 2016

FROM: Gabe Schell, PE I City Engineer

ITEM: Use Agreement

REQUEST

Approval of Use Agreement with Braun Intertec.

Please place this item on the October 25, 2016, City Commission meeting agenda.

BACKGROUND INFORMATION

The City of Bismarck has an easement on NDDOT right-of-way under the Grant Marsh Bridge over the Missouri River. Braun Intertec is requesting permission to utilize a portion of that right-of-way as a staging area for their proposed geotechnical evaluation within the Missouri River.

RECOMMENDED CITY COMMISSION ACTION

Approval of the attached Use Agreement.

STAFF CONTACT INFORMATION

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

USE AGREEMENT

THIS Use Agreement (Agreement) is made and entered into this 5th day of October, 2016 between the City of Bismarck, PO Box 5503, Bismarck North Dakota 58506-5503 hereinafter called the "**City**" and Braun Intertec Corporation, 1502 Grumman Lane, Bismarck, North Dakota 58504, hereinafter called "**Braun**".

Whereas, the **City** has an easement on NDDOT right-of-way and **Braun** desires to utilize a portion of that right-of-way as a staging area to conduct testing in the Missouri River, the parties agree as follows:

1. **DESCRIPTION PREMISES:** In consideration of the following, **the CITY** hereby gives its permission to **Braun** to use, and **Braun** acknowledges that its use of the property is subject to the permission herein granted, the following described premises situated within the City of Bismarck, North Dakota:

    NDDOT ROW under in Interstate I-94 bridge over the Missouri Bridge. Also known as the Grant Marsh Bridge

and referred to in this Agreement as the "Premises".

2. **TERM:** The term of this Agreement shall be for 15 months and shall commence on October 5, 2016 and shall terminate on April 30, 2017 unless **Braun** notifies the **City** of earlier termination.

3. **RENTAL PAYMENTS:** There shall be no rental payments due under this agreement.

4. **USE:** **Braun** may use the Premises as a staging area to conduct testing operations on the Missouri River and for no other purposes.

5. **MAINTENANCE AND REPAIRS:** The **Lessee** shall provide its own maintenance and repair, site control. The **City** shall not be obligated to make any repairs, alterations or improvements on the Premises or on any equipment, facilities or fixtures owned or placed upon the Premises by **Braun.**

6. **COVENANT AGAINST WASTE OR NUISANCE:** **Braun** shall perform a condition assessment of the staging area and entrance to Keelboat park before staging commences and after the work is completed. **Braun** shall repair or restore any damaged pavement or surfaces back to existing conditions at the end of their use. **Braun** shall, throughout the term, take good care of the Premises and any of its

equipment or materials stored upon the Premises and keep it free from waste or nuisance of any kind.

7. ALTERATIONS AND IMPROVEMENTS: Braun shall not make any alterations, additions or improvements to the Premises other than those consistent with the use of the Premises as a testing staging site, without the written consent of the **NDDOT. Braun** may, subject to NDDOT approval and at its own cost and expense and in good workmanlike manner, make minor alterations, additions or improvements or erect, remove or alter equipment as it may deem advisable, consistent with the use of the Premises as a testing staging site. For any alterations, additions or improvements, **Braun** shall comply with all applicable governmental laws, ordinances, regulations and any other requirements. All improvements or fixtures installed by **Braun** must be removed by **Braun** at the termination of the Agreement and such removal must be accomplished in a good workmanlike manner so as not to damage the Premises.

8. ROUTE: Braun shall follow the City of Bismarck Policy regarding load restrictions and oversized permitting. Note that Burnt Boat Road has year round 6-ton restriction. Confirm weight of the barges, cranes and any other truck loads servicing this project. If over 6-ton, use Exit 154, I 194, Liberty Memorial Bridge, and access the staging area from River Road from the south to avoid Burnt Boat Road. Please see the **City's** website for more details. http://bismarcknd.gov/302/Load-Permits-Restrictions-Truck-Routes. **Braun** shall notify the **City** of Bismarck Traffic Engineer (Mark Berg, 355-1505, mberg@bismarcknd.gov) 3 days prior to staging date.

9. FENCING: Braun shall fence off the staging area with orange safety fence (at a minimum) to prevent access to the staging area from the general public during your occupation of the Premises.

10. PROPERTY INSURANCE: The **City** shall maintain no insurance on the Premises. **Braun** shall, at its own expense, replace and repair any and all of the **Braun** fixtures, equipment and other personal property necessary to properly and adequately continue its business. **Braun**, for its own protection, should separately insure such fixtures, equipment or other personal property.

11. INDEMNITY OF THE CITY AND THE NDDOT: Braun agrees to indemnify, save and hold harmless, the **City** (its officers, agents, servants and employees) and the NDDOT (its officers, agents, servants and employees) of and from any and all costs, liability, damage and expense (including costs of suit and reasonable expenses of legal services) claimed or recovered, by any person, firm, or

corporation by reason of injury to, or death of, any person or persons, and damage to, destruction or loss of use of any and all property, arising out of **Braun's** or its agents, employees or contractors use of the Premises. The foregoing provisions concerning indemnification shall not be construed to indemnify the **City**, its officers, employees or agents for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence or willful or wanton conduct of the **City**, its officers, employees, or agents or the NDDOT, it officers, employees, or agents.

12. SURRENDER OF POSSESSION: **Braun** agrees to peaceably and quietly surrender possession of the premises at the termination of this Agreement or any renewal or extension thereof, however occurring.

13. GOVERNING LAW: The Provisions of this Agreement shall be construed and interpreted in accordance with North Dakota law.

14. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties and it supersedes any prior negotiations or agreements of the parties.

15. CONCURRENCE BY THE NDDOT: The permission granted by this Agreement is subject to the written concurrence of the NDDOT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year above written.

City of Bismarck

By_____
Michael C. Seminary, Mayor,
City of Bismarck

Attest:

_____
Keith J. Hunke,
City Administrator

Braun Intertec Corporation

By Steven P Nagle
Steven P. Nagle
Vice President

Attest:

Katherine Kelley
Katherine Kelley
Associate Principal