



January 14, 2020

Board of City Commissioners
Bismarck, ND

Dear Commissioners:

The Board of City Commissioners is scheduled to meet in regular session on Tuesday, January 14, 2020 at 5:15 p.m. in the Tom Baker Meeting Room, City/County Office Building, 221 North Fifth Street, Bismarck, North Dakota.

Invocation and the Pledge of Allegiance presented by a Chaplain from the Bismarck Police Department.

Watch live meeting coverage on Government Access Channels 2 & 602HD, Listen to Radio Access 102.5 FM Radio, or stream FreeTV.org and RadioAccess.org. Agenda items can be found online at www.bismarcknd.gov/agendacenter.

Future City Commission meetings are scheduled as follows:

- January 28th
- February 11th & 25th
- March 10th & 24th

MISSION STATEMENT

To provide high-quality public services in partnership with our community to enhance our quality of life.

MEETING OF THE BOARD OF CITY COMMISSION

1. Consider approval of minutes.

Documents:

[SM120912.pdf](#)
[SM122619.pdf](#)
[MN121719.pdf](#)

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

3. CONSENT AGENDA

- A. Consider approval of expenditures.
- B. Consider approval of personnel actions.

Documents:

[\(C\) HR - Personnel Report.pdf](#)

- C. Consider the request for approval from the Administration Department for the following:**

1. Reappoint Shae Helling to the Bismarck Human Relations Committee.
2. Application for gaming: Dakota Pheasants Forever, 2402 Railroad Ave.
3. Introduction of and call for a public hearing for a new Class C2 Hotel/ Motel Liquor License,

- for the Expressway Suites, 180 E. Bismarck Expressway.
4. **Accept the recommendation from the Human Relations Committee to present the Humanitarian Award to Dr. Robert Roswick.**
 5. **Approve request from Nathan Schneider, VP Bismarck Mandan Chamber EDC, to make changes to the existing Laughing Sun Flex PACE Loan.**

Documents:

- (C) ADMIN - Human Relations Committee Appointment.pdf
- (C) ADMIN - New Gaming Site Authorization.pdf
- (C) ADMIN - New Class C2 Liquor License.pdf
- (C) ADMIN - Humanitarian Award Recommendation.pdf
- (C) ADMIN - Laughing Sun Change.pdf

D. Consider the request for approval from the Airport for the following:

1. A \$1,500 sponsorship to the North Dakota Aviation Council for the 2020 Upper Midwest Aviation Symposium.
2. Approve contract with Volaire Aviation Consulting for air service development services.

Documents:

- (C) AIR - Sponsorship for NDAC for 2020.pdf
- (C) AIR - Volaire Aviation Consulting Contract.pdf

E. Consider the request for approval from the Attorney for the following:

1. Authorize the distribution of items over \$25.00 from Public Works to Edwinton Place.
2. Introduction of and call for a public hearing on Ordinance 6406, regarding the age of purchase for Tobacco or Electronic Smoking Devices.
3. Introduction of and call for a public hearing on Ordinance 6407, to amend Ordinance 2-11-01, regarding Purpose of the Human Relations Committee.

Documents:

- (C) ATTY - Public Works Gifts.pdf
- (C) ATTY - Tobacco Change.pdf
- (C) ATTY - Human Relations Changes.pdf

F. Consider the request for approval from Bismarck-Burleigh Public Health for the following:

1. Approve the measurable outcomes for the United Way Emergency Homeless Shelter.

Documents:

- (C) BBPH - United Way Outcomes.pdf

G. Consider the request for approval from the Community Development Department for the following:

1. Introduction of and call for public hearing on staff-initiated amendments to the Growth Phasing Plan in the 2014 Growth Management Plan.
2. Request to change the date of the continued public hearing on Ordinance 6403, an amendment to Title 4 of the City Code of Ordinances (Building Regulations) regarding the 2018 Building Code and Fire Code adoption, to February 11, 2020.
3. Re-appointment of Joe Fink and Todd Van Orman to the City of Bismarck Renaissance Zone Authority.
4. Authorize the use of Neighborhood Stabilization Program funds for the Boulevard Apartment project.
5. Authorize resolution for Bis-Man Transit Grant filing.

Documents:

- (C) CD - Growth Phasing Plan.pdf

- (C) CD - Building and Fire Code.pdf
- (C) CD - RZA Reappointments.pdf
- (C) CD - NSP Authorization.pdf
- (C) CD - Bis-Man Transit.pdf

H. Consider the request for approval from the Engineering Department for the following:

1. Street closure for the 47th Annual Downtowners Street Fair.
2. Dedication of and acceptance of a watermain easement in the north right of way of 43rd Ave. NE.
3. Street Improvement District No. 531 - Resolution Approving Plans and Specifications, Resolution of Necessity, Resolution Directing the Advertisement of Bids and Receive Bids.
4. Street Improvement District No. 532 - Ordering Preparation of the Preliminary Report, Approving Preliminary Report and Directing Preparation of Plans and Specifications.
5. Street Improvement District No. 533 - Resolution Approving Plans and Specifications, Resolution of Necessity and Resolution Directing Advertisement of Bids and Receiving Bids.
6. The North Dakota Department of Transportation Cost Participation, Construction and Maintenance Agreement for 43rd Ave. NE Reconstruction.
7. Approve the Development Agreement with Wilment Development LLC regarding storm water improvements associated with reconstruction of 43rd Ave.

Documents:

- (C) ENG - Street Fair Closure.pdf
- (C) ENG - Watermain Easement Range 80.pdf
- (C) ENG - Street Improvement District 531.pdf
- (C) ENG - Street Improvement District 532.pdf
- (C) ENG - Street Improvement District 533.pdf
- (C) ENG - 43rd Reconstruction.pdf
- (C) ENG - Wilment Development Agreement.pdf

I. Consider the request for approval from the Finance Department for the following:

1. Application for Abatement for year 2019, Disabled Veteran Credit, at 524 N. 19th St.
2. Application for Abatement for year 2018 & 2019, Disabled Veteran Credit, at 914 Calvert Dr.
3. Application for Abatement for year 2019, Disabled Veteran Credit, at 1321 Columbia Dr.
4. Application for Abatement for year 2018 & 2019, Disabled Veteran Credit, at 4511 Chamberlain Dr.
5. Application for Abatement for year 2019, Disabled Veteran Credit, at 1630 Columbia Dr.
6. Application for Abatement for year 2019, Disabled Veteran Credit, at 315 N. Griffin St.
7. Application for Abatement for year 2019, Disabled Veteran Credit, at 4025 Knudsen Lp.
8. Application for Abatement for year 2019, Disabled Veteran Credit, at 5306 Mellowsun Dr.
9. Application for Abatement for year 2019, Disabled Veteran Credit, at 3127 Nevada St.
10. Application for Abatement for year 2019, Disabled Veteran Credit, at 1500 Portland Dr.
11. Approve the public depositories for City funds.

Documents:

- (C) FIN - Abatement 19th.pdf
- (C) FIN - Abatement Calvert.pdf
- (C) FIN - Abatement Chamberlain.pdf
- (C) FIN - Abatement Columbia.pdf
- (C) FIN - Abatement Griffin.pdf
- (C) FIN - Abatement Knudsen.pdf
- (C) FIN - Abatement Mellowsun.pdf
- (C) FIN - Abatement Nevada.pdf
- (C) FIN - Abatement Portland.pdf
- (C) FIN - Public Depositories.pdf

J. Consider the request for approval from the Human Resource Department for the following:

1. Approve the 2020 BC/BS Administrative Service and Stop Loss Agreement contracts and 2020 Summary Plan Description.

Documents:

(C) HR - Contract Renewals .pdf

K. Consider the request for approval from the Police Department for the following:

1. Permission to participate in solicitation of Donation for Regional K9 Training.
2. Authorize trade/purchase of replacement narcotics vehicle.

Documents:

(C) PD - K9 Solicitaion for NPCA Donations.pdf
(C) PD - 2020 Narcotics Vehicle Purchase.pdf

L. Consider the request for approval from the Public Works - Service Operation Department for the following:

1. Purchase Motorola portable and mobile radios at the State of North Dakota bid contract for the 2020 budget year.
2. Purchase oil for City vehicles and equipment under the state of North Dakota bid contract.
3. Purchase tires for City vehicles and equipment under the state of North Dakota bid contract.
4. Purchase vehicles under the state of North Dakota bid prices and the North Dakota Service contract.
5. Sole Source the purchase of Beet Heat for Winter Roadway Snow Fighting.
6. Award bid for bulbs and ballasts recyclable items to North Dakota E-Waste, LLC.

Documents:

(C) PW-SO - Purchase of Motorola Portables and Radios.pdf
(C) PW-SO - Puchase Oil for Vehicles.pdf
(C) PW-SO - Purchase Tires for Vehicles.pdf
(C) PW-SO - Purchase Vehicles.pdf
(C) PW-SO - Sole Source Purchase of Beet Heat.pdf
(C) PW-SO - Awarding Bid for Bulb and Ballasts Recyclable Items.pdf

4. REGULAR AGENDA

5. Consider the request from the Community Development Department for Jason and Nita Sherwin to appeal the December 5, 2019 decision of the Board of Adjustment to deny a variance from Section 14-03-06(1)(b)(4) of the City Code of Ordinances (Incidental Uses) (Accessory Uses and Buildings) to increase the maximum allowable square footage of accessory buildings on the property from 1,200 square feet to 1,600 square feet and to increase the maximum side wall height of the proposed accessory building from 12 feet to 15 feet on Lot 2, Block 5, Imperial Valley Subdivision (3651 W. Princeton Ave.)

Documents:

(R) CD - Imperial Valley Variance Appeal.pdf

6. Public Hearing on Ordinance 6404, a request for a zoning change from the RM10-Residential zoning district to the Conditional RT-Residential zoning district for Lot A-1 of Lot A of part of Lot 1, North Hills 6th Addition.

Documents:

(C) CD - North Hills Zoning Change.pdf

7. Public Hearing on Ordinance 6405, to amend Ordinance 7-01-03, regarding Competitive Bidding Required.

Documents:

(C) ATTY - Ordinance 6405.pdf

8. Public Hearing on the proposed revisions to the Special Assessment Policy.

Documents:

(C) FIN - Special Assessment Policy Revisions.pdf

9. Consider the request from the Administration Department for a request for Proposals for Architectural and Engineering Services for the space needs for Public Health, Police and Public Works facilities.

Documents:

(C) ADMIN - Archietecture Engineering Services.pdf

10. ~~Receive an update on status of watermain easements on 43rd Ave. NE and request direction from the Board for any further actions.~~

~~Documents:~~

~~(R) ENG - 43rd Ave Watermain.pdf~~

11. Consider the request from the Engineering Department to receive and accept the proposed US 83/ND1804 Watershed Stormwater Master Plan Update.

Documents:

(R) ENG - US 83 ND 1804 Watershed.pdf

12. Consider the request from the Engineering Department for the recommendations for lane configurations on E. Divide Ave. and S. Washington St. within the proposed SI-531 work area.

Documents:

(R) ENG - SI-531 Lane Configurations.pdf

Other Business

Adjourn



MEETING OF THE BOARD OF CITY COMMISSIONERS

December 9, 2019

A meeting occurred with a quorum of the City Commission by Chad Wachter with Commissioners Steve Marquardt, Greg Zenker and Shawn Oban the week of December 9, 2019. The conversation was about possible future development of Silver Ranch north of 43rd Avenue.

The developer would need access across the Magilke/Robb Sattler's property to get sufficient water pressure, but those owners are withholding an easement to prevent expansion. He asked Commissioners to consider eminent domain.

Commissioner Guy was provided with an email regarding these items with the exception of eminent domain, but she did not provide any response. Mayor Steve Bakken indicated that he has never been contacted regarding this information.

MEETING OF THE BOARD OF CITY COMMISSIONERS

December 26, 2019

On 12/26/19 at 12 p.m., the Board of City Commissioners met in the Mayor's Conference Room located at 221 N. 5th St. in Bismarck, N.D. This special meeting addressed the request from the University of Mary to extend the due diligence, closing date and lease extension for the Bismarck Burleigh Public Health Building from December 31, 2019 to July 31, 2020.

Commissioner Marquardt and Commissioner Zenker were present. Commissioner Guy and Commissioner Oban were in contact through conference call. Greg Vetter, the current Vice President of the University of Mary and Jerome Richter, acting Vice President as of 2020, were present on University of Mary's behalf. Christi Schaeffbauer, the university's Vice President of Financial Affairs was also present.

Commissioner Zenker moved to approve the request with the lease and purchase agreement remaining the same. Commissioner Guy seconded the request, and upon a roll call, all present voted aye. The meeting was adjourned at 12:12 p.m.

MISSION STATEMENT

MEETING OF THE BOARD OF CITY COMMISSION

1. Consider the approval of the minutes.
Commissioner Marquardt moved to approve the minutes of the November 26, 2019 Regular Commission Meeting. Commission Guy seconded the motion. Upon a roll call vote, all voted aye. M/C
2. Public comment (restricted to items on the Consent Agenda and Regular Agenda, excluding public hearing items).

Six members of the public spoke on behalf of regular agenda item #10, the approval of Lutheran Social Services' HOME Funding Application for the purchase and rehabilitation of the Boulevard Apartments, located at 1100 E. Boulevard Ave.

Rob Field, Joel Kraft and Mike Carlson spoke against item #10 being passed.

Karen Dunlap spoke in favor of the item.

Tim Karsky, the President of Choice Bank, explained the financial institution's position on the foreclosure process for the building and the outstanding utility bill associated with the property.

Brent Ekstrom, the Executive Director of the Lewis and Clark Development Group, acknowledged Lutheran Social Services is receiving assistance from several non-profit agencies in this project. He also discussed how the federal funds would help in the rehabilitation process of the project for low and moderate income residents.

3. CONSENT AGENDA
Commissioner Marquardt moved to approve the consent agenda. Commissioner Guy seconded the motion. Upon roll call vote, all voted aye. M/C.

A. Consider approval of expenditures.
Voucher numbers: 1090542-1090853

B. Consider approval of personnel actions.

C. Consider the request for approval from the Administration Department for the following:

- 1. A letter of support from Vitality Wellness Group, LLC.**
- 2. Appoint Tait Sundstrom and Myra Kosse to the Bismarck Animal Advisory Board.**
- 3. Appoint Trevor Vannette and Manisha Sawhney to the Bismarck Human Relations Committee.**
- 4. Allow sole source repairs with Vector Construction at the Parkade Building.**

D. Consider the request for approval from the Airport for the following:

1. Change Order #5 to the September 24, 2018 agreement with Strata Corp. for Runway 13/31 Reconstruction Phase 3 (FAA Phase 4).
2. Change Order #6 to the September 24, 2018 agreement with Northern Improvement Company for Runway 13/31 Reconstruction Phase 3 (FAA Phase 4).
3. Purchase a 4-door crew cab 4X4 pickup using State Bid.

E. Consider the request for approval from the Attorney for the following:

1. Introduction of and call for public hearing on Ordinance 6405 to amend Ordinance 7-01-03, regarding Competitive Bidding Required.

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

1. Introduction of and call for Public Hearing on Ordinance 6404, a request for a zoning change from the RM10-Residential zoning district to the Conditional RT-Residential zoning district for Lot A-1 of Lot A of part of Lot 1, North Hills 6th Addition. Introduction of and call for Public Hearing on Ordinance 6404, a request for a zoning change from the RM10-Residential zoning district to the Conditional RT-Residential zoning district for Lot A-1 of Lot A of part of Lot 1, North Hills 6th Addition.

G. Consider the request for approval from the Engineering Department for the following:

1. Creating Street Improvement District S1 531, Ordering Preparation of Preliminary Report, Approving Preliminary Report, and Directing Preparation of Plans and Specifications.
2. Creating Street Improvement District S1 533, Ordering Preparation of the Preliminary Report, Approving Preliminary Report, and Directing Preparation of Plans and Specifications.
3. 43rd Ave. NE Reconstruction Rights of Way Plats, Warranty Deeds and Temporary Construction Easements - HC 121.

H. Consider the request for approval from the Event Center for the following:

1. Select electrical engineer for arena lighting project.

I. Consider the request for approval from the Finance Department for the following:

- 1. Introduction of and call for a public hearing regarding revisions to the Special Assessment Policy.**
- 2. A one-year term for special assessments of \$200 or less.**
- 3. Application for Abatement for year 2019, Disabled Veteran Credit at 3008 Promontory Dr.**
- 4. Application for Abatement for year 2019, Disabled Veteran Credit at 859 San Angelo Dr.**
- 5. Purchase replacement Getac computers for Police Department and tablets and docks for Fire Department.**

J. Consider the request for approval from the Police Department for the following:
Sole Source Purchase of X26 Tasers and associated batteries.

K. Consider the request for approval from the Public Works - Service Operations Department for the following:

- 1. Award bid for one or more 6500# forklift trucks with cab to Forklifts of North Dakota for the Water Treatment Plant.**
- 2. Award bid for one or more 6000# forklift trucks to Forklifts of North Dakota for the Wastewater Treatment Plant.**
- 3. Reallocation of Roads & Streets Division funds from the purchase of a sweeper, loader, dump truck, motor grader and a sander to the purchase of three loaders and one sweeper.**
- 4. Street Tree Pruning contract for 2020 option year.**
- 5. Award bid for the Library HVAC Upgrade to Custom Aire and Skeels Electric.**

L. Consider the request for approval from the Public Works - Utility Operations Department for the following:

1. Award bid for Wastewater Treatment Plant Dewatering System Equipment Procurement to FKC Co. Ltd.

4. REGULAR AGENDA

5. Recieve the report of same day collection for garbage and recycling starting January 6, 2020.
Jeff Heintz from Public Works - Service Operations provided a report on the changes to the recycling collection by Waste Management.
6. Public Hearing on Class C2 Hotel/Motel Liquor License for Courtyard, located at 3319 N. 14th St.

No member of the public appeared for comment.

Commissioner Zenker moved to approve the request as presented. Commissioner Oban seconded the motion, upon a roll call vote, all voted aye. M/C.

7. Public Hearing on Class D Liquor License for full alcohol for on/off sale at the Main Bar, located at 804 E. Main Ave.

No member of the public appeared for comment.

Commissioner Marquardt moved to approve the request as presented. Commissioner Guy seconded the motion, upon a roll call vote, all voted aye. M/C.

8. Public Hearing on Class T Liquor License for a Senior Living Community Liquor License for Touchmark, located at 1000 W. Century Ave.

No member of the public appeared for comment.

Commissioner Oban moved to approve the request as presented. Commissioner Zenker seconded the motion, upon a roll call vote, all voted aye. M/C.

9. Public Hearing on Ordinance 6403, regarding the 2018 Building Code adoption (City of Bismarck Building Code).

Three people appeared to speak for the public hearing on this item.

Jeff Sattler, of Sattler Homes, and Brian Eiseman, Stoneshire Builders, spoke against having the presented Building Code adopted. They requested Commissioners hold off on the Building Code until a more unified code could be developed for the metro-region and the state. Both also voiced their support to adopt the State Building Code.

Fire Chief Joel Boespflug asked the Commission to consider keeping windows at 44 inches to meet the fire code requirements and past practices intended to keep firefighters and homeowners safe.

Commissioner Zenker moved to table the item until the meeting on January 28, 2020, giving the Community Development Department time to revise the code. Commissioner Marquardt seconded the motion. Upon further discussion of the motion, Commissioner Oban moved to approve the item, but clarified his approval included keeping windows at 44 inches as stated in the current building code. All Commissioners agreed upon his motion as stated. M/C

10. Consider the request from the Community Development Department for HOME Funding Application for Boulevard Apartments at 1100 E. Boulevard Ave.
Commissioner Marquardt moved to approve the 2019 HOME Program application for Boulevard Apartments to receive the total 2019 HOME allocation of \$335,000, and the 2018 HOME allocation of \$245,000, but withhold signing of the contract for the funds until the utility bill balance for 1100 E. Boulevard Ave. is paid in full. Commissioner Zenker seconded the motion. Upon roll call vote, Commissioners, Marquardt, Zenker, Guy and Oban all voted aye, President Bakken voted no. M/C.
11. Consider the request from the Engineering Department for the landowner request to address the Board to reconsider the proposed access configuration into his property.

Lon Romsaas of Swenson, Hagen and Company, and the landowner of the property, Don Clement, spoke regarding their request to:

1. Remove the retaining wall from the plans and restoring the planned fill slope.
2. Modify the designed stormwater outfall location from the existing culvert location to the stormwater easement on the east side of the property
3. Reconsider the $\frac{3}{4}$ access at the intersection of Montreal Street to be a full access as that location will also be an entrance into his property to the north.

The Commissioners received their input and no action was taken.

12. Consider the request from the Engineering Department to receive direction regarding adjacent landowner requests for changes to the proposed design of the 43rd Ave. Reconstruction Project HC 121.

After addressing the landowners testimony, the City Engineer recommended the Commission move to approve the requests from the landowner of removing the retaining wall and modifying the stormwater outfall location. He did not support the request to a full access and maintained the recommendation of a $\frac{3}{4}$

access at Montreal Street. Commissioner Oban moved to approve the City Engineer's recommendation as presented, Commissioner Zenker seconded the motion. Upon roll call, Commissioners Zenker, Guy and Oban voted for two out of the three landowner requests to be met. Commissioner Marquardt and President Bakken, voted nay. M/C.

13. Consider the request from the Engineering Department for approval of Amendment #3 to Existing Agreement for Professional Services with KLJ for 43rd Ave. Reconstruction - HC 121.
Commissioner Marquardt approved the motion as presented. Commissioner Zenker seconded the motion. Upon a roll call vote, all voted aye. M/C.
14. Consider the request from the Engineering Department to receive and accept the proposed US 83/ND 1804 Watershed Stormwater Master Plan Update.
The City Engineer asked that this item be tabled until the January 14, 2020 City Commission Meeting. Commissioner Guy moved to approve the request as presented. Commissioner Zenker seconded the request, and upon a roll call vote, all voted aye. M/C.
15. ~~Consider the request for approval from the Engineering Department to enter the Executive Session under North Dakota Century Code Section 44-04-19.2, regarding contract negotiation strategy under NDCC Section 44-04-19.1 (9).~~
This item was removed from the agenda.

Other Business

Having completed all the items on the agenda, President Bakken asked if there was any other business.

The next City Commission Meeting will be at 5:15 on January 14, 2020.

Adjourn

The meeting was adjourned at 8:25 p.m.

PERSONNEL ACTIONS FOR THE MEETING ON Jan. 14, 2020

Full-Time and Part-Time Appointments

Corsiatto, Jenna Planner	Com Development	Probationary appointment @ \$27.12/hr. 1/02/2020
Odell, Michael Firefighter	Fire	Probationary appointment @ \$24.23/hr. 12/16/2019
Vettel, Kyle Firefighter	Fire	Probationary appointment @ \$24.23/hr. 12/16/2019
Withnell, Nicholas Firefighter	Fire	Probationary appointment @ \$24.23/hr. 12/16/2019
Johnston, Sarah Records Technician	Police	Probationary appointment @ \$17.22/hr. 1/13/2020
Schwartzenberger, Megan Health Maintenance Nurse	Public Health	Probationary appointment @ \$26.72/hr. 1/7/2020

Separations

Neurohr, Reed Communications Specialist	CenCom	Terminated. 12/20/2019
Niebuhr, Zachary Communications Specialist	CenCom	Resigned. 1/11/2020
Flynn, Cody Engineering Tech II	Engineering	Resigned. 1/3/2020
Aguirre, Lorena Box Office Cashier	Event Center	Resigned. 12/13/2019
Knapp, Sierra Event Safety Officer I	Event Center	Resigned. 1/6/2020
Langemo, Cathy Concessions	Event Center	Resigned. 12/7/2019
Olmstead, Gary Concessions	Event Center	Resigned. 12/13/2019

Smith, Judy Box Office Cashier II	Event Center	Resigned. 12/13/2019
Swanson, Jericho Event Safety Officer II	Event Center	Resigned. 12/9/2019
Hintz, Patricia Customer Service Temp	Public Works	Resigned. 12/13/2019
Monge, Jason Seasonal Truck Driver	Public Works	Resigned. 12/11/2019

Others

Bleibaum, Taylor Communications Specialist	CenCom	Annual Salary Adj. @ \$20.94/hr. 12/15/2019
Mathias, Tyler Communications Specialist	CenCom	Annual Salary Adj. @ \$20.94/hr. 12/15/2019
Neurohr, Reed Communications Specialist	CenCom	Leave w/out pay 12/27/2019 pay period
Neurohr, Reed Communications Specialist	CenCom	Leave w/out pay 1/10/2020 pay period
Williams, Damon Communications Specialist	CenCom	Annual Salary Adj. @ \$20.94/hr. 12/15/2019
Williams, Damon Communications Specialist	CenCom	Leave w/out pay 1/10/2020 pay period
Clagett, Levi Engineering Intern	Engineering	Annual Salary Adj. – 12/15/2019 @ \$15.00/hr.
Meier, Clint Maintenance Attendant I	Event Center	1200 hr. employee to PT employee effective 1/1/2020
Schmitz, Joann Doorguard/Ticket Taker/Usher	Event Center	Annual Salary Adj. – 12/15/2019 @ \$13.11/hr.
Horner, Clifford Concessions	Event Center	Annual Salary Adj. – 12/15/2019 @ \$12.12/hr.

Heath, Georgia Programmer Analyst I	Finance/IT	Leave w/out pay 12/27/2019 pay period
Flanders, Ian Fire Captain	Fire	Light duty assignment @ \$38.56/hr. 12/19/2019
Leben, Kurt Battalion Chief	Fire	Light duty assignment @ \$52.00/hr. 12/16/2019
Tavis, Michael Firefighter	Fire	Leave w/out pay 12/27/2019 pay period
Brown, Josh Master Police Officer	Police	Promotion-grade change only effective 11/24/2019
McCarthy, April Police Officer	Police	Leave w/out pay 1/10/2020 pay period
Moran, Carter Forestry Tech	Public Works	Changed to 1200 hr. employee effective 1/1/2020
Nottestad, Brad Street Crew Leader	Public Works	Promotion-salary & grade adj. @ \$32.97/hr. 12/29/2019
Schiermeister, Chad Street Crew Leader	Public Works	Promotion-salary & grade adj. @ \$29.13/hr. 12/29/2019



City Administration

DATE: December 30, 2019

FROM: Jason Tomanek, Assistant City Administrator

ITEM: Bismarck Human Relations Committee Appointment

REQUEST:

Consider reappointing Shae Helling to the Bismarck Human Relations Committee.
Please place this item on the January 14, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION:

If confirmed by the Board of City Commissioners, Shae Helling's current term expires on January 31, 2020 and he would like to continue on the committee for another term to expire January 2023.

RECOMMENDED CITY COMMISSION ACTION:

Mayor Bakken recommends approval of the appointment of Shae Helling to the Bismarck Human Relations Committee for the terms specified.

STAFF CONTACT INFORMATION:

Jason Tomanek | Assistant City Administrator, 355-1300 or jtomanek@bismarcknd.gov

From: [Steve Bakken](#)
To: [Whitnie Olsen](#)
Cc: [Krista Rausch](#); [Jason Tomanek](#)
Subject: Re: Human Relations Committee Term Expiring
Date: Tuesday, December 24, 2019 9:35:25 AM
Attachments: [image003.png](#)
[image003.png](#)

Of course. Please renew her.

Mayor, Steve Bakken
sbakken@bismarcknd.gov
[REDACTED]

From: Whitnie Olsen <wolsen@bismarcknd.gov>
Sent: Friday, December 20, 2019 10:00:31 AM
Cc: Krista Rausch <krausch@ndarec.com>; Jason Tomanek <jtomanek@bismarcknd.gov>
Subject: FW: Human Relations Committee Term Expiring

Good morning Mayor,

Shae Helling is a currently the Vice Chair on the Human Relations Committee and his term is set to expire at the end of January. Shae wishes to continue serving on the committee. Please review for approval.

Thank you,

Whitnie Olsen
Administrative Technician
City of Bismarck Administration
221 N 5th St, 4th Floor
Bismarck ND 58501

Phone: 701-355-1305
Fax: 701-222-6470

The logo for the City of Bismarck, featuring the word "Bismarck" in a blue, serif font with a white outline, set against a white background with a subtle shadow effect.

Disclaimer: This e-mail, including attachments, is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510 et seq., may be confidential, or may contain confidential material. It is intended for use only by the person(s) to whom it is directed. If you are not the intended recipient and/or received it in error, you should (1) reply by e-mail to the sender; (2) delete this e-mail, including deletion of all associated text files from all storage locations including individual and network storage devices; and (3) refrain from disseminating or copying this communication. The media in which any electronic data files are transmitted can deteriorate over time and under various conditions. The City does not warrant the accuracy of any information contained in electronic data files transmitted by e-mail.

From: Shae Helling <shaehelling@gmail.com>
Sent: Friday, December 20, 2019 8:57 AM
To: Whitnie Olsen <wolsen@bismarcknd.gov>
Subject: Re: Human Relations Committee Term Expiring

Good morning Whitnie, I am not able to use the fill in form so I will just type out my information here so that it is more readable then me writing it out.

Shae Helling
3113 Kamrose Dr.

From: [Shae Helling](#)
To: [Whitnie Olsen](#)
Subject: Re: Human Relations Committee Term Expiring
Date: Friday, December 20, 2019 9:11:32 AM
Attachments: [image003.png](#)

Good morning Whitnie, i am not able to use the fill in form so i will just type out my information here so that it is more readable then me writing it out.

Shae Helling
3113 Kamrose Dr.
Bismarck, ND 58504
Shaehelling@gmail.com


I wish to continue to serve on the Bismarck Human Relations Committee. Over my 3 year term with the committee, i have been apart of numerous events and discussions that help shape and grow our diverse community. As the Vice-Chairman of the committee, i am fully involved in all the positive moving parts right now and i want to continue to guide the committee towards our goals and help better Bismarck. I am passionate about the City of Bismarck, its people and its continued growth and i believe in the work the Bismarck Human Relations Committee is doing. Please consider me to continue my chair on the Bismarck Human Relations Committee.

About myself:

I moved to Bismarck almost 12 years ago to attend school at the University of Mary. Since that point, i have found my roots in the community of Bismarck. I am passionate about seeing it continue to grow and be a home for my future family and the home for other families. I currently work at Bismarck Aero Center as their Director of FBO Operations & Marketing and have been involved in different volunteer groups around our community including Young Professionals Network & the Bismarck/Mandan EAA Chapter. I want to see myself continue to get more involved with our community and give back. Thank you.

i agree to meet the attendance expectations.

Shaehelling@gmail.com

Thank you,
Shae Helling

On Fri, Dec 20, 2019 at 8:56 AM Shae Helling <shaehelling@gmail.com> wrote:

Good morning Whitnie, i am not able to use the fill in form so i will just type out my information here so that it is more readable then me writing it out.

Shae Helling
3113 Kamrose Dr.
Bismarck, ND 58504
Shaehelling@gmail.com

On Wed, Dec 18, 2019 at 11:22 AM Whitnie Olsen <wolsen@bismarcknd.gov> wrote:

[Application](#)

Bismarck *City Administration*

December 18, 2019

Shae Helling
3113 Kamrose Dr.
Bismarck, ND 58504

RE: Human Relations Committee

Dear Mr. Helling,

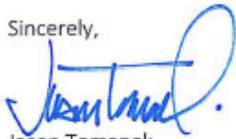
This is to advise you that your term on the Human Relations Committee will expire on January 31, 2020. Membership renewals must be approved by the Mayor and Commissioners of the Bismarck City Commission. If you wish to continue as a member on the Human Relations Committee please submit your application by January 3, 2020.

Applications can be submitted through www.bismarcknd.gov or to:

City Administration Office
City of Bismarck
221 N 5th St.
Bismarck, ND 58501.

If you have any questions regarding the reapplication process, please contact the City Administration office at (701)355-1300.

Sincerely,



Jason Tomanek
Assistant City Administrator
City of Bismarck

JT/wlo
Enclosure





City Administration

DATE: December 30, 2019

FROM: Jason Tomanek, Assistant City Administrator

ITEM: Gaming Site Authorization – Dakota Pheasants Forever

REQUEST:

Consider application for gaming: Dakota Pheasants Forever – 2402 Railroad Ave.
Please place this item on the January 14, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION:

Gaming site authorizations expire on June 30th of each year. The Bismarck Administration Department and the Police Department work collectively to administer the annual gaming site authorizations and renewals.

RECOMMENDED CITY COMMISSION ACTION:

Consider approving the gaming application for Dakota Pheasants Forever.

STAFF CONTACT INFORMATION:

Jason Tomanek | Assistant City Administrator, 355-1300 or jtomanek@bismarcknd.gov



**STATE GAMING LICENSE
REAPPLICATION FORM**
OFFICE OF ATTORNEY GENERAL
SFN 53838 (Rev. 10-2017)

License Number: (Office Use) G -
License Year Ending: June 30, _____

1. Official, Legal Name of Organization: (Do Not Abbreviate) Dakota Pheasants Forever		Business Telephone Number: 701-751-3883	
Business Address: (Street) 651 Oberhausen Dr	City: Bismarck	State: ND	Zip Code: 58504
Mailing Address: PO Box 1094	City: Bismarck	State: ND	Zip Code: 58502
Address where gaming accounting records are kept: 1900 Burnt Boat Dr Ste 102	City: Bismarck	State: ND	Zip Code: 58503
E-mail Address: kevin.ritter@ritteradair.com	Contact Person: Kevin Ritter	Official Position of Contact Person: Treasurer	
2. Is organization recognized as tax exempt by the Internal Revenue Service? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		3. Provide organization's Federal Employer Identification Number (EIN): 51-0006522	
4. Name and Title of Organization's Top Executive Official: (i.e., Cmdr., Pres., etc.) Jody Sommer, President		Daytime Telephone Number: 701-250-8655	
5. Name of Gaming Manager: Kevin Ritter, Treasurer		Daytime Telephone Number: 701-751-3883	
6. Signature of Gaming Manager:		Date:	
7. List the Full Governing Board of the Organization - The full governing board is primarily responsible and may be held accountable for the proper determination and use of net proceeds.			
Name: Jody Sommer	Telephone Number: (701) 250-8655	Name: Jim Martin	Telephone Number: (701) 226-0595
Name: Mitch Bitz	Telephone Number: (701) 516-6257	Name: Dave Nehring	Telephone Number: (701) 214-3184
Name: Kevin Ritter	Telephone Number: (701) 751-3883	Name: Bryan Odegaard	Telephone Number: (701) 426-2392
Name: Steve Hus	Telephone Number: (701) 471-7103	Name:	Telephone Number:
Name:	Telephone Number:	Name:	Telephone Number:
Name:	Telephone Number:	Name:	Telephone Number:
8. Does the Organization Own or Rent the Premises at Which the Games of Chance will be Conducted? <input type="checkbox"/> Own <input checked="" type="checkbox"/> Rent			

AFFIDAVIT:

The Top Executive Official declares that the information is correct and authorizes the Attorney General to inspect the organization's bank and accounting records.	Signature of Top Executive Official: 	Date: 12-10-2019
--------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------	---------------------



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

G - _____ (_____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization **Dakota Pheasants Forever**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

Name of Location Amvets Club #9			
Street 2402 Railroad Ave	City Bismarck	ZIP Code 58504	County Burleigh
Beginning Date(s) Authorized 7/1/19	Ending Date(s) Authorized 6/30/20	Number of twenty-one tables if zero, enter "0": 0	
Specific location where games of chance will be conducted <u>and</u> played at the site (required) See attached floor plan			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known Specific gaming date is February 1, 2020			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
---------------------------------------------------	---------------------------------

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

<input type="checkbox"/> Bingo	<input type="checkbox"/> Club Special	<input type="checkbox"/> Sports Pools
<input checked="" type="checkbox"/> ELECTRONIC Quick Shot Bingo	<input type="checkbox"/> Tip Board	<input type="checkbox"/> Twenty-One
<input checked="" type="checkbox"/> Raffles	<input type="checkbox"/> Seal Board	<input type="checkbox"/> Poker
<input type="checkbox"/> ELECTRONIC 50/50 Raffle	<input type="checkbox"/> Punchboard	<input type="checkbox"/> Calcuttas
<input type="checkbox"/> Pull Tab Jar	<input type="checkbox"/> Prize Board	<input type="checkbox"/> Paddlewheels with Tickets
<input type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input type="checkbox"/> Paddlewheel Table
<input type="checkbox"/> ELECTRONIC Pull Tab Device		

APPROVALS

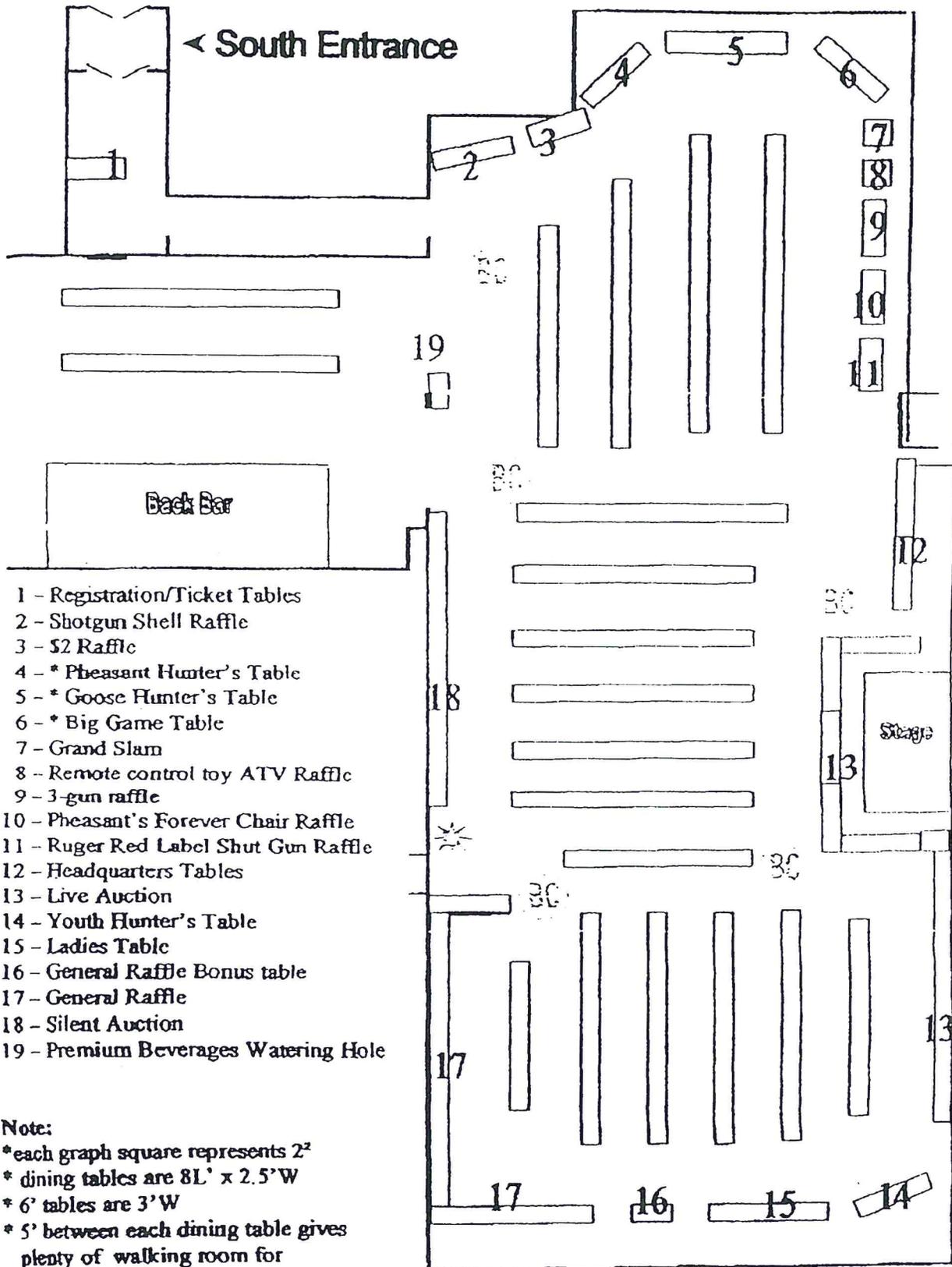
Attorney General	Date
Signature of City/County Official	Date
PRINT Name and official position of person signing on behalf of city/county above	

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

RETURN ALL DOCUMENTS TO:

Office of Attorney General
 Licensing Section
 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 **OR** 800-326-9240





RENTAL AGREEMENT
 OFFICE OF ATTORNEY GENERAL
 LICENSING SECTION
 SFN 9413 (Rev. 05-2018)

License Number (Office Use Only)

Site Owner (Lessor) Amvets Club #9		Site Name Amvets Club #9		Site Phone Number (701) 258-8324
Site Address 2402 Railroad Ave	City Bismarck	State ND	Zip Code 58501	County Burleigh
Organization (Lessee) Dakota Pheasants Forever		Rental Period 7/1/2019 to 6/30/2020		Monthly Rent Amount
1. Is Bingo going to be conducted at this site? 1a. If "Yes" to number 1 above, is Bingo the primary game conducted? If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts.				\$
2. Is Twenty-One conducted at this site? Number of Tables with wagers up to \$5 _____ X Rent per Table \$ _____ Number of Tables with wagers over \$5 _____ X Rent per Table \$ _____				\$
3. Is Paddlewheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____				\$
4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site? Please check: <input checked="" type="checkbox"/> Jar Bar <input type="checkbox"/> Standard Dispensing Device <input type="checkbox"/> Electronic Dispensing Device Number of Electronic Devices _____ No additional rent is allowed for electronic pull tabs. Rent must be based on dispensing device requirements per NDCC 53-06.1-11 (5)(a)(b)				\$
Total Monthly Rent				\$

5. If the only gaming activity to be conducted at this site is a raffle drawing, please check here.

TERMS OF RENTAL AGREEMENT:

This RENTAL AGREEMENT is between the Owner (LESSOR) and Organization (LESSEE) that will be leasing the site to conduct games of chance.

The LESSOR agrees that no game will be directly operated as part of the lessor's business.

The LESSOR agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab, pay a prize board cash prize, and award a prize board merchandise prize involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization.

The LESSOR agrees that the lessor's on call or temporary or permanent employee will not, directly or indirectly, conduct games at the site as an employee of the lessee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

If the LESSEE provides the Lessor with a temporary loan of funds for redeeming pull tabs or prize boards, or both, involving a dispensing device, **the Lessor agrees to repay the entire loan immediately when the lessee discontinues using the device at the site.**

The LESSOR agrees not to interfere with or attempt to influence the lessee's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds.

The LESSOR agrees not to loan money to, provide gaming equipment to, or count drop box cash for the lessee.

At the LESSOR'S option, the lessee agrees that this rental agreement may be automatically terminated if the lessee's gaming license is suspended at this site for more than fourteen days or revoked.

Signature of Lessor 	Title General Manager	Date 12/5/19
Signature of Lessee 	Title Treasurer	Date 12/12/19

(over)



CURRENT GAMING EMPLOYEE LIST
OFFICE OF ATTORNEY GENERAL
 SFN 54270 (02-17)

License No. G- 0524

Organization Name: Dakota Pheasants Forever		
Mailing Address: PO Box 1094		
City: Bismarck	State: ND	Zip: 58502
Business Phone: 701-751-3883	Cell Phone: 701-751-3883	

* PLEASE PRINT OR TYPE *

NAME OF GAMING MANAGER: Kevin Ritter, Treasurer **DATE OF HIRE:** 6/1/2005

NOTE: Volunteer Gaming Managers are required to have a record check completed. **Record Check Completed:** YES NO

	EMPLOYEE NAME First name, Middle name, Last Name	JOB TITLE	DATE OF HIRE	DATE OF BIRTH	Check if Volunteer
1.	Kevin Ritter	Treasurer	6/1/2005	4/1/1963	<input checked="" type="checkbox"/>
2.					<input type="checkbox"/>
3.					<input type="checkbox"/>
4.					<input type="checkbox"/>
5.					<input type="checkbox"/>
6.					<input type="checkbox"/>
7.					<input type="checkbox"/>
8.					<input type="checkbox"/>
9.					<input type="checkbox"/>
10.					<input type="checkbox"/>
11.					<input type="checkbox"/>
12.					<input type="checkbox"/>
13.					<input type="checkbox"/>
14.					<input type="checkbox"/>
15.					<input type="checkbox"/>
16.					<input type="checkbox"/>
17.					<input type="checkbox"/>
18.					<input type="checkbox"/>
19.					<input type="checkbox"/>
20.					<input type="checkbox"/>
21.					<input type="checkbox"/>
22.					<input type="checkbox"/>
23.					<input type="checkbox"/>
24.					<input type="checkbox"/>

RETURN THIS FORM WITH THE STATE GAMING LICENSE REAPPLICATION DOCUMENTS.

To: City of Bismarck
December 5, 2019
Re: Pheasants Forever Site Authorization

I am submitting the required forms to renew our site gaming license.

After the applications are approved I can be contacted at 751-3883 to pick-up the paperwork for delivery to the Attorney General's office.

Sincerely


Kevin Ritter, Treasurer
Dakota Pheasants Forever



City Administration

DATE: December 30, 2019
FROM: Jason Tomanek, Assistant City Administrator
ITEM: Dosch Hospitality Inc. (dba) Expressway Suites application for a Class C2 Hotel / Motel Liquor License.

REQUEST:

Introduction of and call for a public hearing on a request for a new Class C2 Hotel / Motel Liquor License for Dosch Hospitality Inc. (dba) Expressway Suites.

Please place this item on the January 14, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION:

Dosch Hospitality Inc. (dba) Expressway Suites is applying for a Class C2 Hotel / Motel Liquor License application for address, 180 East Bismarck Expressway.

Class C2 - To a hotel or motel that provides at least forty-five rooms for transient guests, to provide on-sale or complementary alcoholic beverages to registered customers and their guests in their rooms or in a common room designated for that purpose. The value of the alcoholic beverages sold shall not exceed the value of the alcoholic beverages given to or otherwise provided to registered customers and their guests. Any alcoholic beverage sold or provided under this license shall not be mixed or dispensed in the direct view of a minor.

RECOMMENDED CITY COMMISSION ACTION:

Staff recommends approval of the introduction of and call for a public hearing on the request from Dosch Hospitality Inc. (dba) Expressway Suites with the public hearing scheduled for Tuesday, January 14, 2020. Staff also recommends approval of the new Class C2 Hotel / Motel Liquor License.

STAFF CONTACT INFORMATION:

Jason Tomanek | Assistant City Administrator, 355-1300 or jtomanek@bismarcknd.gov



CITY OF BISMARCK
ADMINISTRATION DEPARTMENT

Phone: 701-355-1300 • Fax: 701-221-6470 • TDD 711
221 N 5th St • Bismarck, ND 58501

LAST REVISED: 5/1/2019

**APPLICATION FOR RETAIL
ALCOHOL BEVERAGE LICENSE**

Note: The \$200 application fee is due when the application is submitted.
(Fee does not apply to renewal applications)

License Type:									
Individual	<input type="checkbox"/>	Corporation	<input checked="" type="checkbox"/>	Partnership	<input type="checkbox"/>				
New Application		<input checked="" type="checkbox"/>	Renewal	<input type="checkbox"/>	Transfer	<input type="checkbox"/>	Relocation	<input type="checkbox"/>	
A-Nationally Organized Fraternal Order or Club	<input type="checkbox"/>	D-Sale at Retail of Alcoholic Beverages	<input type="checkbox"/>	G-Concession Bismarck Municipal Country Club	<input type="checkbox"/>	J-Non-profit Organization Club or Establishment	<input type="checkbox"/>	O-Microbrewery	<input type="checkbox"/>
A2-Nationally Organized Fraternal Order or Club	<input type="checkbox"/>	E-Sale at Retail of Beer Only	<input type="checkbox"/>	H-Commercial vessels on the Missouri River	<input type="checkbox"/>	K-Beer and Wine at the Bismarck Event Center	<input type="checkbox"/>	P-Event Site	<input type="checkbox"/>
B-Airport Terminal Building	<input type="checkbox"/>	F1-Restaurant - Alcoholic Beverages - 55/45 Split	<input type="checkbox"/>	I1-Restaurant - Alcoholic Beverages - 70/30 Split	<input type="checkbox"/>	L-Beer & Wine at Parks & Recreation Locations	<input type="checkbox"/>	Q-Restaurant On-Sale and Off-Sale Wine	<input type="checkbox"/>
C-Hotel or Motel Full Service	<input type="checkbox"/>	F2-Restaurant - Beer/Wine Only - 55/45 Split	<input type="checkbox"/>	I2-Restaurant - Beer and Wine Only - 70/30 Split	<input type="checkbox"/>	M-Catered Retail Beer, Wine, & Liquor	<input type="checkbox"/>	R-Commercial Airline	<input type="checkbox"/>
C2-Hotel or Motel	<input checked="" type="checkbox"/>	F3-Restaurant - Beer Only - 55/45 Split	<input type="checkbox"/>	I3-Restaurant - Beer Only - 70/30 Split	<input type="checkbox"/>	N-Domestic Winery	<input type="checkbox"/>	S-Beer Arcade	<input type="checkbox"/>

Location Information:				
Name of Partnership or Corporation:		Date of Incorporation:		State Business ID Number:
Dosch Hospitality Inc		1-1-15		
Name of business for which license is requested (DBA):			If out of state corporation, is corporation registered in North Dakota? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Expressway Suites				
Location Address:	City:	State:	Zip:	Phone Number:
180 E Bismarck Expy	Bismarck	ND	58504	(701) 222-3311
Owner of Building or Premises:				
Dosch Hospitality Inc.				

Correspondence Information (Where correspondence is to be sent):			
Primary Contact:		Phone Number:	Email Address:
Joe Dosch		(701) 222-3311	joe@expresswayhotels.com
Mailing Address:	City:	State:	Zip:
180 E Bismarck Expy	Bismarck	ND	58504

List all officers or director of corporation or partners and percentage of ownership:			
Manager's Name: Joe Dosch 10% Ownership		Date of Birth: 09-14-1990	Race: White
Driver's License Number: DOS-90-8632		State Issued: ND	Gender: Male
Home Address: 1206 Salmon St	City: Bismarck	State: ND	Zip: 58503
Occupation: Manager	Phone Number: (701) 426-5351	Title: Manager/Secretary	Email Address: joe@expresswayhotels.com

Name: Mark Dosch 40% Ownership		Date of Birth: 03/30/1960	Race: White
Driver's License Number: DOS-60-7361		State Issued: ND	Gender: Male
Home Address: 709 Calypso Dr	City: Bismarck	State: ND	Zip: 58504
Occupation: Hotel Owner	Phone Number: (701) 426-8258	Title: President	Email Address: expyinn@aol.com

Name: Debra Dosch 30% Ownership		Date of Birth: 09/14/1963	Race: White
Driver's License Number: DOS-63-9545		State Issued: ND	Gender: Female
Home Address: 709 Calypso Dr	City: Bismarck	State: ND	Zip: 58504
Occupation: Sales/Marketing	Phone Number: (701) 426-8382	Title: Vice President	Email Address: deb@expresswayhotels.com

Name:		Date of Birth:	Race:
Driver's License Number:		State Issued:	Gender:
Home Address:	City:	State:	Zip:
Occupation:	Phone Number:	Title:	Email Address:

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

1. Are manager and partners legal residents of the United States and the State of North Dakota, and are all officers or directors legal residents of the United States? Yes No If not, please explain:

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

3. Does the building meet all state and local sanitation and safety requirements? Yes No

4. Has applicant, or any of the persons listed above, within the past five years had any license to engage in sale of alcoholic beverages revoked or suspended? Yes No If yes, please give details:

5. If a new application, has applicant or any of the persons listed above, engaged in the sale or transportation of alcoholic beverages previously? Yes No If yes, please give details:

We currently have a City of Bismarck Class D Liquor License and have operated a hotel lounge.

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

7. Is there any agreement or understanding, or proposed agreement or understanding to obtain the license for another, or to operate the business for another, or as an agent for another? Yes No If yes, please give details:

8. Has the business been sold or leased, or is there any intention to sell or lease the business to another? Yes No
If yes, please give details:

9. Has the applicant, or any of the persons listed above, shown interest in whatsoever, directly or indirectly, any other license liquor establishment within or without the State of North Dakota? Yes No If yes, please give details:

10. Will the applicant, or any of the persons listed above, be engaged in any other business other than the sale of liquor under the license applied for? Yes No If yes, please give details:

11. Have all property taxes and special assessments currently due been paid? Yes No
If not, please explain:

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

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

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

North Dakota

State of



Signature of Applicant

Burleigh

County of

Joe Bosch

Print Name

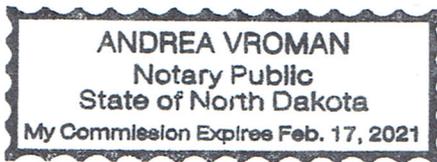
License transfers require signatures from both parties.

The Class C-2 license owned by me is transferred to Applicant upon successful application.

Signature of Current Owner of Liquor License

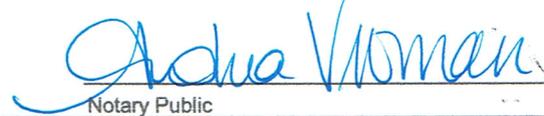


Signature of Applicant



Subscribed and sworn to before me this 19th

day of December, 2019



Notary Public

Note: Each application needs to be signed and notarized.

Restaurant Requirements:

All applications for Class "F", Class "I" (restaurants), Class "M" (caterer), Class "P" (event site) and Class "Q" (Restaurant On-Sale and Off-Sale) licenses **MUST** be accompanied by a sworn statement executed by the licensee and a **certified public accountant** retained by the licensee certifying that gross food sales and liquor sales for the previous calendar year meet the requirements of Chapter 5-01-04 of the City Code of Ordinances.

Liquor License Site Diagram Requirements:

- Site diagrams are to be submitted on a plain sheet of paper, 8½ x 11-inch size. There shall be one-inch margin left clear on all edges of the diagram.
- The licensed area shall be identified within the margins.
- The agency name shall be included on the diagram.
- The direction "North" shall be included on the diagram.
- The interior design of the licensed area shall be represented. This should include entrances, exits, interior doors, windows, tables, coolers, storage offices and room dividers.
- The diagram may be hand drawn, but it must be neat and reasonably accurate. Do not submit copies of construction blueprints.
- If the licensed site is part of a larger complex such as a restaurant, areas such as mixing, serving and storage must be identified.
- Do not use reference or hi-lite markers to identify areas as they do not reproduce when copied.

Site Diagram

Dosch Hospitality Inc.
Expressway Suites

"North"

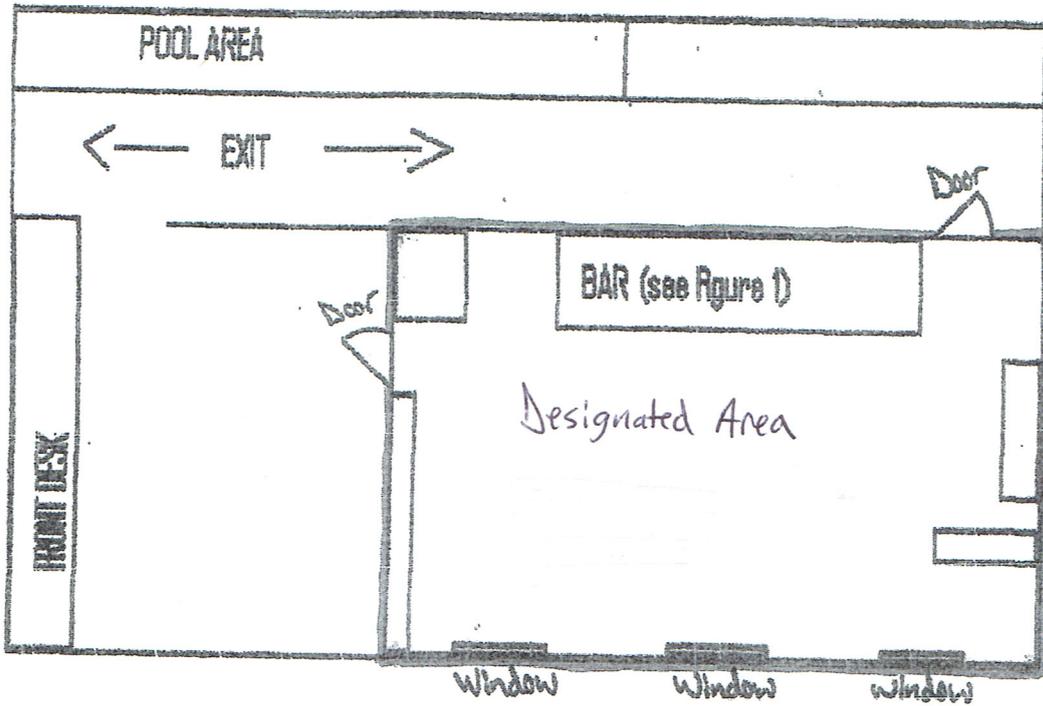
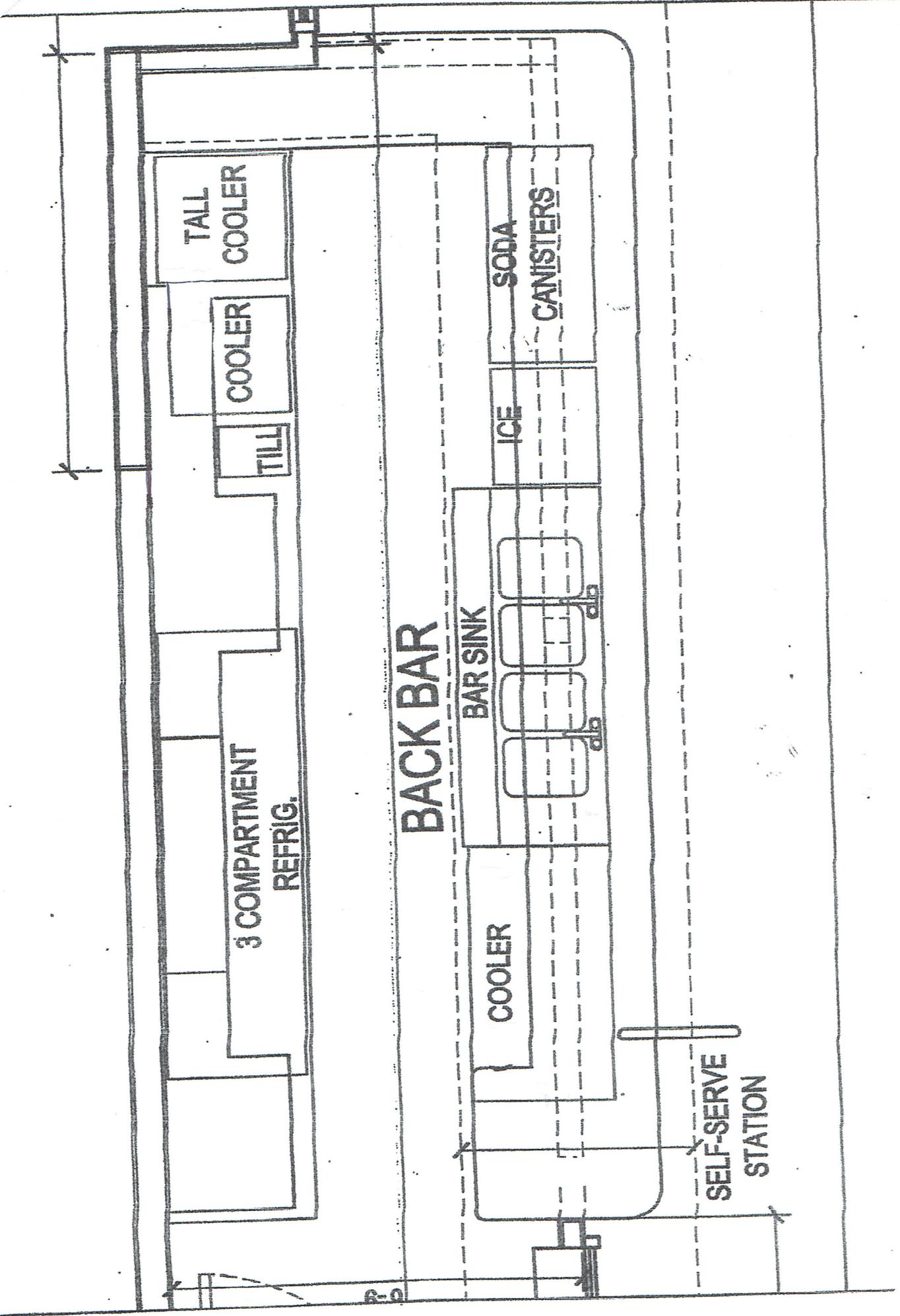


Figure 1

DOOR





City Administration

DATE: January 7, 2020

FROM: Jason Tomanek, Assistant City Administrator

ITEM: Human Relations Committee Humanitarian Award Recommendation

REQUEST:

Approve the recommendation from the Human Relations Committee to present the Humanitarian Award to Dr. Robert Roswick.

BACKGROUND INFORMATION:

Each year the Human Relations Committee (HRC) seeks nominations for individuals or businesses in our community who has exhibited leadership in the area of human rights. The HRC reviewed the nomination of Dr. Robert Roswick at their December 16, 2019 regular meeting.

RECOMMENDED CITY COMMISSION ACTION:

The HRC recommends presenting the Humanitarian Award to Dr. Robert Roswick based on his merits presented in the attached document.

STAFF CONTACT INFORMATION:

Jason Tomanek | Assistant City Administrator, 355-1300 or jtomanek@bismarcknd.gov



City of Bismarck
Human Relations Committee

Humanitarian Award Nomination Form

The Bismarck Human Relations Committee is seeking an individual, business or non-profit organization that has exhibited leadership in the area of human rights. We want to recognize people that educate, identify, protect and promote personal dignity with a focus on eliminating discriminatory barriers that would prevent people from reaching their full human potential.

Individual Nomination

Name:	Occupation:		
Address:	City:	State:	Zip:
Phone (home):	Phone (work/cell):		
Email address:			

Business / Nonprofit Organization Nomination

Name of organization:	CEO / Executive Director:		
Address:	City:	State:	Zip:
Phone (home):	Phone (work/cell):		
Email address:	Website address:		



Please tell us about your chosen nominee. Specifically, how the nominee demonstrates leadership and helps to educate others in the areas of human rights. Please attach a separate document if you require additional space other than what is provided below.

General Information

Name of individual making the nomination:		Relationship to nominee:		
Address:		City:	State:	Zip:
Email address:		Phone:		
Signature: <i>Mary R. Miller</i>		Date:		

Submit nominations to:

City of Bismarck
Attention: Human Relations Committee
221 N. 5th Street
Bismarck, ND 58501
E-mail: wolsen@bismarcknd.gov

Current members of the Bismarck Human Relations Committee are not eligible for this award. For more information about the Bismarck Human Relations Committee visit www.bismarcknd.gov.

Nomination of Dr. Robert Roswick

City of Bismarck's Humanitarian Award

It is with great enthusiasm that I nominate Dr. Robert Roswick for the City of Bismarck's Humanitarian Award. Simply put, his actions epitomize the intent and purpose of this award: "to recognize people that educate, identify, protect and promote personal dignity with a focus on eliminating discriminatory barriers that would prevent people from reaching their full human potential."

In short, Dr. Roswick put his career and reputation on the line to speak out, stand up and defend a fellow colleague facing racial discrimination and an undue termination.

Background:

Dr. Roswick, former Medical Director of a physician-owned clinic in Bismarck identified disparate treatment of an Indian-American physician compared with that of other white physicians. In an email to 20 physician colleagues, Dr. Roswick stated this treatment was both problematic and discriminatory.

The clinic ultimately suspended the Indian-American physician, and in 2015, terminated him, an action Dr. Roswick opposed.

Dr. Roswick was subsequently fired.

Dr. Roswick filed a lawsuit in U.S. District Court against the clinic in March 2017, claiming he was retaliated against for speaking out against alleged racial discrimination of a physician at the clinic.

After a five-day trial, a jury ruled in Roswick's favor this past August, finding that the clinic retaliated against him for his opposition to the reported racial discrimination, and Dr. Roswick was awarded lost wages and benefits.

Why does this matter?

Many would compare Dr. Roswick's actions against the large clinic as a "David and Goliath" moment. Many said the facts wouldn't matter; going up against a major employer with a formidable legal team and a seemingly limitless legal budget would be a zero-win game.

Clearly, the jury, when faced with the facts and multiple witnesses, felt differently.

For Dr. Roswick, this case was never about the money (which, after funding his own lawsuit is easily spoken for); rather, he felt the clinic retaliated against him for standing up for somebody who wasn't able to stand up.

But, this really isn't a story about two physicians and a clinic. This is a story of our community. It's a story of setting a precedent that racial discrimination will not be tolerated in the workplace. It's a story of courage, putting what is right and just ahead of one's own personal career security.

Dr. Roswick could have easily done nothing. He would have stayed in good favor with his clinic's leadership. He would have continued to earn a paycheck, maintained his long-worked-for patient practice, and enjoyed the easy path.

But he didn't. Instead, his reputation was questioned, his actions were scrutinized, and he was fired after a 15-year career. And yet, he fought. He did things that were hard. And he prevailed.

Perhaps Martin Luther King's quote adequately sums up Dr. Roswick's conviction and courage: "Our lives begin to end the day we become silent about things that matter."

Dr. Roswick, through doing the right thing when he saw wrong, and for being a leader from within his realm of influence, will hopefully have a lasting impact on our community, making it a little more welcome, a little more tolerant, and a lot more aware.



ADMINISTRATION

DATE: January 14, 2020
FROM: Keith J. Hunke, City Administrator
ITEM: Changes to Laughing Sun FlexPACE Loan

REQUEST

Consider request from Nathan Schneider, VP Bismarck Mandan Chamber EDC to make changes to the existing Laughing Sun Flex PACE Loan.

Please place this item on the January 14, 2020 City Commission meeting.

BACKGROUND INFORMATION

A request is being made to remove a signer and guarantor on the loan from the City of Bismarck via the Bismarck Vision Fund to Laughing Sun Brewing Company, LLC dated May 18, 2018 in the amount of \$103,336.92. The loan was made as the local portion of the Bank of North Dakota's Flex PACE program. Laughing Sun is requesting that Todd Sattler be removed as a signer and a guarantor. The other two owners would remain as guarantors on the note and all other terms and conditions from the Promissory Note dated May 18, 2018 would remain the same. The reason for the change is due to Mr. Sattler no longer being involved with the business.

RECOMMENDED CITY COMMISSION ACTION

Approve request from Nathan Schneider, VP Bismarck Mandan Chamber EDC to make changes to the existing Laughing Sun Flex PACE Loan.

STAFF CONTACT INFORMATION

Keith J. Hunke, khunke@bismarcknd.gov, 701-355-1300

Keith Hunke

From: Nathan Schneider <nshneider@bmcedc.com>
Sent: Tuesday, January 14, 2020 11:39 AM
To: Keith Hunke; Janelle Combs; Jason Tomanek
Subject: Laughing Sun Proposed Change

Good Morning Keith, Janelle, and Jason:

Per my conversation with Keith this morning please add the following to the city commission agenda:

A request is being made to remove a signer and guarantor on the loan from the City of Bismarck via the Bismarck Vision Fund to Laughing Sun Brewing Company, LLC dated May 18, 2018 in the amount of \$103,336.92. The loan was made as the local portion of the Bank of North Dakota's Flex PACE program. Laughing Sun is requesting that Todd Sattler be removed as a signer and a guarantor. The other two owners would remain as guarantors on the note and all other terms and conditions from the Promissory Note dated May 18, 2018 would remain the same. The reason for the change is due to Mr. Sattler no longer being involved with the business.

Let me know if this works.

Thanks.

Nathan

Nathan Schneider, CEcD
Vice President
Bismarck Mandan Chamber EDC
1640 Burnt Boat Dr
Bismarck, ND 58503
tel: 701.223.5660
dir: 701.751.5613
mob: 701.204.3908



www.bismarckmandan.com



Airport

DATE: December 17, 2019

FROM: Greg Haug, Airport Director

ITEM: Consider a \$1,500 sponsorship to the North Dakota Aviation Council (NDAC) for the 2020 Upper Midwest Aviation Symposium.

REQUEST

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Airport Staff requests the Board consider a \$1,500 sponsorship to the North Dakota Aviation Council (NDAC) for the Upper Midwest Aviation Symposium held at the Grand Hotel in Minot on March 1-3, 2020. Bismarck Airport staff has attended and participated in the Upper Midwest Aviation Symposium for many years. The symposium promotes staff professional development and fosters the aviation industry in the State of North Dakota.

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

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

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

RECOMMENDED CITY COMMISSION ACTION

Approve the \$1,500 sponsorship for 2020 Upper Midwest Aviation Symposium.

STAFF CONTACT INFORMATION

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



AIRPORT

DATE: January 7, 2020
FROM: Gregory B. Haug, Airport Director
ITEM: Agenda Item for January 14, 2020

A handwritten signature in blue ink, appearing to be "GBH", is located to the right of the "FROM:" line.

REQUEST

Consider the approval of a contract with Volaire Aviation Consulting for air service development services.

BACKGROUND INFORMATION

Bismarck Airport has had an ongoing Air Service Development program to improve airline service to our city for a number of years. Integral to that program is our air service development and marketing consultant firm, Volaire Aviation. Michael Mooney, a managing partner of Volaire Aviation, is Bismarck Airport's lead consultant.

Relationships with air service consultants take a while to develop. There needs to be time for the airport and consultant to develop a strategic vision for air service to/from the community. It is equally important that the consultant understands the community and how shifts in air service will affect it. Volaire Aviation and Mr. Mooney have provided these services to Bismarck for three years and have an excellent understanding of the nuances of our market. Mr. Mooney is a former V.P. of Planning, Pricing and Revenue Management for a major airline and has 35 years of airline and air service development experience in the industry. Mr. Mooney is well respected by airline route planners and has very good contacts within the airline/aviation community.

The current contract with Volaire Aviation expired on December 31, 2019. Airport staff negotiated an updated contract with Volaire Aviation to provide air service development consulting and marketing assistance. The contract period is January 1, 2020 through December 31, 2022, with an option for two one year renewals upon mutual consent of both parties.

The proposed contract includes base items needed to assist airport staff with managing and advancing air service in our market. The base items include updates to the airport's air service strategic plan, data reports, airport marketing assistance, community visits, airline headquarters

meetings, and conference meetings where the airport can meet directly with airline route planners to discuss route performance and/or future opportunities. In addition to the base items, the contract outlines optional items that may be selected by airport staff throughout the year.

The contract has a monthly fee of \$4,500, which has remained the same from the last contract. This fee covers all base items and the selection of optional items. Airport staff feels the fee is reasonable and that it is important to maintain the relationship it has developed with Mr. Mooney and other members of Volaire Aviation over past years. Airport staff is recommending the commission approve this contract with Volaire Aviation.

The fee for this contract is included in the airport's approved spending plan.

RECOMMENDED CITY COMMISSION ACTION

1. Approve the contract between the City of Bismarck and Volaire Aviation Consulting for air service development services.

STAFF CONTACT INFORMATION

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

Enclosures:

1. Proposed contract between the City of Bismarck and Volaire Aviation Consulting

CONSULTING SERVICES AGREEMENT

This Consultancy Agreement (the “Agreement”) is made and entered into by and between Volaire Aviation, Inc. (the “Consultant”) and the Bismarck Airport (the “Airport” or BIS) (hereinafter referred to individually as a “Party” and collectively as “the Parties”).

1. Engagement and Services

- (a) Engagement. The Airport hereby engages the Consultant to provide and perform the services set forth in this section of the agreement (the “Services”), and the Consultant hereby accepts the engagement.
- (b) Term. This agreement will begin January 1, 2020, and be in effect through December 31, 2022. Either party can terminate the contract on 60-day notice with or without cause. Upon mutual consent of both parties this contract may be extended for two additional one (1) year terms thru December 31, 2024.
- (c) Scope of Work. Consultant will complete the following projects in the timeframe noted;

Monthly retainer to include the following at an inclusive retainer rate of **\$4,500 or \$54,000 annually:**

<u>Professional Service</u>	<u>Frequency</u>	<u>Value</u>
Airline Headquarters Meetings	Up to 2/year	\$9,000 for 1st, \$7,500 2nd
Conference Meetings (7 x year)	3 conferences/year	\$4,500 for 1st per conf, \$2,500 others
Community Visit	1 per year	\$3,500 per visit
Air Service Plan Update (inc. ASD+Marketing Strategy)	Every Year	\$2,000
Airport Marketing Assistance	Ad hoc up to 8 hrs/month inc.	\$160/hour, max 96 hrs/year max \$15,360/year
Quarterly Air Service Data Report	Per quarter	\$800/quarter, \$3,200 per year

One or a combination of items from the below list per contract year up to up to **\$15,000**

Economic Activity Analysis of new service option	\$ 7,500
Air Service Development Video	\$15,000
Webbased Travel Cost Calculator	\$ 3,000
SCASD Grant application	\$12,000
Pricing Scan (ten city pair comparison, two airports)	\$ 3,000
Catchment Leakage Analysis	\$12,000
Subsequent Airline HQ Meeting	\$ 7,500
Demographic Profile of Catchment Area Report	\$ 5,000
Additional Community Visit	\$ 3,500

2. Consultancy Fees and Expenses

(a) Fee Schedule. Consultant will perform all of the scope of work items per calendar year plus one or a combination of the optional items per calendar year, as directed by the Airport. **Airport will pay the Consultant a monthly retainer fee of \$4,500 or \$54,000 annually.**

(b) Expenses. Consultant shall be entitled to reimbursement for expenses reasonably incurred in the performance of the Services, upon submission and approval of written statements in accordance with the then regular procedures of the Airport. Reasonable expenses include, but are not limited to, travel (airfare, hotel, rental car, and meals), printing of materials, and shipping of materials. Consultant will invoice all expenses at cost plus a 10% administrative fee.

(c) Payment. The Consultant shall submit to the Airport invoices detailing the Services performed, expenses, and the amount due. All such invoices shall be due and payable within thirty (30) calendar days after receipt thereof by the Airport.

(d) Air Service/Airport Marketing Assistance. Consultant may provide guidance, upon request, pertaining to the Airport's overall marketing program to include items such as media buys, review of press releases, social media monitoring, graphic design development, and involvement in stakeholder communication, at the rates defined herein. If Airport requires additional marketing assistance, in excess of the 8 hours/month included in the retainer, Airport can request additional hours at the reduced rate of \$110/hour.

a.) *Graphic/creative images purchased for the airport are subject to a 10% administrative fee.*

3. Non-Compete Consulting Agreement

Consultant agrees that for the duration of this contract not to provide air service consulting services at Dickinson, Jamestown, Williston or Minot, North Dakota.

4. Federal Provisions (Attachment B)

Federal law requires that certain agreement provisions must be incorporated into all airport agreements. These federally required agreement provisions are hereby incorporated herein and made a part of this agreement and the contractor agrees to the following:

- a. Civil Rights – General
- b. Civil Rights Title VI Assurances
 - i. Notice - Solicitation
 - ii. Clause - Contracts
 - iii. Clause – Transfer of U.S. Property
 - iv. Clause – Transfer of Real Property
 - v. Clause - Construct/Use/Access to Real Property
 - vi. List – Pertinent Authorities
- c. Federal Fair Labor Standards Act
- d. Occupational Safety and Health Act

5. Contact Information

For Bismarck Airport

Greg Haug
Airport Director
2200 Terminal Boulevard, Suite 225B
P.O. Box 991,
Bismarck, North Dakota 58502
ghaug@bismarcknd.gov

For Volaire Aviation Consulting

Michael Mooney
Managing Partner
8500 E. 116th Street,
Suite 728
Fishers, Indiana
michael.mooney@volaireaviation.com

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their authorized representatives as of the date first written above.

Signed for and on behalf of
Bismarck Airport

Signed for and on behalf of
Voltaire Aviation, Inc.

By: Steven Bakken
Title: President, Board of City Commissioners

By: Michael Mooney
Title: Managing Partner

Scope of Work Detail and Description (Attachment A)

Airline Headquarters Meetings

Consultant will prepare all materials for airline headquarters meetings, including a specific business case for targeted service. Presentations will include specific demographic analysis of the airport catchment area, economic analysis of the market region, overview of current airline market conditions, and a specific business case and analysis of proposed new service or expanded service.

Consultant will attend all airline headquarters meetings with Airport and present the full business case for current, new, and expanded service.

Consultant will provide all requested follow-up information requested by the airline following the meeting.

Air service development conference meetings

Consultant will work with Airport to identify target airlines for meetings and to identify which conferences Airport should attend. Consultant will work with conference organizers to schedule meetings.

Consultant will prepare all materials for airline conference meetings, including a specific business case for targeted service. Presentations will include specific demographic analysis of the airport catchment area, economic analysis of the market region, overview of current airline market conditions, and a specific business case and analysis of proposed new service or expanded service.

Consultant will attend all airline conference meetings with Airport and present the full business case for current, new, and expanded service.

Consultant will provide all requested follow-up information requested by the airline following the meeting.

Community visits

Consultant will prepare state of the industry information, market detail, and other pertinent information for community meetings at Airport's request. This will include presentation of any pricing study information that may be relevant. Community visit can include presentation to both government bodies in public or executive session and or an open to the public community meeting or meetings.

Air Service Development and Marketing Strategy Plan

This Plan will outline historic and current air service patterns and domestic and international traffic and average fare data. The Plan will outline Bismarck market air service strengths and weaknesses and airline industry or other external factors which may affect local air service. The Plan will outline future air service goals and objectives and options for attaining those goals and objective. The Plan will review existing airport and community incentive programs and recommend options for improvement.

The Plan will summarize the existing air services at the Airport and outline potential improvements to existing service or new routes and carriers that can be targeted for recruitment.

Additionally, the plan will include recommendations of the airport's continued marketing and communications program and include a detailed overview of the program's air service marketing objectives, including an outline of tactics to achieve program goals. The plan will provide a roadmap for the airport to work from internally and with consultant assistance on air service related marketing efforts.

Air Service Development Plan Update

The Plan Update will update all data from the original Plan and identify changes in the environment that may suggest changes in the Plan.

Marketing Assistance

Provided as needed by an air service marketing professional familiar with the Bismarck market. Consultant may provide guidance, upon request, pertaining to the Airport's overall marketing program to include items such as media buys, review of press releases, social media monitoring, graphic design development, and involvement in stakeholder communication, at the rates defined herein.

Quarterly Air Service Data Report

Consultant will provide the Airport with a quarterly report defining the existing and projected near future services of each incumbent carrier. The report will also provide a summary of the most recent DOT traffic and fare and operational reports for each carrier and route at the Airport.

Optional Services Scope of Work Detail and Description

Economic Activity Analysis of Potential New Air Service

The consultant will perform an analysis of the economic changes that would reasonably occur given new air service option. Analysis would be performed using the IMPLAN Economic Impact software and would project for the Airport the positive economic changes that would occur from a given new air service.

Air Service Video

The consultant would provide a photo journalist who specializes in air service market video development. The photo journalist would come to Bismarck and develop a short video that would outline the strengths of the community and region. The video would be used in conjunction with recruiting of new air service and new air carriers.

Web-based Travel Cost Calculator

The consultant will develop and install on the Airport's website a travel related cost calculator option. This option would allow website users to input a travel scenario in which air service from another airport can be compared to using service from Bismarck, to the same destination in the same time frame. The tool would show the true cost of driving to another airport vs. using Bismarck.

Small Community Air Service Development Grant (SCASD)

The consultant would develop for the Airport a SCASD grant application. The consultant would aid the Airport in defining what air service goals the Grant application would have and how much local matching funds would be needed. The consultant would aid the Airport in filing the Grant application and with any follow through needed to gain DOT grant award.

Pricing Scan

Consultant would perform a review of BIS market pricing and, if needed, contact any incumbent carrier where a Scan may reveal pricing strategies that are non-competitive and damaging to the Airport's traffic capture and generation.

Catchment Leakage Analysis (CLA)

Consultant would perform an analysis of Bismarck region catchment area air travel volume, destination, airport of use, airline of use and average fare paid. The report would capture GDS and DOT data for the catchment area. The catchment area for research and data harvest would be defined by the Airport.

Demographic Profile of Catchment Area Report

Consultant will perform an analysis of the Bismarck region catchment area demographics. This will include Department of Labor and US Census data on population age, income, race, gender and education. This can be correlated with the Catchment Leakage Analysis. Data would be broken down by county or zip code.

Attachment B
Civil Rights Provisions

1. Airport and Airway Improvement Act of 1982, Section 520 - General Civil Rights Provisions

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

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

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- A. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- B. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

2. Civil Rights Act of 1964, Title VI – Contractor Contractual Requirements

A. Title VI Solicitation Notice

(Source: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

B. Title VI Solicitation Notice:

The City of Bismarck, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. Title VI Clauses for Compliance with Nondiscrimination Requirements

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Compliance with Nondiscrimination Requirements

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

- A. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- B. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or

b. Cancelling, terminating, or suspending a contract, in whole or in part.

F. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

4. Title VI List of Pertinent Nondiscrimination Authorities

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the

programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and

private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

5. **Clauses for Deeds Transferring United States Property**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the (*Title of Recipient*) will accept title to the lands and maintain the project constructed thereon in accordance with the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200), the regulations for the administration of the University Transportation Centers Program, and the policies and procedures prescribed by the Office of the Secretary of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim, and convey unto the

(Title of Recipient) all the right, title and interest of the U.S. Department of Transportation in and to said lands.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto *(Title of Recipient)* and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real

property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the *(Title of Recipient)*, its successors and assigns.

The *(Title of Recipient)*, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the *(Title of Recipient)* will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].

6. Clauses For Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the *(Title of Recipient)* pursuant to the provisions for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for

another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, *(Title of Recipient)* will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the *(Title of Recipient)* will have the right to enter or re-enter the lands and

facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the *(Title of Recipient)* and its assigns.

7. Clauses for Construction/Use, Access to Real Property Acquired Under the Activity, Facility or Program

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by *(Title of Recipient)* pursuant to the provisions for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above of the above Non-discrimination covenants, *(Title of Recipient)* will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.

- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, (*Title of Recipient*) will there upon revert to and vest in and become the absolute property of (*Title of Recipient*) and its assigns.

Federal Fair Labor Standards Act (Federal Minimum Wage)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Federal Agency with Enforcement Responsibilities	Requirement
U.S. Department of Labor – Wage and Hour Division	Federal Fair Labor Standards Act (29 USC 201)

Occupational Safety and Health Act of 1970

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration



City Attorney

DATE: January 3, 2020

FROM: Janelle Combs, City Attorney

ITEM: Authorization to accept and distribute items over \$25.00 from Public Works

REQUEST

Accept the receipt of bonus items received at Public Works from vendors that are in excess of \$25 each and donate them to Edwinton Place.

Please place this item on the 1/14/2020 City Commission consent meeting agenda.

BACKGROUND INFORMATION

The City's ethics policy prohibits the receipt of gifts from vendors in excess of \$25.00 in value. It was determined that Quill had provided bonus items valued in excess of limit at Public Works. Pursuant to the ethics policy, we are requesting Commission approval to accept the items and donate them to Edwinton Place. The items are as follows:

Chefman 3 in 1 Electric Grill Pot Skillet

Hamilton Beach Toaster Oven

Casserole Carrier Set

Rachel Ray 9.5" covered skillet

Burt's Bees Kit

Umbrella

Travel bag

Blue striped tote

Blue striped travel bag

Truly Wire Free Earbuds

Outdoor Utility Wagon

RECOMMENDED CITY COMMISSION ACTION

Receive gifted items from Quill and donate them to Edwinton Place.

STAFF CONTACT INFORMATION

Janelle Combs | City Attorney, 355-1340 or jcombs@bismarcknd.gov



City Attorney

DATE: January 3, 2020

FROM: Janelle Combs, City Attorney

ITEM: Ordinance 6406 regarding Tobacco or Electronic Smoking Ages

REQUEST

Consider introduction and call for a public hearing on Ordinance 6406 to amend Ordinances 5-11-04 and 6-07-01 regarding Violations and Sale of Tobacco or Electronic Smoking Devices to Minors.

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

On December 20, 2019, President Trump sign a federal law raising the legal age to purchase tobacco to 21. The changes on the attached ordinance will reflect the current state of federal law.

RECOMMENDED CITY COMMISSION ACTION

First reading and introduction of Ordinance 6406 and call for a public hearing.

STAFF CONTACT INFORMATION

Janelle Combs | City Attorney, 355-1340 or jcombs@bismarcknd.gov

CITY OF BISMARCK
Ordinance No. 6406

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

AN ORDINANCE TO AMEND SECTIONS 5-11-04 and 6-07-01 OF THE BISMARCK CODE OF ORDINANCES RELATING TO VIOLATIONS AND SALE OF TOBACCO OR ELECTRONIC SMOKING DEVICES TO MINORS.

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

Section 1. Amendment. Section 5-11-04 of the City of Bismarck Code of Ordinances relating to Violations is hereby amended and re-enacted to read as follows:

5-11-04. Violations.

* * * * *

3. If after the hearing the Municipal Judge finds that the violation charged has occurred as proven by a preponderance of the evidence, the Municipal Judge may assess a fine of up to \$1000. The Municipal Court may suspend all or part of any fine imposed upon a showing by the person or business that it has attempted to train its employees on the prevention of the sale of tobacco products and electronic smoking devices to persons under ~~18~~21 years of age. The Municipal Court shall issue its Findings and Order which shall be served on the person or business. The decision of the Municipal Court shall be final.

(Ord. 5017, 11-23-99; Ord. 5157, 02-26-02; Ord. 6164, 10-27-15)

* * * * *

Section 2. Amendment. Section 6-07-01 of the City of Bismarck Code of Ordinances relating to Sale of Tobacco or Electronic Smoking Devices to Minors is hereby amended and re-enacted to read as follows:

6-07-01. Sale of Tobacco or Electronic Smoking Devices to Minors Person Under 21 Years of Age.

1. Any person who sells or furnishes to a ~~minor person~~ under the age of 21, or procures for a ~~minor person~~ under the age of 21, cigarettes, cigarette papers, cigars, snuff, tobacco, tobacco products, or an electronic smoking device, in any form in which it may be utilized for smoking, inhaling or chewing is guilty of an infraction. For the purposes of this Chapter:

* * * * *

2. No person over 13 and under ~~18~~21 years of age shall sell, possess, purchase, attempt to purchase, smoke or use tobacco products or an electronic smoking device or tobacco in any other form in which it may be utilized for smoking, inhaling, or chewing except that a person under ~~18~~21 years of age employed by a licensed tobacco dealer or distributor may handle the tobacco products, or electronic smoking devices listed in this section as a part of his or her employment. In addition, an individual under ~~eighteen~~21 years of age may purchase and possess tobacco products or an electronic smoking device as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority. Any person or business that is subject to a compliance survey shall be notified of the results within 7 days of the survey. Any person violating this section shall have committed a non-criminal violation and shall pay a fee of seventy (\$70) dollars, subject to the following procedures:

* * * * *

3. It shall be an infraction for any person to sell or dispense any tobacco product or electronic smoking device through the use of a vending machine except that tobacco products or electronic smoking devices may be offered for sale or sold from a vending machine on licensed on-sale or off-sale alcoholic beverage premises in those areas not accessible to ~~minor~~persons under the age of 21 or through a

vending machine that requires a salesperson to control the dispensation of such product. Vending machines for tobacco products or electronic smoking devices located upon licensed premises must be located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases will be readily observable. The vending machine shall not be located in a coat room, restroom, unmonitored hallway, outer lobby or waiting area or similar unobserved area; nor shall the vending machine be accessible to the public when the establishment is closed.

* * * * *

*Reference: NDCC Sec. 12.1-31-03 (1985)
(Ord. 4418, 02-25-92; Ord. 4687, 06-13-95; Ord. 4741, 01-23-96;
Ord. 4826, 02-25-97; 4988, 05-25-99; Ord. 5017, 11-23-99; Ord.
5031, 03-14-00; Ord. 5129, 08-28-01; Ord. 5160, 02-26-02; Ord.
6029, 02-11-14; Ord. 6164, 10-27-15).*

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

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



City Attorney

DATE: January 6, 2020

FROM: Janelle Combs, City Attorney

ITEM: Ordinance 6407 regarding Human Relations Committee purpose

REQUEST

Consider introduction and call for a public hearing on Ordinance 6407 to amend Ordinance 2-11-01 regarding Purpose of the Human Relations Committee.

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The Human Relations Committee at their meeting on December 16, 2019, moved to change the mission of the Human Relations Committee. Since its mission is enacted through the ordinances, in order to accomplish this a change in the ordinance is required. A copy of the minutes from both the December and October Human Relations Committee meetings are attached.

RECOMMENDED CITY COMMISSION ACTION

First reading and introduction of Ordinance 6407 and call for a public hearing.

STAFF CONTACT INFORMATION

Janelle Combs | City Attorney, 355-1340 or jcombs@bismarcknd.gov

CITY OF BISMARCK

Ordinance No. 6407

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

AN ORDINANCE TO AMEND SECTION 2-11-01 OF THE BISMARCK CODE OF ORDINANCES RELATING TO PURPOSE.

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

Section 1. Amendment. Section 2-11-01 of the City of Bismarck Code of Ordinances relating to Purpose is hereby amended and re-enacted to read as follows:

2-11-01. Purpose. The purpose of the Bismarck Human Relations Committee is to create an atmosphere of inclusion, equality and accessibility through ~~protect and promote the personal dignity of all Bismarck citizens and eliminate any discriminatory barriers that prevent them from reaching their full human potential.~~ The Bismarck Human Relations Committee seeks to make education and outreach ~~and compliance a meaningful and visible strategy~~ to recognize the value of a diverse community.

(Ord. 5208, 10-08-02)

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

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



Bismarck Human Relations Committee
Meeting Minutes
December 16, 2019

The Bismarck Human Relations Committee (HRC) met on December 16, 2019, at 5:15 PM in the Bismarck City/County Building, 1st Floor Conference Room, 221 N 5th Street. Chair Rausch presided.

Call to Order

Chair Rausch called the meeting to order at 5:15 PM.

Roll Call

Committee members present were Darcy Andahl, Brandi Jude, Trevor Vannett and S. Hannah Vanorny. Whitnie Olsen with the City of Bismarck was present.

Committee member Shae Helling was absent.

HRC Mission

The Mission was read by Chair Rausch.

Acceptance of Minutes

Chair Rausch called for consideration of the minutes of the November 18, 2019 Bismarck Human Relations Committee meeting.

Motion: Brandi Jude made a motion to approve the minutes of the November 18, 2019 meeting as received. Trevor Vannett seconded the motion and it was unanimously approved with committee members in attendance voting in favor of the motion.

Humanitarian Award Nomination

Dr. Robert Roswick was nominated for the Humanitarian Award. The committee discussed the merits of Dr. Roswick and how it met the qualifications to be recognized for the award.

Motion: Brandi Jude made a motion to seek the Bismarck City Commission's approval to present the Humanitarian Award to Dr. Robert Roswick. Trevor Vannett seconded the motion and it was unanimously approved with the committee member in attendance in favor of the motion.

Public Comment

No public comment.

Renaming the Human Relations Committee/Committee Bylaws

The committee discussed the options for changing their name.

Motion: Trevor Vannett made a motion to not change the name. Brandi Jude seconded the motion. S. Hannah Vanorny and Darci Andahl did not approve the motion. With a lack of committee votes, the discussion had been tabled for a meeting in the future.



Discussion on drafting the bylaws is tabled for a meeting in the future.

Rewriting the Mission Statement

The committee created a draft mission statement on October 21, 2019: The mission of the Bismarck Human Relations Committee is to create an atmosphere of inclusion, equality and accessibility through education and outreach to recognize the value of a diverse community.

Motion: Trevor Vannett made a motion to approve the mission statement drafted on October 21, 2019 meeting. Brandi Jude seconded the motion and it was unanimously approved with the committee members in attendance in favor of the motion.

Diversity University

Spring Event:

Brandi Jude provided an update on the spring event. Brandi Jude asked S. Hannah Vanorny to contact her peers in request of participation in the event. The committee discussed different key topics to highlight at the event. The event will be specific to women and their various roles in the community. The committee discussed a name for the event. Brandi Jude would like to schedule the event around other women's activities in the month of March.

Motion: Trevor Vannett made a motion to allow Brandi Jude to move forward with the March Diversity University event allowing her up to \$1500.00 for expenses. Darci Andahl seconded the motion and it was unanimously approved with the committee members in attendance in favor of the motion.

Chair Rausch asked Brandi Jude to provide a list of the qualities, skills, etc. that they are looking for in event participants. Brandi Jude will supply the committee with a list at the January meeting. She also asked for ideas as to how the committee members can help.

Upcoming Events

Interfaith Multicultural Potluck

Bismarck Interfaith is hosting an Interfaith Multicultural Potluck on Saturday, February 1, 2020 from 11:00 AM to 1:00 PM at the Hillside Aquatics Complex community room.

Families Around the World

S. Hannah Vanorny gave the members a handout for an event being held at the Bismarck Public Library on January 13th from 6-8 pm. S. Hannah Vanorny will take brochures and applications for the HRC to distribute at the event. Krista Rausch will try to stay at the booth for an hour. Due to a lack of participation commitment the committee decided to not participate in the event this year. They will revisit discussion to participate in the event in the future.

Annual Report

2019 annual report prepared by S Hannah Vanorny. She will present the report at the January 28th Bismarck City Commission Meeting.



Goals for 2020

Discuss at the next meeting.

Resignations and new membership

Whitnie Olsen updated the committee on the resignation of Paul Zondo. She also let the committee know that Trevor Vannette and Manisha Sawhney would be reviewed for approval at the December 17, 2019 Bismarck City Commission Meeting. Shae Helling's term will expire January 31, 2020. Whitnie Olsen will send him notice of the term expiration and an application.

Other Business

Whitnie Olsen provided a draft brochure to the committee. Committee members provided comment on the brochure.

Motion: Brandi Jude made a motion to approve the draft brochure with recommended changes. Darci Andahl seconded the motion and it was unanimously approved with committee members in attendance voting in favor of the motion.

January Meeting Date

January 27, 2020 will be the next meeting date for the Human Relation Committee.

Adjournment

There being no further business, the meeting was adjourned by Chair Rausch. The next meeting of the Bismarck Human Relations Committee will be held at 5:15 PM. on Monday, January 27, 2019 in the 1st floor conference room of the Bismarck City/County Building.

Reported by Whitnie Olsen



Bismarck Human Relations Committee
Meeting Minutes
October 21, 2019

The Bismarck Human Relations Committee (HRC) met on October 21, 2019, at 5:15 PM in the Bismarck City/County Building, 1st Floor Conference Room, 221 N 5th Street. Chair Krista Rausch presided.

Call to Order

Chair Rausch called the meeting to order at 5:15 PM.

Roll Call

Committee members present were Darcy Andahl, Shae Helling, Brandi Jude, Krista Rausch, Trevor Vannette, S. Hannah Vanorny and Paul Zondo. Other guests present were Whitnie Olsen and Jason Tomanek.

HRC Mission

The Mission was read by Chair Rausch.

Acceptance of Minutes

Chair Rausch called for consideration of the minutes of the September 16, 2019 Bismarck Human Relations Committee meeting.

Motion: Brandi Jude made a motion to approve the minutes of the September 16, 2019 meeting as received. Darcy Andahl seconded the motion and it was unanimously approved with committee members in attendance voting in favor of the motion.

Revising Meeting Date and Time

The committee discussed changing the meeting date and time. Committee members did not present an issue with the date and time. Whitnie Olsen will conduct quorum calls on meeting days.

Upcoming Events

Cultural Dinner – An Evening in Guatemala

Chair Rausch provided an update to the committee. The dinner will take place at Legacy High School in their Black Box Theater on November 7, 2019, at 6:00 PM. Guatemalan volunteers will direct an in-class session for the Legacy High School culinary students on October 24, 2019 from 10:50 AM - 12:10 PM and October 25, 2019 from 12:10 PM - 1:30 PM. S. Hannah Vanorny will attend the Thursday session and Shae Helling will attend the Friday session. The event is listed on Eventbrite and tickets are \$25.00.

Film Festival

The committee was asked to participate in the Human Family event, North Dakota Human Rights Film Festival, November 1-2, 2019. S. Hannah Vanorny, Shae Helling and Chair Rausch committed to volunteer at the event. Chair Rausch will contact Sean Coffman to confirm three volunteers for the event.



Spring Event

Brandi Jude volunteered to be the lead for the spring event. She would like to plan the event for late February or early March. The event would highlight culture and diversity throughout the City. She will provide additional information as the plans come together.

Renaming the Human Relations Committee

The committee brainstormed words which they felt described the Human Relations Committee and the work that they do. The following words were mentioned: inclusion, equality, diversity, education, unity, outreach, accessibility, welcoming, neighbors, friends and human rights.

The committee also created a draft mission statement: The mission of the Bismarck Human Relations Committee is to create an atmosphere of inclusion, equality and accessibility through education and outreach to recognize the value of a diverse community.

Meeting Bylaws

The committee discussed creating bylaws outlining various expectations including attendance. Whitnie Olsen will send copies of other committee bylaws for the committee members to review for discussion at the November 18, 2019 meeting.

Other Business

Adjournment

There being no further business, the meeting was adjourned by Chair Rausch. The next meeting of the Bismarck Human Relations Committee will be held at 5:15 PM. on Monday, November 18, 2019 in the 1st floor conference room of the Bismarck City/County Building.

Reported by Whitnie Olsen



Bismarck-Burleigh Public Health

DATE: January 7, 2020

FROM: Renae Moch, Public Health Director: *RM*
Dave Draovitch, Bismarck Police Chief

ITEM: Consider Measurable Outcomes for United Way Emergency Shelter

REQUEST

Consider measurable outcomes for United Way Emergency Homeless Shelter as defined in the attached document.

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Aligning with the City of Bismarck's Strategic Plan/Focus Area "Social Health", a funding request was approved for the United Way Emergency Homeless Shelter during the 2019 Call for Projects period. One-time funding in the amount of \$250,000 will be paid to United Way Emergency Homeless Shelter in 2020. In return, the City of Bismarck requests United Way report to the Bismarck City Commission on measurable outcomes defined in the attached document.

In addition to outcome reporting, United Way will transition the emergency homeless shelter to 24/7 shelter operations, serve as a single point of contact for the Bismarck Police Department (MOU for review & consideration 1/28/20 commission meeting), and communicate shelter activities and operational information to the City of Bismarck through a City Liaison appointed by the Bismarck City Commission.

RECOMMENDED CITY COMMISSION ACTION

Determine frequency of payments to United Way in 2020, consider measurable outcomes reported to the City Commission, and appoint a City Liaison to the United Way Emergency Shelter. (MOU with the Bismarck Police Department for single point of contact will be considered during 1/28/20 commission meeting).

STAFF CONTACT INFORMATION

Renae Moch, MBA, FACMPE | Public Health Director, 355-1540 or
rmoch@bismarcknd.gov

Dave Draovitch, Chief | Bismarck Police Department, 355-1866 or
ddraovitch@bismarcknd.gov

**UNITED WAY EMERGENCY HOMELESS SHELTER
2020 MEASURABLE OUTCOMES/REPORTING TO BISMARCK CITY COMMISSION**

1. 24/7 Homeless Shelter Operations

United Way Emergency Homeless Shelter will expand service hours operating 24/7 providing shelter and daytime programming for clients experiencing homelessness.

2. Single Point of Contact – (Consider MOU 1/28/20 commission meeting)

United Way Emergency Homeless Shelter will serve as the “single point of contact” for the Bismarck Police Department regarding homeless clients in the City of Bismarck. United Way Emergency Homeless Shelter will provide the City of Bismarck Police Department with one 24/7 phone number/address for officers to contact for assistance with individuals experiencing homelessness in the community.

3. City Liaison

The City of Bismarck will appointment a City Liaison to the United Way Emergency Shelter to facilitate and coordinate communication and activities between the two parties. The City Liaison will not serve in official capacity as a member of the United Way Board of Directors, but exist as a subject matter expert and point of contact between the City of Bismarck and the United Way Emergency Shelter.

4. Reporting to City Commission

United Way Emergency Shelter will provide a mid-term and year-end report to the Bismarck City Commission. The mid-term report will be presented at the **July 14, 2020** commission meeting and the year-end report will be presented at the **December 15, 2020** commission meeting.

Reports should include the following information:

- Number/Type of activities funded by the City of Bismarck during reporting period.
- Client served during reporting period categorized by demographics as follows:
 - # of Men
 - # Women
 - # of Adults (age 18 & over)
 - # of Children (age 18 & under)
 - # of Veterans
 - # of Chronically homeless
 - # of Families (single men with children, single female with children, couples with children)
 - Total Number of Clients Served
- Number of individuals turned away due to entry barriers:
 - Under influence of drugs/alcohol
 - Arrived with pet
 - Handicapped accessibility needs unable to be met
 - Criminal background/Sex offenders
 - Other – Specify
- Average length of stay for clients served
- Any other information requested by the City Commission that United Way is currently tracking for shelter operation services.



Community Development Department

DATE: January 7, 2020
FROM: Ben Ehreth, AICP, Community Development Director
ITEM: Amendment to Growth Phasing Plan

REQUEST

The Community Development Department – Planning Division is initiating an amendment to the Priority and Future areas of the Growth Phasing Plan, which was first adopted with the 2014 Growth Management Plan. This Plan is amended in the fourth quarter of every year to reflect changing development conditions.

Please place this item on the January 14, 2020 City Commission meeting agenda and the January 28, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The Planning & Zoning Commission held a public hearing on this request on December 18, 2019.

No members of the public spoke during the public hearing.

At the conclusion of the public hearing, and based on the findings contained in the staff report, the Planning & Zoning Commission unanimously recommended approval of the proposed amendment to the Priority and Future areas of the Growth Phasing Plan.

RECOMMENDED CITY COMMISSION ACTION

January 14th meeting of the Board of City Commissioners – consider the request for the proposed amendment to Growth Phasing Plan sections of the 2014 Growth Management Plan and call for a public hearing on the proposed amendment for the January 28th meeting of the Board of City Commissioners.

January 28th meeting of the Board of City Commissioners – hold a public hearing on the proposed amendment to the Future and Priority areas of the Growth Phasing Plan.

STAFF CONTACT INFORMATION

Ben Ehreth, AICP | Community Development Director, 355-1842 or behreth@bismarcknd.gov

Kim L. Lee, AICP | Planning Manager, 355-1846 or klee@bismarcknd.gov

Daniel Nairn, AICP | Planner, 355-1854 or dnairn@bismarcknd.gov



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

December 18, 2019

Project Summary

<i>Title:</i>	Amendment to Growth Phasing Plan
<i>Status:</i>	Planning & Zoning Commission – Public Hearing
<i>Project Contact:</i>	Daniel Nairn, AICP, Planner
<i>Request:</i>	Modify Priority and Future areas of the Growth Phasing Plan to reflect changing development conditions

Staff Analysis

The Community Development Department is proposing an amendment to the Priority and Future areas of the Growth Phasing Plan, which was first adopted with the 2014 Growth Management Plan. This Plan is amended in the fourth quarter of every year to reflect changing development conditions.

Purpose of the Growth Phasing Plan

The Growth Phasing Plan establishes the phasing for growth in areas outside of the City of Bismarck and within the City’s extraterritorial area. The areas within the plan could reasonably be served by municipal utilities at some point in the future. The outer boundary of the Growth Phasing Plan coincides with the Urban Service Area Boundary (USAB), first established in the 2003 Growth Management Plan.

The Growth Phasing Plan is further divided into Priority and Future areas. The Priority areas are anticipated for development in the short-term because City services may be readily accessed, based on available funding. The Future areas are anticipated for development in the long-term, with immediate City participation in financing or extending municipal services unlikely and limited. However, development in these areas may be possible with private funding for infrastructure.

Areas that are already developed as rural residential are assumed to remain as such and are not included in either the Priority or Future areas. It is anticipated that

future urban growth will occur around these subdivisions.

Growth Capacity Analysis

Each year, City staff analyzes the potential development capacity within the city limits, as well as within the existing Priority and Future areas. This available capacity is compared to overall growth projections for the City to help determine how much additional serviceable land may be necessary to meet expected demand for new development. The results of the analysis inform staff’s recommendation for boundary adjustments.

Within the city limits, there is capacity for an additional 7,899 residents and 17,432 jobs. An additional 5,755 residents and 7,930 jobs may be accommodated in the Priority areas. At projected population and employment growth rates, this development capacity would be exhausted in 15 years for population and 23 years for jobs.

Proposed Changes to the Growth Phasing Plan

The proposed changes to the Plan are relatively minor. No change is proposed to the outside boundary of the USAB. Three new areas are proposed to be added to the Future area:

- Areas of Promontory Point VI Addition and Promontory Point VII Addition that are not annexed are proposed to shift to the Future

(continued)

areas. These areas cannot be developed until further sanitary sewer facilities are installed by the developer.

- Areas of Silver Ranch First Addition and Silver Ranch First Addition First Replat that are not annexed are proposed to shift to the Future areas. These areas cannot be developed until further sanitary sewer facilities are installed by the developer.
- Unplatted land in SE $\frac{1}{4}$ of Section 19, T139N-R79W/Gibbs Township is proposed to shift to Future areas.

Additionally, five annexations occurred in 2019 for approximately 259 acres, most of which was taken from the Priority areas. Based on the proposed changes to the plan and prior annexations, the new proposed Priority areas are approximately 26% smaller than the areas in the currently approved plan. The proposed Priority areas have an estimated capacity of 14 years of population growth and 22 years of job growth, assuming city limits are filled first.

Required Findings of Fact (relating to land use)

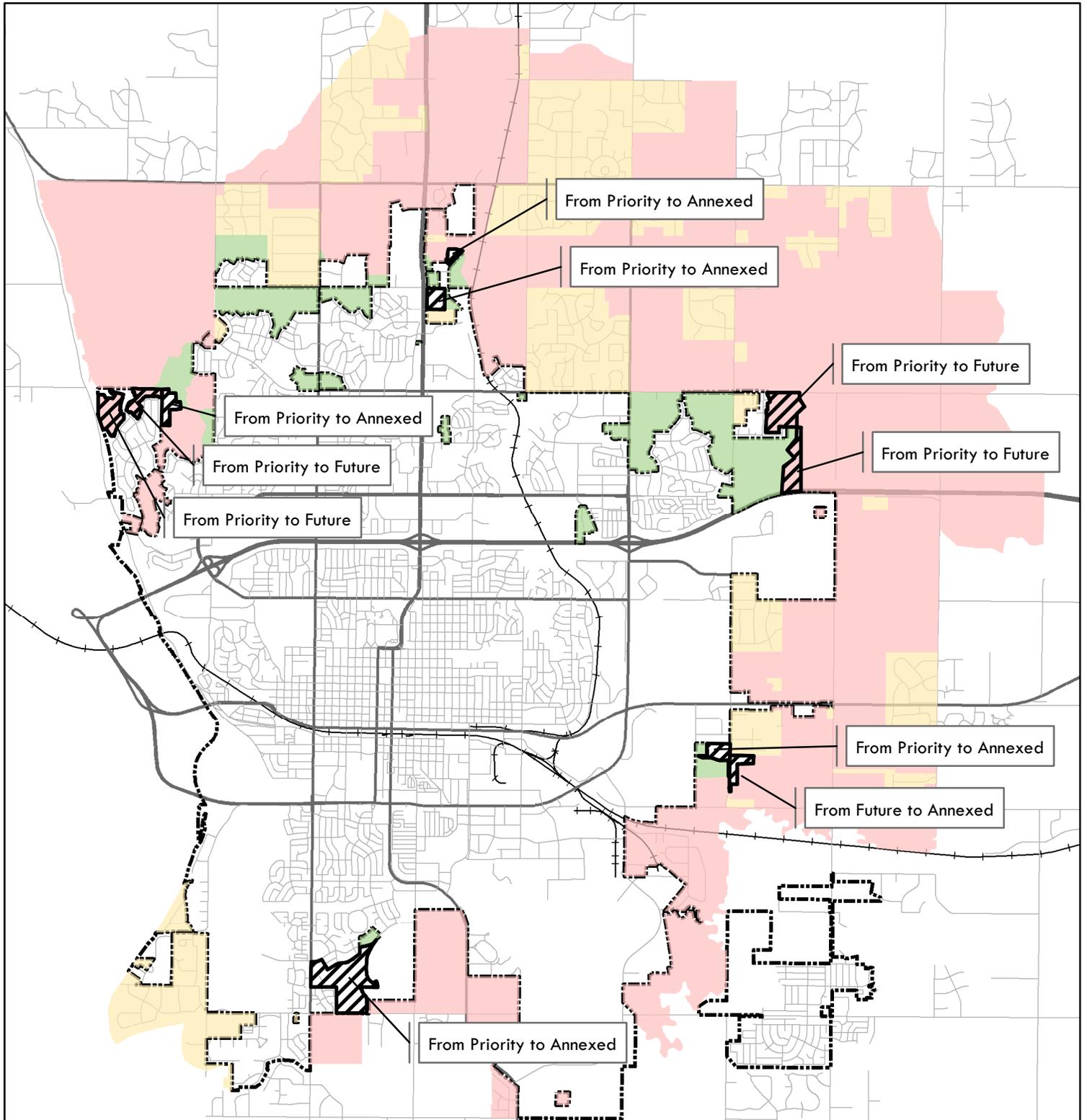
1. The proposed Growth Phasing Plan amendment would not adversely affect the public health, safety or general welfare;
2. The proposed Growth Phasing Plan amendment is justified by a change in conditions since the Growth Phasing Plan was adopted in 2014;
3. The proposed amendment is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Staff Recommendation

Based on the above findings, staff recommends approval of amendments to the Priority and Future areas of the Growth Phasing Plan, as shown on the attached map.

Attachments

1. Proposed amendments to the Growth Phasing Plan.



Phase

-  Priority - Development anticipated in the short-term because city services may be readily accessed, as funding is available.
-  Future - Development anticipated in the long-term and immediate City participation in extending services is unlikely. Development may occur with private funding of infrastructure costs.
-  Rural Residential
-  Proposed 2019 Changes

0 2,200 4,400 8,800 Feet

This map is for reference purpose only and is not intended as a survey or accurate representation of all map features.





Community Development Department

DATE: January 7, 2020

FROM: Ben Ehreth, AICP, Community Development Director

ITEM: Bismarck Building Code and Fire Prevention Code – Building Regulation Ordinance 6403 Text Amendment Request for Public Hearing

REQUEST

The City of Bismarck Community Development Department requests a delay in the Bismarck Board of City Commission action associated with consideration of the City of Bismarck Building Code and Fire Prevention Code and to host another public hearing on the item at the February 11, 2020 regular Bismarck Board of City Commission meeting.

Please place this item on the January 14, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The initial public hearing for the City of Bismarck Building Code and Fire Prevention Code was held on December 17, 2019. The item was tabled until the January 28, 2020 Board of City Commissioners meeting, allowing time to revise the proposed ordinance based on public testimony.

Given public testimony and discussion from the Bismarck Board of City Commission at the December 17, 2019 meeting it is anticipated substantial changes may occur in a revised proposed ordinance. Community Development Department staff consulted with the Bismarck City Attorney, and determined the proposed ordinance amendment should be re-published and another public meeting held on the subject, so as to be consistent with Title 2 Administration and Government Organization Chapter 2-04 Ordinances and Contracts of the Bismarck Code of Ordinances.

In order to allow sufficient time to make changes and re-publish the proposed modified ordinance, staff believes the earliest a public hearing could be held on the item would be February 11, 2020.

RECOMMENDED CITY COMMISSION ACTION

January 28th meeting – consider the revised building regulation ordinance text amendment as outlined in Ordinance 6403 and call for a public hearing on this item for the February 11th meeting.

February 11th meeting – hold a public hearing on the revised building regulation ordinance text amendment as outlined in Ordinance 6403 and take final action on the request.

STAFF CONTACT INFORMATION

Ben Ehreth, AICP | Community Development Director, 355-1842 or behreth@bismarcknd.gov

Brady Blaskowski | Building Official, 355-1467 or bblaskowski@bismarcknd.gov



Community Development Department

DATE: January 7, 2020

FROM: Ben Ehreth, AICP, Community Development Director

ITEM: Reappointment of Renaissance Zone Authority Members

REQUEST

Mayor Steve Bakken recommends that Joe Fink and Todd Van Orman be reappointed to serve on the Bismarck Renaissance Zone Authority.

Please place this item on the January 14, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

If confirmed by the Board of City Commissioners, the term for these positions would expire in December 2022.

RECOMMENDED CITY COMMISSION ACTION

Reappoint Joe Fink and Todd Van Orman for a term on the Bismarck Renaissance Zone Authority to expire in December 2022.

STAFF CONTACT INFORMATION

Ben Ehreth, AICP | Community Development Director, 355-1842 or behreth@bismarcknd.gov

Kim Lee, AICP | Planner Manager, 355-1846 or klee@bismarcknd.gov

Daniel Nairn, AICP | Planner, 355-1854 or dnairn@bismarcknd.gov



Community Development Department

DATE: January 7, 2020
FROM: Ben Ehreth, AICP, Community Development Director
ITEM: Approval of Neighborhood Stabilization Fund

REQUEST

Consider authorizing the use of \$830,000 in Neighborhood Stabilization Program (NSP) funds for the Boulevard Apartments project. These funds would be from the State of North Dakota, but would need City of Bismarck approval because the project is located within the city of Bismarck.

Please place this item on the January 14, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The Neighborhood Stabilization Program (NSP) was authorized by Congress in 2008 to stabilize neighborhoods and stem the decline of home values after the housing crisis. The funds must be used to serve low- to moderate-income households. In the State of North Dakota's Consolidated Plan, the City of Bismarck was identified as a primary target city for the use of remaining NSP funds because we are a CDBG entitlement city.

With the City's original allocation of these funds, the City of Bismarck purchased foreclosed or abandoned homes for rehabilitation and resale. The City's most recent NSP project was the allocation of program income funds to the Burleigh County Housing Authority to acquire land for Edwinton Place.

The North Dakota Department of Commerce is now requesting that the City participate in another NSP housing project in Bismarck utilizing program income funds from elsewhere in the State. Lutheran Social Services along with CommunityWorks North Dakota is proposing to purchase and rehabilitate the foreclosed property located at 1100 E Boulevard Avenue. The property will be called Boulevard Avenue Apartments and the estimated total cost to purchase and rehabilitate the building is over \$11,000,000. Other funding sources for this project include Low Income Housing Tax Credits (LIHTC), Housing Incentive Funds (HIF), tax exempt bonds, a Green Garden grant, previously approved City of Bismarck HOME funds passed through from the State of North Dakota and owner equity and mortgage.

RECOMMENDED CITY COMMISSION ACTION

Authorize the use of \$830,000 in State NSP funds for the Boulevard Apartments project in Bismarck.

STAFF CONTACT INFORMATION

Ben Ehreth, AICP | Community Development Director, 355-1842 or behreth@bismarcknd.gov

Kim Lee, AICP | Planning Manager, 355-1846 or klee@bismarcknd.gov

Jenna Corsiatto | Planner, 355-1847 or jcorsiatto@bismarcknd.gov



Community Development Department

DATE: January 7, 2020

FROM: Ben Ehreth, AICP, Community Development Director

ITEM: Authorizing Resolution for Bis-Man Transit Grant Filing

REQUEST

The Bismarck-Mandan Metropolitan Planning Organization (MPO), on behalf of Bis-Man Transit, requests approval of an Authorizing Resolution to allow Bis-Man Transit to make application through the North Dakota Department of Transportation for Section 5310 and Section 5339 funding to support capital assistance projects.

Please place this item on the January 14, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Bis-Man Transit buses and service vehicles are assigned by title to the City of Bismarck. It is understood that such vehicles purchased by Bis-Man Transit through state or federal funding will be assigned and titled to the City of Bismarck with the grant funds for the purchase of such vehicles passing through the City of Bismarck (grantee) to Bis-Man Transit (subrecipient) for reimbursement.

North Dakota Department of Transportation has set forth specific requirements regarding the pass-through grant process pertaining specifically to the relationship of grantee/subrecipient of the City of Bismarck and Bis-Man Transit, respectively. One of these requirements is the authorization of Bis-Man Transit, by the City of Bismarck, to make application for Section 5310 and Section 5339 capital assistance through the North Dakota Department of Transportation. The authorization is provided by resolution, as attached, and is updated on an annual basis. The Authorizing Resolution currently on file was approved and signed April 9, 2019.

RECOMMENDED CITY COMMISSION ACTION

Consider the Authorizing Resolution to be signed by the President of the Bismarck City Commission and approve the request.

STAFF CONTACT INFORMATION

Ben Ehreth, AICP | Community Development Director, 355-1842 or behreth@bismarcknd.gov

Steve Saunders | MPO Executive Director, 355-1848 or ssaunders@bismarcknd.gov

Authorizing Resolution

This resolution authorizes the filing of an application for a grant under 49 U.S.C. Sections 5310 and 5339, as amended by The Fixing America's Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015, and other authorizing legislation to be enacted,

WHEREAS, the U.S. Department of Transportation is authorized to make grants to states through the Federal Transit Administration (FTA) to support capital assistance projects for non-urbanized area public transportation systems under Sections 5310 and 5339 of The Fixing America's Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015, as amended; and

WHEREAS, the North Dakota Department of Transportation has been designated by the Governor to administer Sections 5310 and 5339; and

WHEREAS, the contract for financial assistance will impose certain obligations upon the applicant, including provisions for the local share of project costs;

THEREFORE, BE IT RESOLVED on behalf of the [the City of Bismarck] that [Bis-Man Transit] is authorized to execute and file an application with the North Dakota Department of Transportation to aid the financing of capital assistance for projects pursuant to Sections 5310 and 5339 of The Fixing America's Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015, as amended;

That [Bis-Man Transit] is authorized to furnish such additional information as the North Dakota Department of Transportation may require in connection with the application of the project.

The undersigned duly qualified and acting [President] of [Bismarck City Commission] certifies that the foregoing is a true and correct statement.

(Date)

(Signature of Officer)

[President, Bismarck City Commission]
(Title of Officer)



Engineering Department

DATE: January 1, 2020

FROM: Gabe Schell, City Engineer

ITEM: Street Closure for 47th Annual Downtowners Street Fair

REQUEST

Consider approval of street closure for 47th Annual Downtowners Street Fair.

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The 47th Annual Downtowners Street Fair is scheduled for September 18-19, 2020. The areas and timeframes requested for closure are the same as requested for the 2019 Street Fair. See attached request from Downtown Business Association.

RECOMMENDED CITY COMMISSION ACTION

Approve street closure request.

STAFF CONTACT INFORMATION

Mark Berg, PE | Traffic Engineer, 355-1505 or mberg@bismarcknd.gov



January 1, 2020

Keith Hunke, City Administrator
Mayor Bakken & City Commissioners
Mark Berg, City Traffic Engineer
PO Box 5503
Bismarck ND 58502-5503

Re: 2020 Street Closure Request

Dear Mr. Hunke, Mayor Bakken, City Commissioners, and Mr. Berg:

The Downtown Business Association requests the following street closings for the following annual community event:

1. 47th Annual Downtowners Street Fair - September 18-19, 2020

Same street areas as in 2019.

Eight blocks: 300, 400 and 500 E Broadway Ave, 100 and 200 blocks of Fourth Street and 100, 200 and 300 blocks of Fifth Street and all alleys leading into the event. Time schedule: close after 5 pm on Thursday, September 17 for vendor setup and reopen after final cleanup on Saturday night, September 19. This request is the same as requested for the 2019 Street Fair, which included one additional optional block on the 300 block of Fifth Street if needed for additional vendors.

The Downtowners agrees to post "No Parking" signs along all streets occupied by Street Fair within the time required. If 300 block of Fifth Street is needed, **Thayer Avenue would not be closed**. Crossing guards will be posted at Thayer & 5th.

Please contact the Downtowners with any questions or concerns.

Thank you,

Kate Herzog, COO
Chief Operating Officer



Engineering Department

DATE: January 6, 2020

FROM: Gabe Schell, City Engineer

ITEM: Water main Easement –43rd Avenue NE, in SE ¼, Section 13, Township 139, Range 80.

REQUEST

Request dedication of and acceptance of a water main easement in the north right of way of 43rd Avenue NE

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The location of this proposed water main easement is north of the section line in SE ¼, Section 13, Township 139, Range 80, along 43rd Avenue NE from Roosevelt Drive to 1323 feet east.

RECOMMENDED CITY COMMISSION ACTION

Approve dedication of and acceptance of a water main easement in the north right of way of 43rd Avenue

STAFF CONTACT INFORMATION

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

WATERLINE MAIN EASEMENT

THIS EASEMENT, is made this 11th day of December, 2019, by and between the undersigned parties, dealing in their sole and separate property ("Grantors") and the City of Bismarck, a municipal corporation, whose post office address is PO Box 5503, Bismarck, ND 58506-5503 ("Grantee").

1. For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor grants the Grantee, its successors and assigns, an exclusive easement to construct, operate, maintain, and repair a waterline main under or upon the real property hereinafter described, together with the right to remove trees, brush, undergrowth, and other impediments interfering with the location, construction, and maintenance of said utility. Grantee shall have the right of ingress and egress across the real property of the Grantor for the purposes herein granted.
2. This Waterline Main Easement is limited to the following described real property:

A 40.00 foot easement for water main purposes over, under, and across the Southwest Quarter of the Southeast Quarter of Section 13, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, and being more particularly described as follows:

The North 40.00 feet of the South 60.00 feet of said Southwest Quarter of the Southeast Quarter, as measured at a right angle to the South line of said Southwest Quarter of the Southeast Quarter.

Together with the South 20.00 feet of the West 40.00 feet of said Southwest Quarter of the Southeast Quarter, as measured at a right angle to the South line of said Southwest Quarter of the Southeast Quarter. Said tract contains 1.23 acres, more or less.
3. After completing the above-described construction and installation, or after exercising any of any benefits given by this easement, the Grantee shall restore the lands to as near their original condition as reasonably possible. The Grantee will remove all debris, spoils, and equipment resulting from or used in conjunction with the performance hereunder. The Grantee will pay for damage to fences and growing crops arising from any exercised right under the Waterline Easement.
4. The terms of the easement is reserved for 99 years, beginning on the date of execution.
5. The Grantor hereby reserves title to and any interest in any and all archeological and paleontological elements, whether or not located on or under the surface of said land.
6. The Grantor reserves the right to review and require changes in design and elevations of the waterline that may affect future development to Grantor's property.

IN WITNESS WHEREOF, the Grantor has executed this Waterline Main easement as of the date first above written.

Thomas M Schafer

Thomas M. Schafer
Dealing in his sole and separate property
4728 43rd Avenue NE
Bismarck, ND 58504

Joseph P. Shafer

Joseph P. Shafer
Dealing in his sole and separate property
24 Greely Drive
Lincoln, ND 58504

Michael W. Schafer

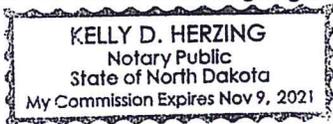
Michael W. Schafer
Dealing in his sole and separate property
80 McDougal Drive
Lincoln, ND 58504

Jennifer J. Aus

Jennifer J. Aus
Dealing in her sole and separate property
1227 6th Street NE
Devils Lake, ND 58301

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

On this 2 day of January, 2020, before me personally appeared Thomas M. Schafer, 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.



Kelly D. Herzing
Notary Public
State of North Dakota
My commission expires: 11/9/2021

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

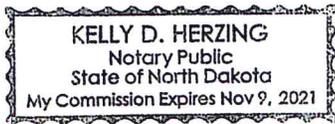
On this 2 day of January, 2020, before me personally appeared Joseph P. Shafer, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.



Kelly D. Herzing
Notary Public
State of North Dakota
My commission expires: 11/9/2021

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

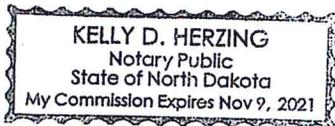
On this 2 day of January, 2020, before me personally appeared Michael M. Schafer, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.



[Signature]
Notary Public
State of North Dakota
My commission expires: 11/9/2021

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

On this 2 day of January, 2020, before me personally appeared Jennifer J. Aus, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that she executed the same.



[Signature]
Notary Public
State of North Dakota
My commission expires: 11/9/2021

Acceptance of the easement by the City of Bismarck:

Attest:

Steve Bakken, President
Board of City Commissioners

Keith J. Hunke
City Administrator

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

On this _____ day of _____, 20_____, before me personally appeared Steve Bakken, President of the 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.

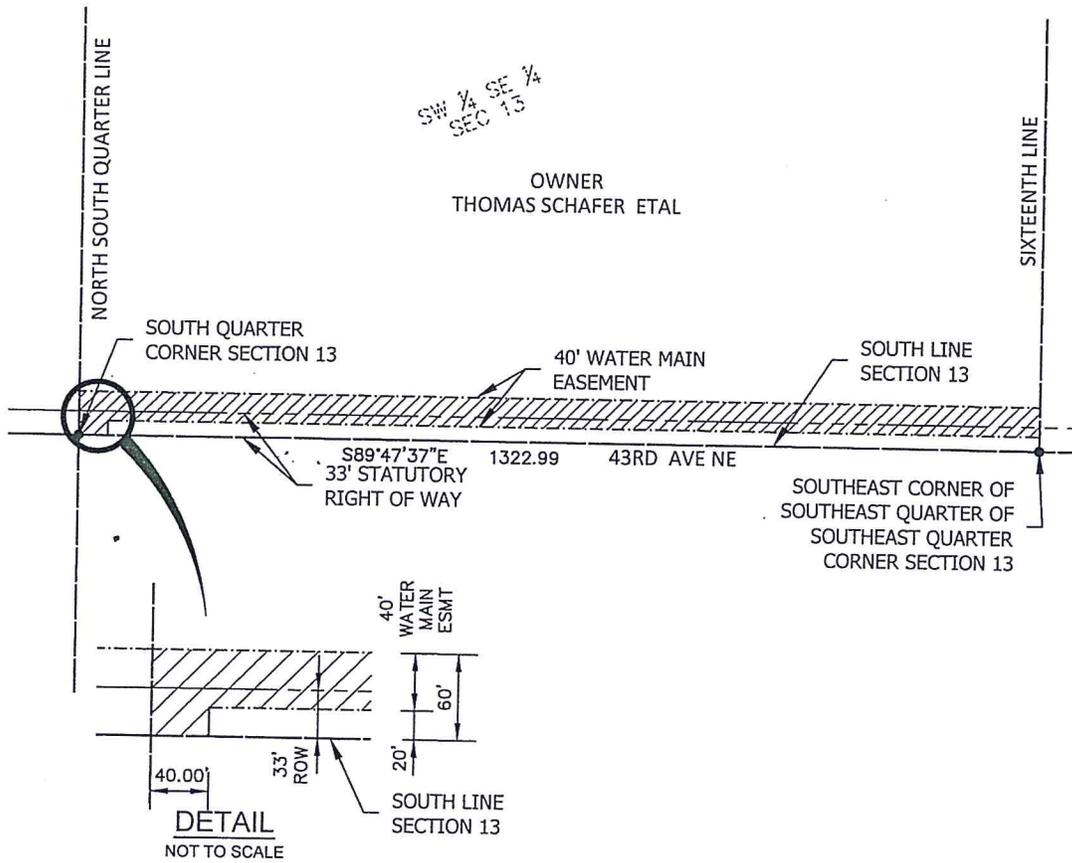
(SEAL)

Notary Public
State of North Dakota
My Commission Expires: _____

The legal description was prepared by Robert M. Illg, Professional Land Surveyor #LS-8444, 4719 Shelburne Street, Suite 6, Bismarck, ND 58503.

WATER MAIN EASEMENT

SOUTHWEST QUARTER OF SOUTHEAST QUARTER, SECTION 13,
TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN,
BURLEIGH COUNTY, NORTH DAKOTA



LEGEND

- FOUND MONUMENT
- EASEMENT AREA

BASIS OF BEARING:
Derived from State Plane Coordinates



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

DATE: 9/14/16

Page 1 of 2

WATER MAIN EASEMENT

DESCRIPTION:

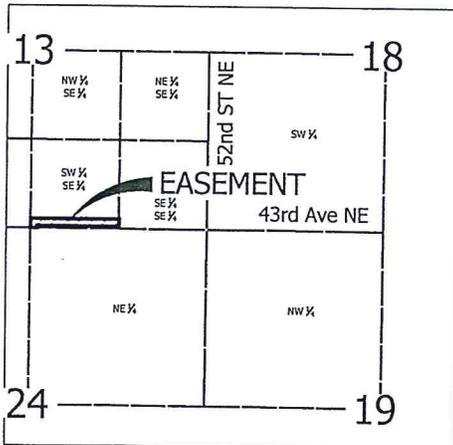
A 40.00 foot Easement for Water Main purposes over, under and across the Southwest Quarter of the Southeast Quarter, Section 13, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota and being more particularly described as follows:

The north 40.00 feet of the south 60.00 feet of said Southwest Quarter of Southeast Quarter, as measured at a right angle to the south line of said Southwest Quarter of the Southeast Quarter.

Together with the south 20.00 feet of the west 40.00 feet of said Southwest Quarter of the Southeast Quarter, as measured at a right angle to the south line of said Southwest Quarter of the Southeast Quarter. Containing 1.23 acres, more or less.

VICINITY MAP

NOT TO SCALE



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

DATE: 9/14/16

Page 2 of 2



Engineering Department

DATE: January 6, 2020
FROM: Gabe Schell, City Engineer
ITEM: Street Improvement District No. 531

REQUEST

Request for Resolution Approving Plans and Specifications

Request for Resolution of Necessity.

Request for Resolution Directing the Advertisement of Bids and Receive Bids

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Street Improvement District No. 531 consists of eight units (205 blocks) of asphalt resurfacing (patch, level, mill, overlay, chip seal, curb repair, alley repair), reconstruction and related items and one unit (2 blocks) converting gravel alleys to asphalt pavement. Given the size of the district, it will bid in two parts, Part A and Part B, to allow for two separate contracts under one assessment district.

Letters will be sent to parcel owners prior to the public hearing date scheduled for February 25, 2020.

PART A (78 Blocks Roadway Maintenance and 2 Blocks Alleys)

Unit No. 1

Buckskin Avenue – Longhorn Drive to 130' east

Eagles View Lane – High Creek Road to Cul-De-Sac

Eagles View Place – Eagles View Lane to Cul-De-Sac

High Creek Road – Valley Drive to 80' south of Eagles View Lane

Longhorn Drive – Valley Drive to 135' south of Saddle Ridge Drive

Mustang Drive – Valley Drive to 575' east

Saddle Ridge Road – Longhorn Drive to Cul-De-Sac
Valley Drive – 30' south of Stagecoach Circle to 120' south of Longhorn Drive

Unit No. 2

Valley Drive – Tyler Parkway to 209' west of Mesquite Loop (W)

Unit No. 3

9th Street – Capitol Avenue to Central Avenue
11th Street – Capitol Avenue to Divide Avenue
Constitution Drive – 9th Street to Central Avenue
Central Avenue – 9th Street to Owens Avenue
Owens Avenue – 9th Street to 11th Street

Unit No. 4

Mandan Street – Cherokee Avenue to Sioux Avenue
1st Street – Mandan Street to Sioux Avenue
Meredith Drive – Divide Avenue to Arikara Avenue
2nd Street – Divide Avenue to Arikara Avenue
Apache Street – Divide Avenue to 2nd Street
Mohawk Street – Divide Avenue to Teton Avenue
3rd Street – Divide Avenue to Boulevard Avenue
Osage Avenue – Washington Street to Meredith Drive
Cherokee Ave – Washington Street to Meredith Drive
Teton Avenue – Meredith Drive to 4th Street
Cheyenne Avenue – 2nd Street to 3rd Street
Arikara Ave – Washington Street to 4th Street
Seminole Avenue – Mandan Street to 1st Street
Sioux Avenue – Washington Street to Boulevard Avenue
Alley between 3rd and 4th – Arikara Avenue to Boulevard Avenue

Unit No. 5

Alley between 3rd Street and 4th Street – Divide Avenue to Teton Avenue
Alley between 3rd Street and 4th Street – Teton Avenue to Arikara Avenue

PART B (127 Roadway Maintenance)

Unit No. 6

20th Street – Divide Avenue to Laforest Avenue
21st Street - Harmon Avenue to Laforest Avenue
22nd Street – Divide Avenue to Laforest Avenue
23rd Street – Divide Avenue to 22nd Street
Vista Lane – Laforest Avenue to Boulevard Avenue
Northview Lane – Divide Avenue to Boulevard Avenue
Crestview Lane –Cul-De-Sac to Boulevard Avenue

Ridgeview Lane – Cul-De-Sac to Boulevard Avenue
26th Street – Divide Avenue to Valley View Avenue
Divide Avenue – 19th Street to Volk Drive
Harmon Avenue – 20th Street to 22nd Street
Rolling Drive – 23rd Street to Cul-De-Sac
Laforest Avenue – 23rd Street to Crestview Lane
Boulevard Avenue – 22nd Street to 26th Street
Hillside Terrace – Boulevard Avenue to Cul-De-Sac
Hillview Avenue – Boulevard Avenue to 26th Street

Unit No. 7

8th Street – Avenue C to Rosser Avenue
8th Street - Thayer Avenue to Broadway Avenue
Avenue C – 5th Street to 9th Street
Avenue B – 7th Street to 9th Street
Avenue A – 8th Street to 9th Street
Thayer Avenue – 7th Street to 9th Street
Alley between 7th Street and 8th Street – Avenue C to Avenue B
Alley between 7th Street and 8th Street – Avenue B to 250' south of Avenue B
Alley between 8th Street and 9th Street – Avenue B to Avenue A
Alley between 8th Street and 9th Street – Avenue A to 100' south

Unit No. 8

Washington Street – Bismarck Expressway to 150' south of Billings Drive
Willow Lane – Pleasant Street to Cul-De-Sac

Unit No. 9

Columbia Drive – 7th Street to Atlanta Drive
Albany Drive – Denver Avenue to Richmond Drive
7th Street – Bismarck Expressway to Denver Avenue
7th Street – Bozeman Drive to 7th Street
7th Street – Denver Avenue to Columbia Drive
Richmond Drive – Denver Avenue to Atlanta Drive
Bozeman Drive – Denver Avenue to 7th Street
Lansing Drive – Cul-De-Sac to 7th Street
Denver Avenue – 3rd Street to University Drive
Tulsa Drive – 3rd Street to Columbia Drive
Concord Drive – 7th Street to Richmond Drive

Project Schedule-Part A

Letters to Property Owners Sent:	January 17, 2020
Protest Period Ends:	February 20, 2020
Public Hearing:	February 25, 2020
Receipt and Opening of Bids:	March 16, 2020

Award of Bid: March 24, 2020
Project Completion: August 2021

Project Schedule-Phase B

Letters to Property Owners Sent: January 17, 2020
Protest Period Ends: February 20, 2020
Public Hearing: February 25, 2020
Receipt and Opening of Bids: March 17, 2020
Award of Bid: March 24, 2020
Project Completion: August 2021

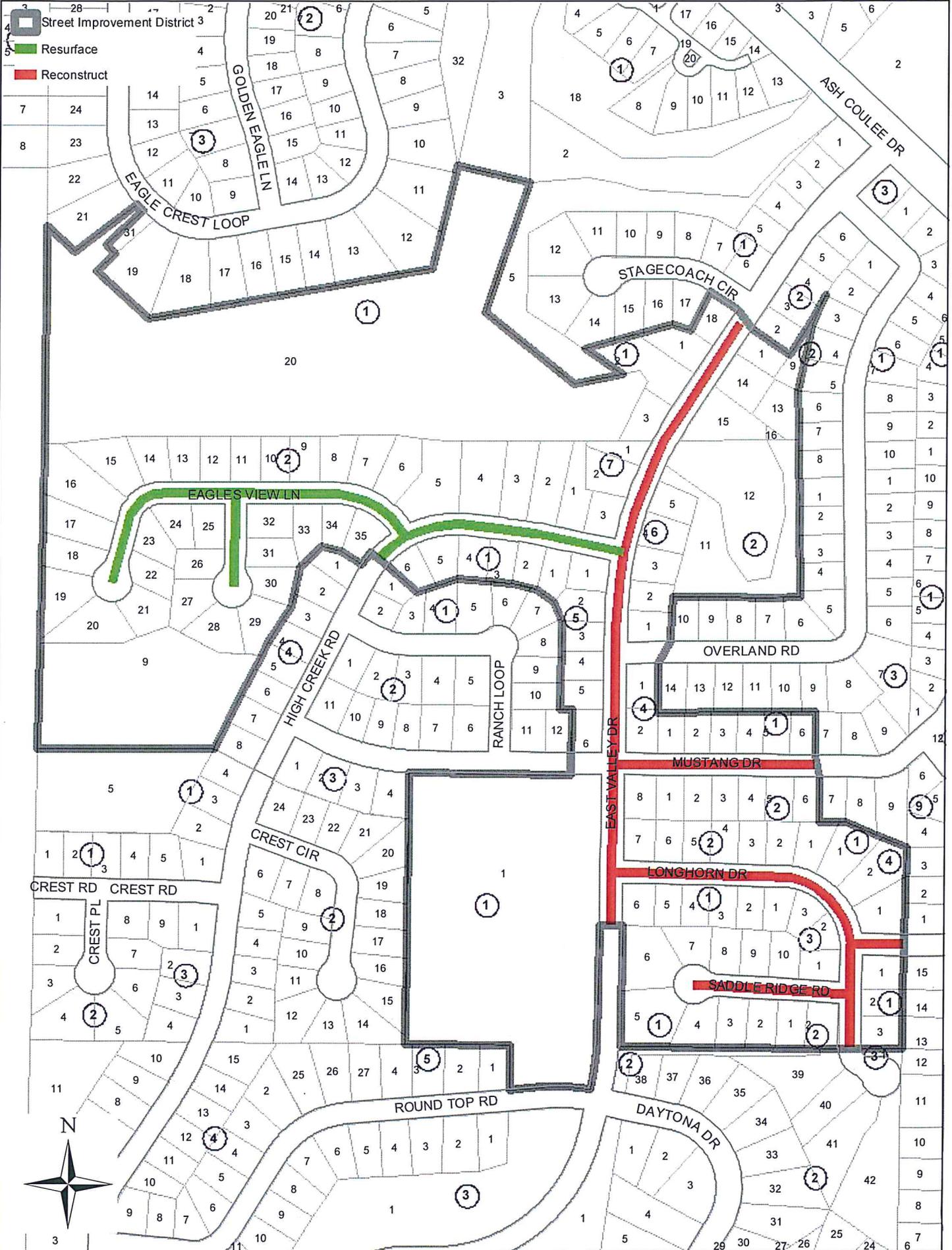
RECOMMENDED CITY COMMISSION ACTION

Consider request for approval of Resolution Approving Plans and Specifications, Resolution of Necessity, and Resolution Directing Advertisement of Bids and Receiving Bids for SI 531

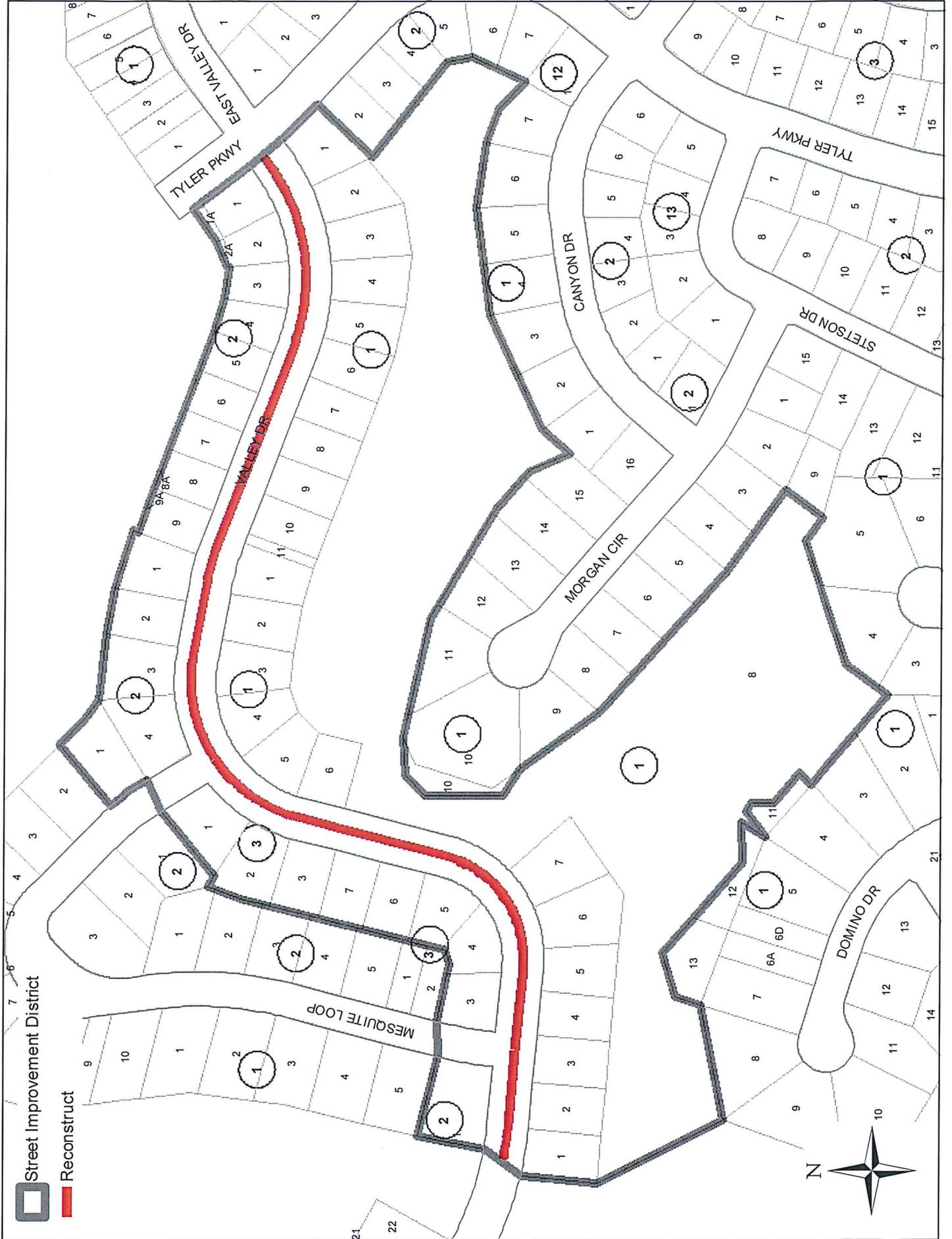
STAFF CONTACT INFORMATION

Linda Oster, PE, Design & Construction Engineer, 355-1505, loster@bismarcknd.gov

SI 531 - UNIT 1



SI 531 - UNIT 2



SI 531 - UNIT 3

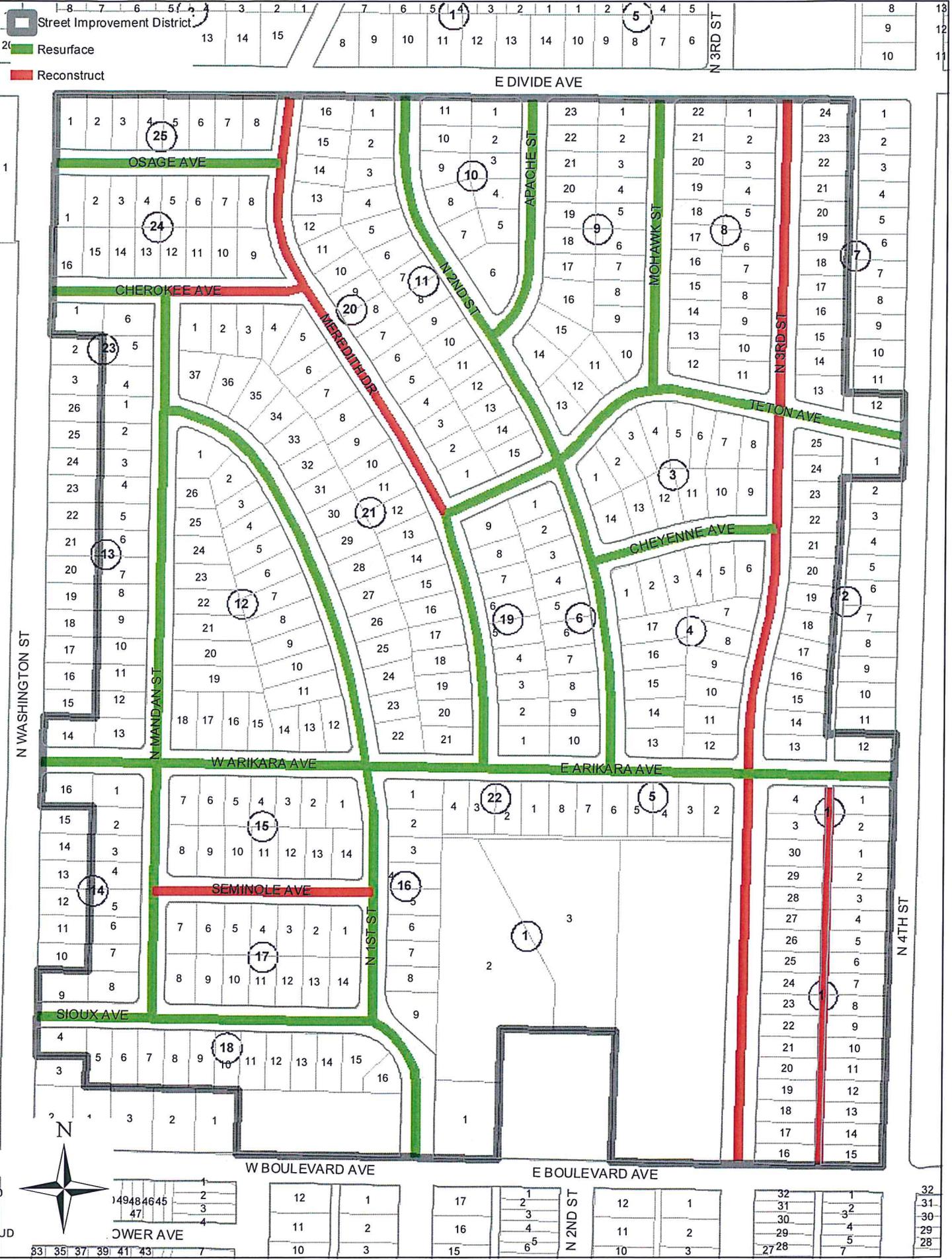
Street Improvement District

2 Resurface

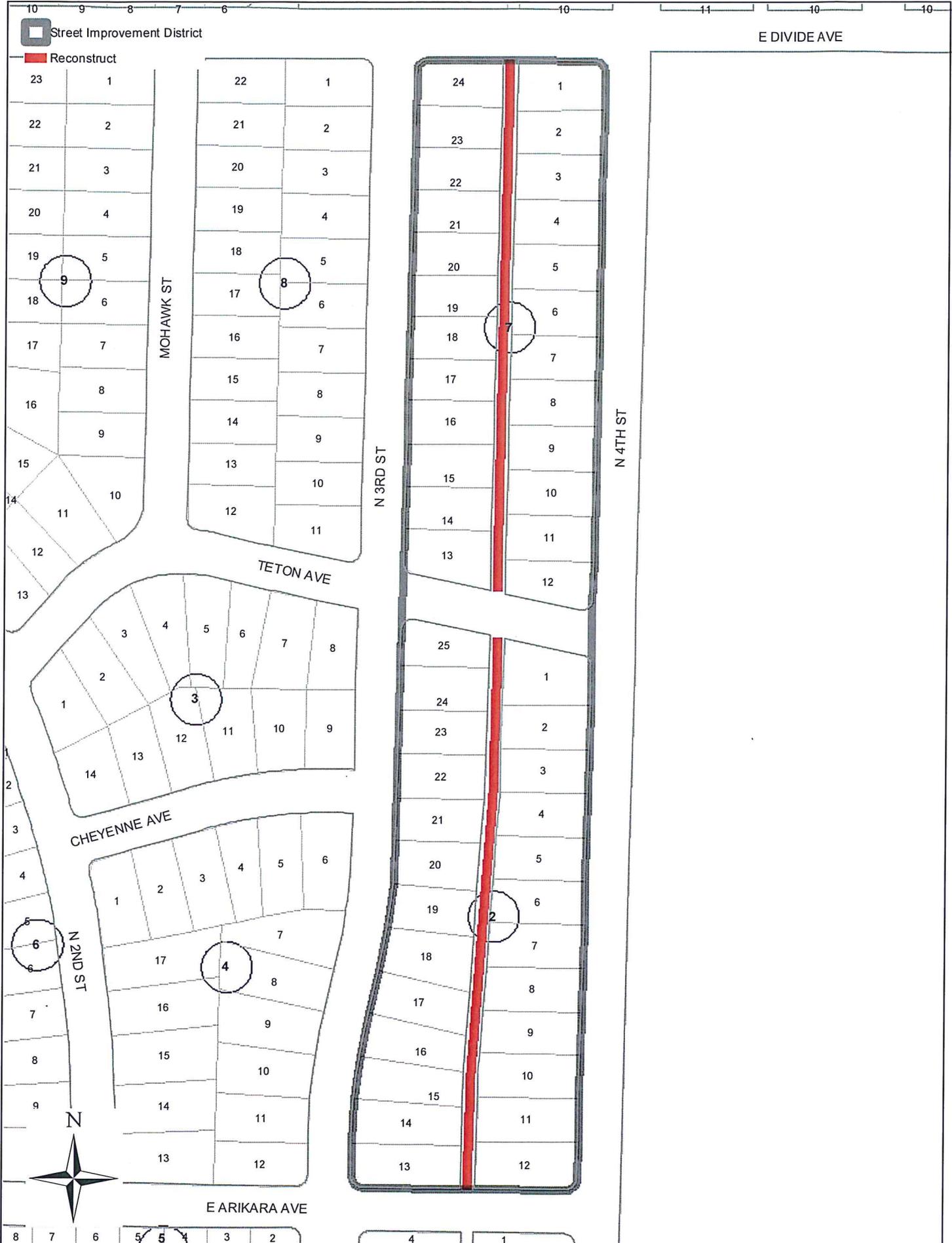
3 Reconstruct



SI 531 - UNIT 4



SI 531 - UNIT 5



SI 531 - UNIT 7



Street Improvement District

Resurface

Reconstruct

E E AVE

E D AVE

E D AVE

E C AVE

E B AVE

E A AVE

E A AVE

E ROSSER AVE

E THAYER AVE

E THAYER AVE

E BROADWAY AVE

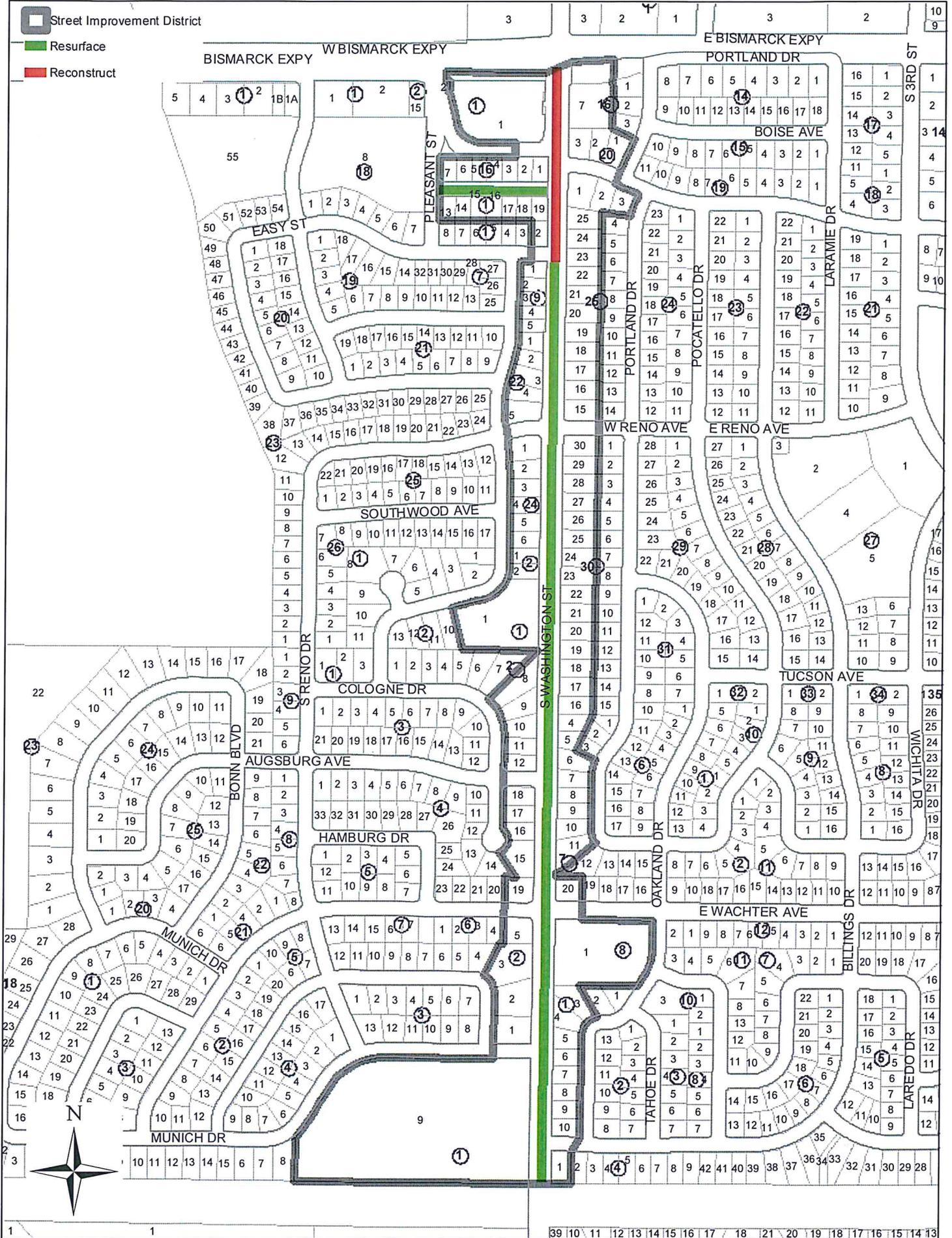
AUDITORS LOT



2	24	24	24	24	24	24	24
22	23	23	23	23	23	23	23
22	23	23	23	23	23	23	23
22	23	23	23	23	23	23	23

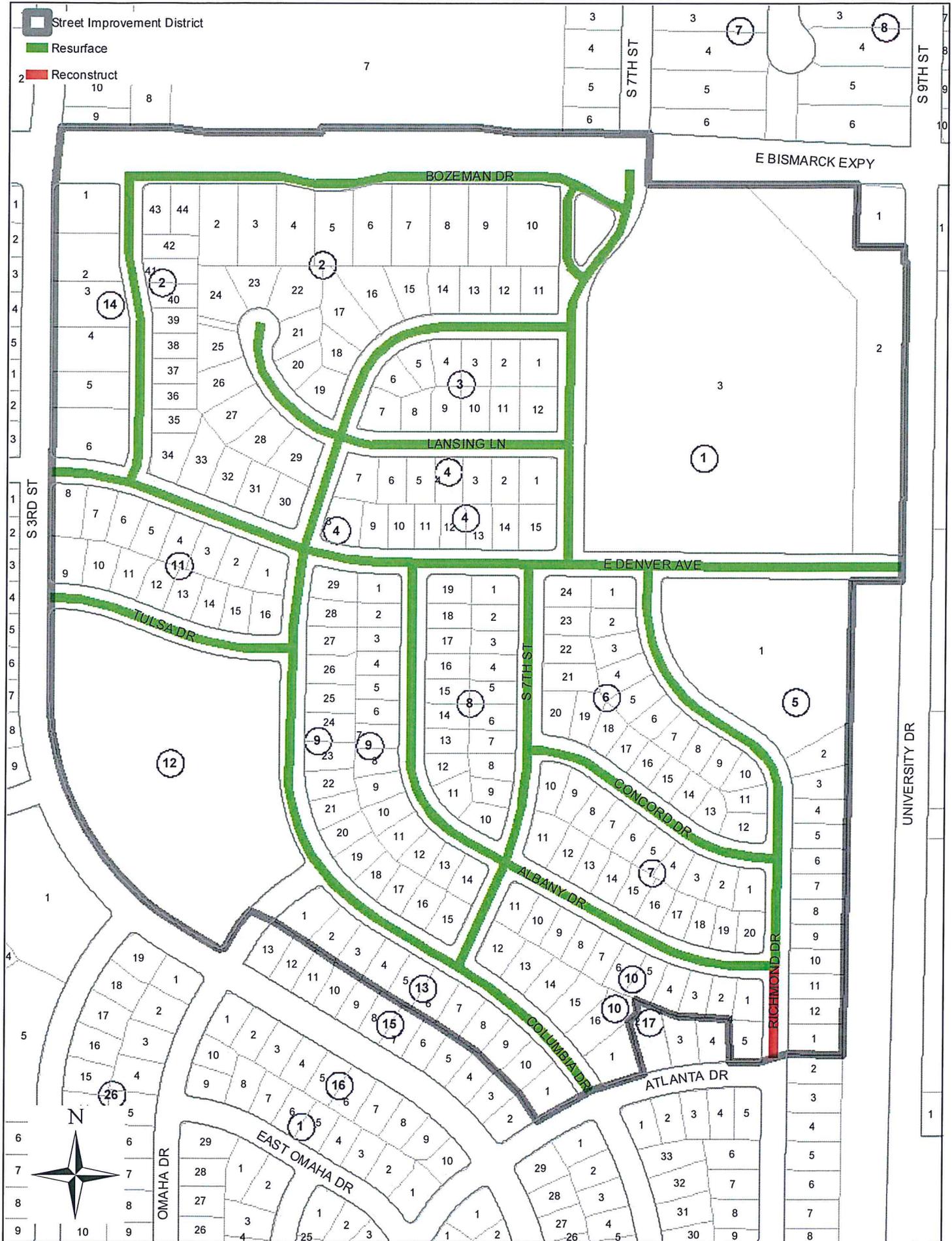
SI 531 - UNIT 8

- Street Improvement District
- Resurface
- Reconstruct



SI 531 - UNIT 9

- Street Improvement District
- Resurface
- Reconstruct





Engineering Department

DATE: January 6, 2020
FROM: Gabe Schell, City Engineer
ITEM: Street Improvement District No. 532

REQUEST

Request for Resolution Creating District SI 532 and Ordering Preparation of the Preliminary Report.

Request for Resolution Approving Preliminary Report and Directing Preparation of Plans and Specifications.

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Street Improvement District No. 532 consists of 2 units (70 blocks) of roadway maintenance with work consisting of scrub seal. Unit 1 includes 13,735 LF of sealed roadway. Unit 2 includes 9,665 LF of sealed roadway.

A scrub seal is similar to a standard chip seal where a rejuvenating emulsion and crushed rock are placed on the asphalt surface to extend life of the pavement. The emulsion is applied to the road utilizing a series of brushes which helps to work the emulsion into all cracks and provide a better seal. This will be the second time a scrub seal is used in Bismarck but it has been used in other municipalities in North Dakota. The first project was completed during the 2019 construction season with favorable results.

Letters will be sent to property owners prior to the public hearing. Included in the letter will be an invitation to a public information meeting to answer questions property owners may have on the project. This meeting will take place prior to the public hearing.

Unit No. 1

Ithica Drive – Century Avenue to Springfield Street
Springfield Street – Ithica Drive to Interstate Avenue
Stevens Street – Ithica Drive to Interstate Avenue
Hawken Street – Century Avenue to Stevens Street
Winchester Drive – Weatherby Way to Interstate Avenue
Stewart Drive – Remington Avenue to Winchester Drive
Apollo Avenue – Washington Street to Cul-De-Sac
Weatherby Way – Stevens Street to Washington Street
Browning Avenue – Cul-De-Sac to Washington Street
Remington Avenue – Stevens Street to Washington Street
Dohn Avenue – Stevens Street to Winchester Drive

Unit No. 2

Stonewall Drive – 170’ north of Tucker Lane to 129’ south of Hitchcock Drive
Roosevelt Drive – 159’ north of Tucker Lane to 231’ south of Hitchcock Drive
Tucker Lane – 128’ west of Stonewall Drive to Roosevelt Drive
Calgary Avenue – 128’ west of Stonewall Drive to Roosevelt Drive
Chamberlain Drive – Stonewall Drive to Frost Lane
Chamberlain Place – Frost Lane to Cul-De-Sac
Penn’s Lane – 160’ west of Stonewall Drive to Stonewall Drive
Penn’s Place – Stonewall Drive to Cul-De-Sac
Frost Lane – Stonewall Drive to Roosevelt Drive
Hitchcock Drive – Stonewall Drive to Roosevelt Drive

Project Schedule

Resolution of Necessity and Authorization to Advertise:	January 28, 2020
Letters to Property Owners Sent:	January 30, 2020
Protest Period Ends:	March 4, 2020
Public Hearing:	March 10, 2020
Receipt and Opening of Bids:	April 6, 2020
Award of Bid:	April 14, 2020
Project Completion:	Fall 2020

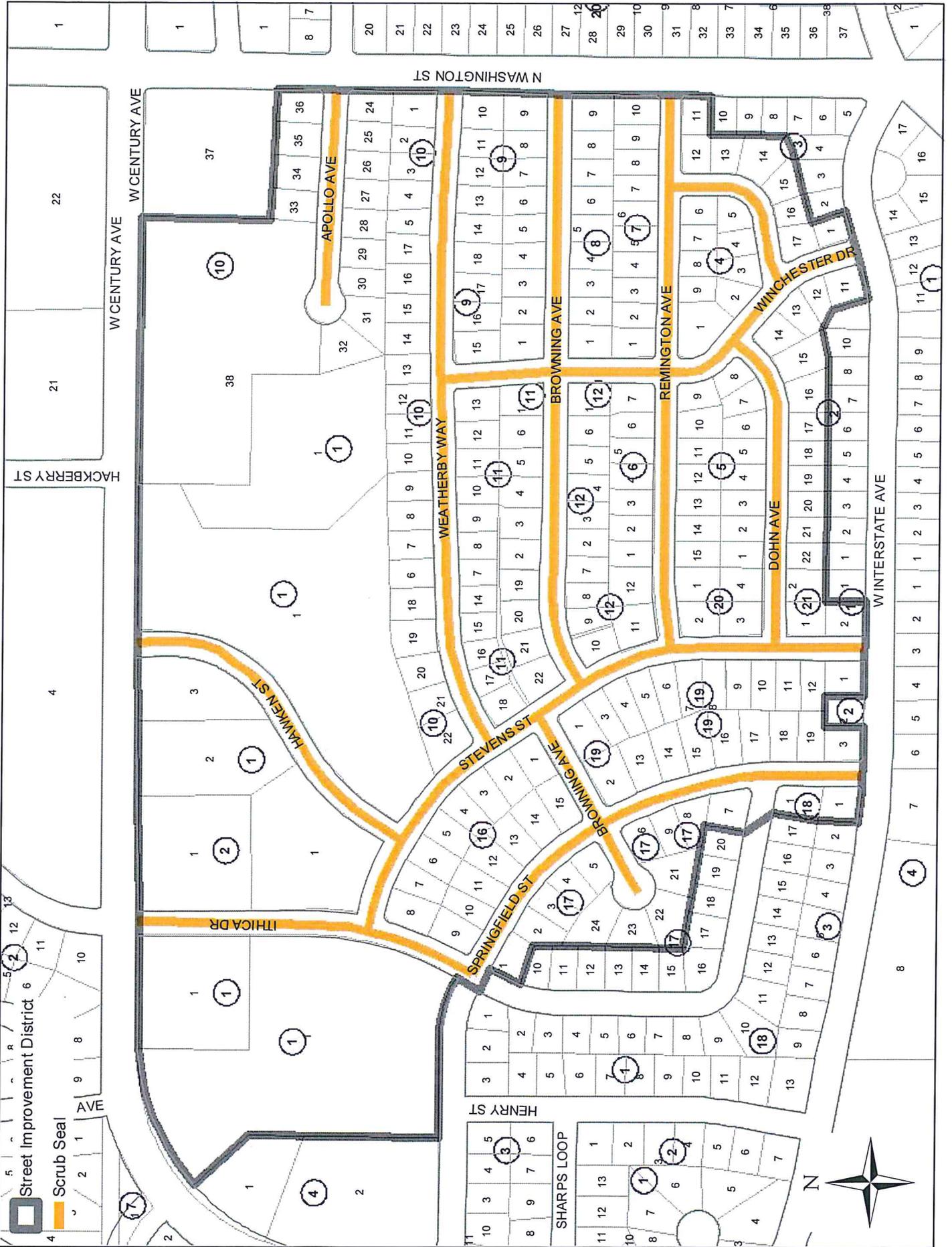
RECOMMENDED CITY COMMISSION ACTION

Consider request creating Street Improvement District SI 532, Ordering Preparation of the Preliminary Report, Approving Preliminary Report, and Directing Preparation of Plans and Specifications.

STAFF CONTACT INFORMATION

Linda Oster, PE, Design & Construction Engineer, 355-1505, loster@bismarcknd.gov

SI 532 - UNIT 1



SI 532 - UNIT 2

- Street Improvement District
- Scrub Seal





Engineering Department

DATE: January 6, 2020
FROM: Gabe Schell, City Engineer
ITEM: Street Improvement District No. 533

REQUEST

Request for Resolution Approving Plans and Specifications

Request for Resolution of Necessity.

Request for Resolution Directing the Advertisement of Bids and Receive Bids

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Street Improvement District No. 533 consists of one (1) unit of concrete pavement repair including full and partial depth pavement repairs, curb and gutter, driveways, ADA curb ramps, sealing and related work. The overall length of this project is approximately 4131 lineal feet.

Letters will be sent to parcel owners prior to the public hearing date scheduled for February 25, 2020.

Unit No. 1

Washington Street – Rosser Avenue to 295' north of Ingals Avenue
 Memorial Highway –Hannifin Street to Washington Street
 Front Avenue – Washington Street to Mandan Street

Project Schedule

Letters to Property Owners Sent:	January 17, 2020
Protest Period Ends:	February 20, 2020
Public Hearing:	February 25, 2020
Receipt and Opening of Bids:	March 16, 2020
Award of Bid:	March 24, 2020
Project Completion:	Fall 2020

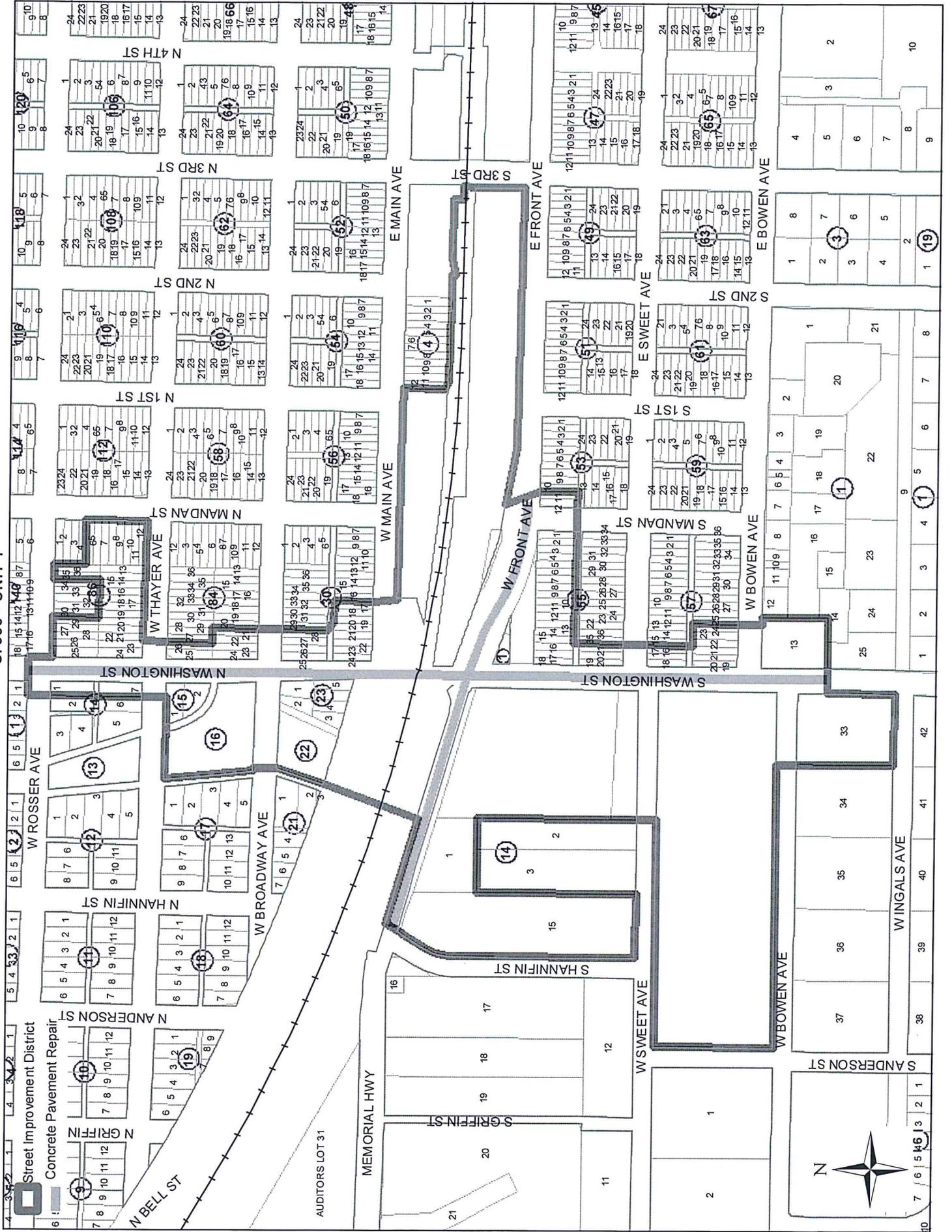
RECOMMENDED CITY COMMISSION ACTION

Consider request for approval of Resolution Approving Plans and Specifications, Resolution of Necessity, and Resolution Directing Advertisement of Bids and Receiving Bids for SI 533

STAFF CONTACT INFORMATION

Linda Oster, PE, Design & Construction Engineer, 355-1505, loster@bismarcknd.gov

SI 533 - UNIT 1



Street Improvement District
Concrete Pavement Repair





Engineering Department

DATE: January 7, 2020

FROM: Gabe Schell, City Engineer

ITEM: 43rd Avenue NE Reconstruction – HC 121

REQUEST

Consider approval of North Dakota Department of Transportation (NDDOT) Cost Participation, Construction, and Maintenance Agreement for 43rd Avenue NE Reconstruction (AC-NHU-1-981(119), PCN 22492, HC 121)

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The NDDOT requires approval of the attached agreement as a condition for the award of federal funding. This agreement details the respective responsibilities of the NDDOT and the City of Bismarck during construction and maintenance phases of the 43rd Avenue Reconstruction project. This project is scheduled to be bid on February 7, 2020 with construction and substantial completion in 2020.

The agreement obligates \$7,280,000 in federal funding not exceeding 80.93% of the total eligible project costs. The City is responsible for the 19.07% local match as well as all costs exceeding approximately \$9,000,000. There is an additional funding clause in this agreement reflecting the City's desire to advance construct the entirety of the project in 2020 with a requested reimbursement of the federal funding in Federal Highway Administration fiscal year 2022. Please note that if federal funding not become available, the City will not be reimbursed.

Please note also that NDDOT is including language in this agreement that prohibits the construction or use of any entrances onto 43rd Avenue NE other than those shown in the plans, without prior approval of NDDOT. It is my understanding that the NDDOT is requiring this language moving forward in order to protect the federal investment made in a particular corridor.

RECOMMENDED CITY COMMISSION ACTION

Approve the NDDOT Cost Participation, Construction, and Maintenance Agreement

STAFF CONTACT INFORMATION

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

**North Dakota Department of Transportation
COST PARTICIPATION, CONSTRUCTION, AND MAINTENANCE AGREEMENT
LPA FEDERAL AID PROJECT**

Federal Award Information – to be provided by NDDOT

CFDA No: 20.205	CFDA Title: Highway Planning & Construction
Award Name: Federal Aid Highway Program	Awarding Fed. Agency: Federal Highway Admin
NDDOT Program Mgr: Marohl, Sengaroun H.	Telephone: 701-328-4449

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

For NDDOT use only.

FHWA Authorization date:

Project No. AC-NHU-1-981(119)	LPA: CITY BISMARCK
Location: BISMARCK 43RD AVE NE FROM N WASHINGTON ST TO STATE ST	
Type of Improvement: GRADING, AGGREGATE BASE, PCC PAVEMENT, HMA, CURB & GUTTER, SHARED USE PATH, SIDEWALK, RETAINING WALL, STORM SEWER, LIGHTING, TRAFFIC SIGNALS, SIGNING AND MARKING	
	Length: 1.182 MILES

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and the Local Public Agency (LPA) of City Bismarck, North Dakota, hereinafter referred to as the LPA, who agree that:

It is in the best interest of both parties to have the LPA construct and maintain this project according to the terms and conditions set forth in this agreement. NDDOT will assist the LPA with the preparation and distribution of the bid documents and include the project in a scheduled bid opening.

The LPA agrees to the terms and conditions required for this project by the Federal Highway Administration (FHWA).

NDDOT will procure federal funds for the construction of the project, pursuant to Title 23 of the United States Code.

Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost up to a maximum of \$7,280,000. The balance of the project is the obligation of the LPA.

Additional Funding Clause

NDDOT will reimburse the LPA for the amount paid by FHWA in fiscal year 2022, if federal funding becomes available. The LPA understands and agrees that should federal funding not become available the LPA will not be reimbursed and all costs for the project will be the responsibility of the LPA.



The total eligible project costs include the cost of those items shown in the engineer's detailed estimate as approved for federal funds and any project changes approved by NDDOT for the use of federal funds.

Federal funds may not be obligated by the LPA, prior to FHWA approval of the program documents for the project.

PART I

LPA Obligation:

1. To comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the LPA of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. Seq.).

Include the following paragraph verbatim in any subcontracts they sign relative to this project:

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 solicitation, award, and administration of USDOT-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 NDDOT deems appropriate.

2. To comply with requirements of 23 CFR Part 633, Required Contract Provisions, and 23 CFR Part 635, Construction and Maintenance.
3. To construct the project in conformity with the construction contract, changes to the plans shall meet the requirements of 23 CFR Part 625, Design Standards for Highways and the current edition of the NDDOT's *Local Government Manual*.
4. To construct the project in conformity with the approved environmental documents and provide for the implementation of any measures mitigating the environmental impact of the project.
5. To comply with the procedures outlined in the current edition of NDDOT's *Local Government Manual*.
6. To comply with the current edition of NDDOT's *Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects*.
7. The LPA will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance,
8. To comply with the requirements of Appendices A and E of the Title VI Assurances, attached and incorporated by reference herein.



PART II

Contracting and Construction:

1. On behalf of the LPA, NDDOT will:
 - a. Prepare the bid package, solicit proposals, and include the project in a scheduled bid opening as provided in the North Dakota Century Code, Chapter 24-02.
 - b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidder's good faith efforts in satisfying the requirements of the current edition of the DBE special provision, and 49 CFR Part 26. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.
 - c. Tabulate the bids and send to the LPA.
 - d. Concur in the award of the contract, after the LPA has executed the contract, for the sole purpose of enabling the LPA to procure federal aid for the construction of the project.
2. The LPA will:
 - a. Review bids to determine the lowest responsible bidder.
 - b. Execute the contract.
 - c. Distribute copies of the executed contract and contract bond to NDDOT.
3. During the construction of the project, the LPA will:
 - a. Provide engineering services, material testing, and inspection of the work as required by the contract documents and the current editions of NDDOT's *Sampling and Testing Manual* and the *Standard Specifications for Road and Bridge Construction*.
 - b. Keep all project records and documentation as required in NDDOT's current editions of the *Construction Records Manual* and the *Construction Automated Records System*.
 - c. Make all records available to NDDOT and FHWA for inspection upon request. The LPA will submit all documents and records to NDDOT for review before final payment is made. NDDOT will maintain the project records for three years from the final voucher date of FHWA and then return them to the LPA.
 - d. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

PART III

Post Construction:

After the project is completed the LPA agrees to:



1. Control the length and location of curb openings for future entrances and to not permit the length of curb openings for entrances to exceed the length shown on the plans or as shown on a sketch of typical entrances for similar entrances; and prohibit the construction or use of any entrances along the project within the LPA other than those shown on the plans, without prior approval of NDDOT.
2. Prohibit double parking and diagonal parking within the limits of the project. Additional parallel parking will be allowed within the limits of the project if designed considering the effects the added parking will have on the entire traffic corridor. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.
3. If the traffic corridor intersects a state highway, the LPA must justify to NDDOT that any new access allowed will have minimal impact to the state highway. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.
4. Prohibit the installation of traffic signals and pedestrian beacons on or in connection with the project, including those installed at the sole cost and expense of the LPA or by others, without NDDOT approval.
5. Maintain all traffic control devices on the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.
6. Restrict the speed limit on the project at or below the maximum design speed. Any changes to the speed limit will be pursuant to North Dakota Century Code, Chapter 39-09.
7. Provide maintenance to the completed project at its own cost and expense.
8. Prohibit access and encroachments upon the right of way pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

PART IV

General:

1. The LPA will make all contract payments. NDDOT will reimburse the LPA for the amount paid by FHWA in fiscal year 2022, if federal funding becomes available. Payment will be made upon receipt of the engineer's estimate (CARS progressive estimate). The LPA understands and agrees that should federal funding not become available the LPA will not be reimbursed and all costs for the project will be the responsibility of the LPA.
2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. No official, employee, or other person performing services for the LPA who is authorized to negotiate or approve any contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract. No officer or employee of such person retained by the LPA shall have any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon public records of NDDOT and of the LPA, and such officer, employee, or person has not participated in such acquisition for and in behalf of the LPA.
4. The failure of the state to enforce any provisions of this contract shall not constitute a waiver by the state of that or any other provision.
5. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its



discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

6. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at the respective places of business as set forth below or at a place designated hereafter in writing by the parties.

Local Government Engineer
ND Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Gabe Schell, City Engineer
City of Bismarck
221 N 5th St
Bismarck, ND 58501

7. The LPA is advised that its signature on this contract or agreement certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.
8. This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The LPA, by the signature below of its authorized representative, hereby acknowledges that the LPA has read this agreement, understands it, and agrees to be bound by its terms and conditions.



Executed by the LPA of Bismarck, North Dakota, the date last below signed.

APPROVED:

Janelle Combs
CITY/STATES ATTORNEY (TYPE OR PRINT)

SIGNATURE

1/14/20
DATE

LPA of Bismarck

*

Steve Bakken
NAME (TYPE OR PRINT)

SIGNATURE

* President, Board of City Commissioners
TITLE

1/14/20
DATE

ATTEST:

Keith Hunke
AUDITOR (TYPE OR PRINT)

SIGNATURE

1/14/20
DATE

Executed by the North Dakota Department of Transportation the date last below signed.

APPROVED as to substance:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19; C.M. 12/31/2019



CERTIFICATION OF LOCAL MATCH

It is hereby certified that the LPA of Bismarck will provide non-federal funds, whose source is identified below, as match for the amount the LPA is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided by LPA. Please designate the source(s) of funds in the LPA budget that will be used to match the federal funds obligated for this project through the North Dakota Department of Transportation.

Source: Sales Tax

Executed at _____, North Dakota, the last date below signed.

ATTEST:

Keith Hunke
AUDITOR (TYPE OR PRINT)

SIGNATURE

1/14/20
DATE

APPROVED:

LPA of Bismarck

Steve Bakken
NAME (TYPE OR PRINT)

SIGNATURE

* President, Board of City Commissioners
TITLE

1/14/20
DATE

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19; C.M. 12/31/2019



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX A OF THE TITLE VI ASSURANCES**

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 Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, 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 Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
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 Acts and the Regulations relative to Non-discrimination 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 Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway 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 Recipient will impose such contract sanctions as it or the Federal Highway 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 Recipient or the Federal Highway 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 Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX E OF THE TITLE VI ASSURANCES**

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:

Pertinent Non-Discrimination Authorities:

- 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); and 49 CFR Part 21.
- 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);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- 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, 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 C.P.R. 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 nondiscrimination 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.*).



Risk Management Appendix

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

Parties: State – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees

Governments – State and Government Entity, as defined above

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

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

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

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

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

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

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

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

RM Consulted 2007
Revised 11-19





Engineering Department

DATE: January 7, 2020

FROM: Gabe Schell, City Engineer

ITEM: Development Agreement – Wilment Development LLC – HC-121 43rd Avenue Reconstruction from Washington Street to State Street

REQUEST

Consider Development Agreement with Wilment Development LLC regarding storm water improvements associated with reconstruction of 43rd Avenue.

Please place this item on the January 14, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

As part of the project development Wilment Development LLC requested that the City consider discharging the proposed storm sewer system from the existing low point on the north side of 43rd Avenue to a point further east to allow the drainage to flow through an existing platted storm water easement. By agreeing to relocate the drainage point the developer has agreed to complete the necessary storm water improvements beyond the right of way of 43rd Avenue. This agreement serves to bind the developer to complete the work by a specified date.

RECOMMENDED CITY COMMISSION ACTION

Approve development agreement.

STAFF CONTACT INFORMATION

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

DEVELOPMENT AGREEMENT

The City of Bismarck (the City) and Wilment Development LLC (the Landowner) make this Development Agreement with regard to the proposed outfall of the storm water system to be constructed as part of the City's 43rd Avenue NE reconstruction project HC 121 in Bismarck, North Dakota.

In exchange for the City's agreement to outfall the proposed storm water system within the platted storm water easement within Lot 26, Block 1, Boulder Ridge First Addition, Burleigh County, Bismarck, North Dakota, the Landowner agrees to the following:

1. Construct a storm water conveyance system consisting of a series of pipes and/or grading to adequately convey the proposed storm water discharge. The upstream termini of the system is the limits of the City's project at a location adjacent to the 43rd Avenue right of way and the platted storm water easement across lot 26, Block 1, Boulder Ridge First Addition and the downstream termini of the conveyance system is the storm water easement in the NE corner of said lot 26.

2. Construction shall be completed by _____, 20__ in order to avoiding adversely affecting the schedule of the City's project. This date can be amended if mutually agreed upon by both the City and the Landowner.

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

Dated this _____ day of _____, 2020

Wilment Development LLC

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF BURLEIGH)

On this _____ day of _____, 2020, before me personally appeared _____, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that s/he executed the same.

Notary Public
State of North Dakota

(SEAL)

Dated this _____ day of _____, 2020

Steve Bakken
President, Board of City Commissioners

Attest: _____

Keith J. Hunke
City Administrator

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF BURLEIGH)

On this _____ day of _____, 2020, before me personally appeared _____, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that s/he executed the same.

Notary Public
State of North Dakota

(SEAL)



Finance Department

DATE: January 6, 2020

FROM: Dmitriy Chernyak, Finance Director

DAC
01/06/20

ITEM: Application for Abatement

REQUEST

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

Applications for Abatement for 2019- Disabled Veteran Credit

Property Owner- Paul Uskevicz Jr

Property Address- 524 N 19th St / 0050-047-010

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The above property applicant has met all the requirements set forth in the N.D.C.C 57-02-08(20) to apply for the Disabled Veteran Credit.

RECOMMENDED CITY COMMISSION ACTION

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

STAFF CONTACT INFORMATION

Allison Jensen

ajensen@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. 0050-047-010
Name PAUL USKEVICZ JR Telephone No.
Address 524 N 19TH ST. BISMARCK

Legal description of the property involved in this application:

FLANNERY & WETHERBY
Block: 47
LOTS 5-6

Total true and full value of the property described above for the year 2019 is:

Land \$ 38,000
Improvements \$ 152,800
Total \$ 190,800
(1)

Total true and full value of the property described above for the year 2019 should be:

Land \$ 38,000
Improvements \$ 152,800
Total Adj, \$ 155,800
(2)

The difference of \$ 35,000 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
- 2. Residential or commercial property's true and full value exceeds the market value
- 3. Error in property description, entering the description, or extending the tax
- 4. Nonexisting improvement assessed
- 5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
- 6. Duplicate assessment
- 7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
- 8. Error in noting payment of taxes, taxes erroneously paid
- 9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
- 10. Other (explain) 70% Dis / Exempt 4 months

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 the disabled veteran credit be approved as presented.

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

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

Signature of Preparer (if other than applicant)

Date

Signature of Applicant

Date

Recommendation of the Governing Body of the City or Township

Recommendation of the governing board of _____

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

Dated this _____ day of _____, _____

 City Auditor or Township Clerk

Action by the Board of County Commissioners

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

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

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

Dated _____

County Auditor _____ Chairperson _____

Certification of County Auditor

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

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

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

Year	Reduction in Taxable Valuation	Reduction in Taxes

County Auditor _____ Date _____

**Application For Abatement
Or Refund Of Taxes**

Name of Applicant Paul Dskewicz

County Auditor's File No. 20-001

Date Application Was Filed With The County Auditor 1/3/20

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

Alan Outmeier
weeb



Finance Department

DATE: December 30, 2019

FROM: Dmitriy Chernyak, Finance Director

MAC 12/30/19

ITEM: Applications for Abatement

REQUEST

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

Applications for Abatement for 2018 & 2019- Disabled Veteran Credit
Property Owner- Neil & Marcene Labrensz
Property Address- 914 Calvert Dr / 1580-007-001

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The above property applicant has met all the requirements set forth in the N.D.C.C 57-02-08(20) to apply for the Disabled Veteran Credit.

RECOMMENDED CITY COMMISSION ACTION

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

STAFF CONTACT INFORMATION

Allison Jensen
ajensen@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. 1580-007-001
Name NEIL & MARCENE LABRENSZ Telephone No.
Address 914 CALVERT DR. BISMARCK

Legal description of the property involved in this application:

SONNET HEIGHTS SUBDIVISION
Block: 7
LOT 1

Total true and full value of the property described above for the year 2018 is:

Land \$ 58,000
Improvements \$ 198,400
Total \$ 256,400
(1)

Total true and full value of the property described above for the year 2018 should be:

Land \$ 58,000
Improvements \$ 198,400
Total Adj \$ 166,400
(2)

The difference of \$ 90,000.00 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.
- 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) Disabled Veteran- 60% Dis

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 the disabled veteran credit be approved as presented.

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

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

Signature of Preparer (if other than applicant)

Date

Signature of Applicant

Date

Recommendation of the Governing Body of the City or Township

Recommendation of the governing board of _____

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

Dated this _____ day of _____, _____

 City Auditor or Township Clerk

Action by the Board of County Commissioners

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

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

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

Dated _____, _____

 County Auditor Chairperson

Certification of County Auditor

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

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

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

Year	Reduction in Taxable Valuation	Reduction in Taxes

 County Auditor Date

**Application For Abatement
 Or Refund Of Taxes**

Name of Applicant Labrenz Neil + Marcene

County Auditor's File No. 19-197

Date Application Was Filed With The County Auditor 12/30/19

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

Allan Vuetmaier
 by epb.

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. 1580-007-001
Name NEIL & MARCENE LABRENSZ Telephone No.
Address 914 CALVERT DR. BISMARCK

Legal description of the property involved in this application:

SONNET HEIGHTS SUBDIVISION
Block: 7
LOT 1

Total true and full value of the property described above for the year 2019 is:
Land \$ 58,000
Improvements \$ 198,400
Total \$ 256,400
(1)

Total true and full value of the property described above for the year 2019 should be:
Land \$ 58,000
Improvements \$ 198,400
Total Adj. \$ 166,400
(2)

The difference of \$ 90,000.00 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.
- 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) Disabled Veteran- 60% Dis

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 the disabled veteran credit be approved as presented.

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

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

Signature of Preparer (if other than applicant)

Date

Signature of Applicant

Date

Neil G. Labrensz 12/23/2019

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 Labrensz
Deil + Marcene

County Auditor's File No. 19-198

Date Application Was Filed With The County Auditor 12/30/19

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

Allan Uetmeh
by epb



Finance Department

DATE: December 17, 2019

FROM: Dmitriy Chernyak, Finance Director

DAC 12/18/19

ITEM: Applications for Abatement

REQUEST

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

Application for Abatement for 2019- Disabled Veteran Credit

Property Owner- Audrey Grafsgaard

Property Address- 1321 Columbia Dr / 0594-009-025

Applications for Abatement for 2018 & 2019- Disabled Veteran Credit

Property Owner – Patrick & Michelle Gieser

Property Address- 4511 Chamberlain Dr / 1359-009-090

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The above property applicants have met all the requirements set forth in the N.D.C.C 57-02-08(20) to apply for the Disabled Veteran Credit.

RECOMMENDED CITY COMMISSION ACTION

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

STAFF CONTACT INFORMATION

Allison Jensen

ajensen@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. 594-009-025
Name GRAFSGAARD, AUDREY D Telephone No.
Address 1321 COLUMBIA DR

Legal description of the property involved in this application:

MEADOW VALLEY 3RD
Block: 9
LOT 20

Total true and full value of the property described above for the year 2019 is:

Land \$ 48,000
Improvements \$ 156,700
Total Adj: \$ 129,700
(1)

Total true and full value of the property described above for the year 2019 should be:

Land \$ 48,000
Improvements \$ 156,700
Total Re-Adj: \$ 99,700
(2)

The difference of \$ 30,000 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
- 2. Residential or commercial property's true and full value exceeds the market value
- 3. Error in property description, entering the description, or extending the tax
- 4. Nonexisting improvement assessed
- 5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
- 6. Duplicate assessment
- 7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
- 8. Error in noting payment of taxes, taxes erroneously paid
- 9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
- 10. Other (explain) Disabled Veteran - Additional Credit
(WAS @ 50% / NOW 70%)

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 the disabled veteran credit be approved as presented.

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

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

Signature of Preparer (if other than applicant) _____ Date _____
Signature of Applicant Audrey Grafsgaard 12-16-19 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

Audrey Guatsgaard

County Auditor's File No.

19-180

Date Application Was Filed With The County Auditor

12/16/19

Date County Auditor Mailed Application to Township Clerk or City Auditor

(must be within five business days of filing date)

*Alan Vietmeyer
by epb*

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. 1339-009-090
 Name GIESER, PATRICK & MICHELLE Telephone No. _____
 Address 4511 CHAMBERLAIN DR

Legal description of the property involved in this application:

SATTLER'S SUNRISE 5TH
 Block: 9
 LOT 19

Total true and full value of the property described above for the year 2018 is:
 Land \$ 52,000
 Improvements \$ 201,100
 Total \$ 253,100
(1)

Total true and full value of the property described above for the year 2018 should be:
 Land \$ 52,000
 Improvements \$ 201,100
 Total Adj. \$ 133,100
(2)

The difference of \$ 120,000 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
- 2. Residential or commercial property's true and full value exceeds the market value
- 3. Error in property description, entering the description, or extending the tax
- 4. Nonexisting improvement assessed
- 5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
- 6. Duplicate assessment
- 7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
- 8. Error in noting payment of taxes, taxes erroneously paid
- 9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
- 10. Other (explain) Disabled Veteran - 80%

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 the disabled veteran credit be approved as presented

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

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

Signature of Preparer (if other than applicant) _____ Date _____ Signature of Applicant [Signature] Date 12-16-15

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 Gieser Patrick + Michelle

County Auditor's File No. 19-108

Date Application Was Filed With The County Auditor 12/11/19

Date County Auditor Mailed Application to Township Clerk or City Auditor 12/11/19
(must be within five business days of filing date)

Allan Vietmeyer
12/11/19

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. 1359-009-090
Name GIESER, PATRICK & MICHELLE Telephone No. _____
Address 4511 CHAMBERLAIN DR

Legal description of the property involved in this application:

SATTLER'S SUNRISE 5TH
Block: 9
LOT 19

Total true and full value of the property described above for the year 2019 is:
Land \$ 52,000
Improvements \$ 201,100
Total \$ 253,100
(1)

Total true and full value of the property described above for the year 2019 should be:
Land \$ 52,000
Improvements \$ 201,100
Total Adj. \$ 133,100
(2)

The difference of \$ 120,000 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
- 2. Residential or commercial property's true and full value exceeds the market value
- 3. Error in property description, entering the description, or extending the tax
- 4. Nonexisting improvement assessed
- 5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
- 6. Duplicate assessment
- 7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
- 8. Error in noting payment of taxes, taxes erroneously paid
- 9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
- 10. Other (explain) Disabled Veteran - 80%

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? _____ yes/no Estimated value: \$ _____

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: _____ yes/no Purpose of appraisal: _____
_____ Market value estimate: \$ _____
Appraisal was made by whom? _____

4. The applicant's estimate of market value of the property involved in this application is \$ _____

5. The estimated agricultural productive value of this property is excessive because of the following condition(s): _____

Applicant asks that the disabled veteran credit be approved as presented

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

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

Signature of Preparer (if other than applicant) _____ Date _____ Signature of Applicant [Signature] Date 12-16-19

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 Eiseser Patrick + Michelle

County Auditor's File No. 19-179

Date Application Was Filed With The County Auditor 12/10/19

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

Allan Vettermer
by epp.



Finance Department

DATE: January 2, 2020

FROM: Dmitriy Chernyak, Finance Director

dal 01/02/20

ITEM: Application for Abatement

REQUEST

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

Applications for Abatement for 2019- Disabled Veteran Credit
Property Owner- Carl & Carol Edgerly
Property Address- 1630 Columbia Dr / 0596-020-065

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The above property applicant has met all the requirements set forth in the N.D.C.C 57-02-08(20) to apply for the Disabled Veteran Credit.

RECOMMENDED CITY COMMISSION ACTION

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

STAFF CONTACT INFORMATION

Allison Jensen
ajensen@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. 0596-020-065
 Name EDGERLY, CARL D & CAROL Telephone No. _____
 Address 1630 COLUMBIA DR. BISMARCK

Legal description of the property involved in this application:

MEADOW VALLEY 4TH
 Block: 20
 LOT 14

Total true and full value of the property described above for the year 2019 is:

Land \$ 48,000
 Improvements \$ 130,900
 Total Adj \$ 88,900
(1)

Total true and full value of the property described above for the year 2019 should be:

Land \$ 48,000
 Improvements \$ 130,900
 Total Re-Adj \$ 73,900
(2)

The difference of \$ 15,000 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
- 2. Residential or commercial property's true and full value exceeds the market value
- 3. Error in property description, entering the description, or extending the tax
- 4. Nonexisting improvement assessed
- 5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
- 6. Duplicate assessment
- 7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
- 8. Error in noting payment of taxes, taxes erroneously paid
- 9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
- 10. Other (explain) Additional Credit (was @ 60% / Now 70%)

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 the disabled veteran credit be approved as presented.

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

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

Signature of Preparer (if other than applicant) _____ Date _____ Signature of Applicant [Signature] Date 1-2-20

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 Edgerly
Carl & Carol

County Auditor's File No. 19-200

Date Application Was Filed With The County Auditor 1/2/20

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

Allan Oetmeier
taxepb.



Finance Department

DATE: December 31, 2019

FROM: Dmitriy Chernyak, Finance Director

DAC
01/02/20

ITEM: Application for Abatement

REQUEST

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

Applications for Abatement for 2019- Disabled Veteran Credit
Property Owner- Deborah Walker
Property Address- 315 N Griffin St / 0045-010-040

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The above property applicant has met all the requirements set forth in the N.D.C.C 57-02-08(20) to apply for the Disabled Veteran Credit.

RECOMMENDED CITY COMMISSION ACTION

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

STAFF CONTACT INFORMATION

Allison Jensen
ajensen@bismarcknd.gov
355-1630

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 Deborah Walker

County Auditor's File No. 19-199

Date Application Was Filed With The County Auditor 6/19/19

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



Finance Department

DATE: December 26, 2019

FROM: Dmitriy Chernyak, Finance Director

DC 12/30/19

ITEM: Application for Abatement

REQUEST

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

Application for Abatement for 2019- Disabled Veteran Credit
Property Owner- Lane Masters
Property Address- 4025 Knudsen Loop / 1612-002-050

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The above property applicant has met all the requirements set forth in the N.D.C.C 57-02-08(20) to apply for the Disabled Veteran Credit.

RECOMMENDED CITY COMMISSION ACTION

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

STAFF CONTACT INFORMATION

Allison Jensen
ajensen@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. 1612-002-050
Name LANE MASTERS Telephone No. _____
Address 4025 KNUDSEN LOOP, BISMARCK

Legal description of the property involved in this application:

EDGEWOOD VILLAGE 7TH
Block: 2
LOT 11

Total true and full value of the property described above for the year 2019 is:

Land \$ 70,000
Improvements \$ 239,500
Total \$ 309,500
(1)

Total true and full value of the property described above for the year 2019 should be:

Land \$ 70,000
Improvements \$ 239,500
Total Adj. \$ 286,000
(2)

The difference of \$ 22,500.00 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.
- 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) 90% DISABILITY / EXEMPT 2 MONTHS

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 the disabled veteran credit be approved as presented.

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

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

Signature of Preparer (if other than applicant) _____ Date _____
Signature of Applicant [Signature] Date 12/26/19

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 Lane Masters

County Auditor's File No. 19-189

Date Application Was Filed With The County Auditor 12/26/19

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

*Allan Uetmeier
 by epk.*



Finance Department

DATE: December 19, 2019

FROM: Dmitriy Chernyak, Finance Director

MAC 12/19/19

ITEM: Application for Abatement

REQUEST

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

Application for Abatement for 2019- Disabled Veteran Credit

Property Owner- Joseph Jr & Shyla Wesson

Property Address- 5306 Mellowsun Dr / 1433-001-001

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The above property applicant has met all the requirements set forth in the N.D.C.C 57-02-08(20) to apply for the Disabled Veteran Credit.

RECOMMENDED CITY COMMISSION ACTION

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

STAFF CONTACT INFORMATION

Allison Jensen

ajensen@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. 1433-001-001
Name WESSON JR, JOSEPH L & SHYLA K Telephone No.
Address 5306 MELLOWSUN DR. BISMARCK

Legal description of the property involved in this application:

HORIZON HEIGHTS 3RD
Block: 1
LOT 1

Total true and full value of the property described above for the year 2019 is:

Land \$ 70,000
Improvements \$ 237,500
Total \$ 307,500
(1)

Total true and full value of the property described above for the year 2019 should be:

Land \$ 70,000
Improvements \$ 237,500
Total Adj \$ 172,500
(2)

The difference of \$ 135,000.00 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.
- 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) Disabled Veteran - 90% Dis

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 the disabled veteran credit be approved as presented.

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

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

Shyla K 19 Dec 19
Signature of Preparer (if other than applicant) Date Signature of Applicant

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 Wesson Sessprachnyk

County Auditor's File No. 91-185

Date Application Was Filed With The County Auditor 12/19/19

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

*Allan Vietmeier
 bjepb.*



Finance Department

DATE: December 20, 2019

FROM: Dmitriy Chernyak, Finance Director

DAC 12/20/19

ITEM: Application for Abatement

REQUEST

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

Application for Abatement for 2019- Disabled Veteran Credit
Property Owner- Lawrence & Judith Fleckenstein
Property Address- 1500 Portland Dr / 605-030-035

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The above property applicant has met all the requirements set forth in the N.D.C.C 57-02-08(20) to apply for the Disabled Veteran Credit.

RECOMMENDED CITY COMMISSION ACTION

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

STAFF CONTACT INFORMATION

Allison Jensen
ajensen@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 2019

Property I.D. No. 0605-030-035

Name FLECKENSTEIN, LAWRENCE & JUDITH A

Telephone No. _____

Address 1500 PORTLAND DR, BISMARCK, ND 58504-6463

Legal description of the property involved in this application:

WACHTER'S 3RD Block: 30 LOT 8

Total true and full value of the property described above for the year 2019 is:

Land \$ 52,000
Improvements \$ 161,500
Total \$ 213,500
(1)

Total true and full value of the property described above for the year 2019 should be:

Land \$ 52,000
Improvements \$ 161,500
Total Adj. \$ 138,500
(2)

The difference of \$ 75,000 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
- 2. Residential or commercial property's true and full value exceeds the market value
- 3. Error in property description, entering the description, or extending the tax
- 4. Nonexisting improvement assessed
- 5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
- 6. Duplicate assessment
- 7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
- 8. Error in noting payment of taxes, taxes erroneously paid
- 9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
- 10. Other (explain) Disabled Veteran - 50% DIS (Full Year)

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 the disabled veteran credit be approved AS presented.

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

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

Signature of Preparer (if other than applicant) _____

Date _____

Lawrence & Judith Fleckenstein
Signature of Applicant

19 Dec 2019
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**

Heckenstein

Name of Applicant *Lawrence J. Smith*

County Auditor's File No. *19-187*

Date Application Was Filed With The County Auditor *12/08/19*

Date County Auditor Mailed Application to Township Clerk or City Auditor *12/10/19*
(must be within five business days of filing date)

Colleen Dietzner
by eps.



Finance Department

DATE: January 6, 2020
FROM: Dmitriy Chernyak, Finance Director
ITEM: Approval of Public Depositories

REQUEST

Approve Public Depositories for City Funds.

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

In accordance with the provisions of NDCC 21-04, the City Commission designates the depositories for City Funds in even-numbered years. Attached is the list of the current financial institutions requesting approval to continue the designation.

RECOMMENDED CITY COMMISSION ACTION

Approve the list of Public Depositories for City Funds

STAFF CONTACT INFORMATION

Dmitriy Chernyak | Finance Director, 355-1600 or dchernyak@bismarcknd.gov

Depositories

- Bank of North Dakota
- Bremer Bank
- Choice Financial
- First International Bank and Trust
- Starion Bank
- US Bank
- Wells Fargo



HUMAN RESOURCES DEPARTMENT

DATE: January 3, 2020
FROM: Robert McConnell, Director of Human Resources
ITEM: 2020 Renewal Contract with BC/BS

REQUEST

Approval of the 2020 BC/BS Administrative Service and Stop Loss Agreement contracts and 2020 Summary Plan Description

Please place this item on the January 14, 2020 City Commission meeting.

BACKGROUND INFORMATION

Blue Cross/Blue Shield of ND administers the City of Bismarck's Health Insurance and provides Stop Loss coverage for our plan. We would like to renew our contract with them for the 2020 plan year.

RECOMMENDED CITY COMMISSION ACTION

The Human Resource Department recommends approval of the BC/BS Administrative Service Agreement and Stop Loss agreement.

STAFF CONTACT INFORMATION

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

Summary Plan Description

City of Bismarck

Health Care Coverage

This is a grandfathered Benefit Plan under the Patient Protection and Affordable Care Act (PPACA).



This health plan is that of your employer. Blue Cross Blue Shield of North Dakota is serving only as the Claims Administrator and does not assume any financial risk except for stop-loss coverage.

Blue Cross Blue Shield of North Dakota is an independent licensee of the Blue Cross & Blue Shield Association



In accordance with federal regulations, Blue Cross Blue Shield of North Dakota is required to provide you the following disclosure:

Blue Cross Blue Shield of North Dakota complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, gender identity, sexual orientation or sex. Blue Cross Blue Shield of North Dakota does not exclude people or treat them differently because of race, color, national origin, age, disability, gender identity, sexual orientation or sex.

Blue Cross Blue Shield of North Dakota:

- Provides free aids and services to people with disabilities to communicate effectively with us, such as:
 - Written information in other formats (large print, audio, accessible electronic formats, other formats)
- Provides free language services to people whose primary language is not English, such as:
 - Qualified interpreters
 - Information written in other languages

If you need these services, please call Member Services at 1-844-363-8457 (toll-free) or through the North Dakota Relay at 1-800-366-6888 or 711.

If you believe that Blue Cross Blue Shield of North Dakota has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, gender identity, sexual orientation or sex, you can file a grievance with:

Civil Rights Coordinator

4510 13th Ave S

Fargo, ND 58121

701-297-1638 or North Dakota Relay at 800-366-6888 or 711

701-282-1804 (fax)

CivilRightsCoordinator@bcbsnd.com (email) (Communication by unencrypted email presents a risk.)

You can file a grievance in person or by mail, fax, or email within 180 days of the date of the alleged discrimination. Grievance forms are available at <http://www.bcbsnd.com/report> or by calling 1-844-363-8457. If you need help filing a grievance, the Civil Rights Coordinator is available to help you.

You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights electronically through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at:

U.S. Department of Health and Human Services

200 Independence Avenue SW.

Room 509F, HHH Building

Washington, DC 20201

800-368-1019 or 800-537-7697 (TDD)

Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>

Español (Spanish)

ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-844-363-8457 (TTY: 1-800-366-6888 o 711).

Deutsch (German)

ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-844-363-8457 (TTY: 1-800-366-6888 oder 711).

中文 (Chinese)

注意：如果您使用繁體中文，您可以免費獲得語言援助服務。請致電 1-844-363-8457 (TTY: 1-800-366-6888 或 711)。

Oroomiffa (Oromo)

XIYYEEFFANNAA: Afaan dubbattu Oroomiffa, tajaajila gargaarsa afaanii, kanfaltiidhaan ala, ni argama. Bilbilaa 1-844-363-8457 (TTY: 1-800-366-6888 ykn 711).

Tiếng Việt (Vietnamese)

CHÚ Ý: Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 1-844-363-8457 (TTY: 1-800-366-6888 hoặc 711).

Ikirundi (Bantu – Kirundi)

ICITONDERWA: Nimba uvuga Ikirundi, uzohabwa serivisi zo gufasha mu ndimi, ku buntu. Woterefona 1-844-363-8457 (TTY: 1-800-366-6888 canke 711).

العربية (Arabic)

ملحوظة: إذا كنت تتحدث اذكر اللغة، فإن خدمات المساعدة اللغوية تتوافر لك بالمجان. اتصل برقم 1-844-363-8457-1 (رقم هاتف الصم والبكم: 1-800-366-6888 أو 711).

Kiswahili (Swahili)

KUMBUKA: Ikiwa unazungumza Kiswahili, unaweza kupata, huduma za lugha, bila malipo. Piga simu 1-844-363-8457 (TTY: 1-800-366-6888 au 711).

Русский (Russian)

ВНИМАНИЕ: Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните 1-844-363-8457 (телетайп: 1-800-366-6888 или 711).

日本語 (Japanese)

注意事項：日本語を話される場合、無料の言語支援をご利用いただけます。1-844-363-8457 (TTY: 1-800-366-6888 または 711) まで、お電話にてご連絡ください。

नेपाली (Nepali)

ध्यान दिनुहोस्: तपाईंले नेपाली बोल्नुहुन्छ भने तपाईंको निम्ति भाषा सहायता सेवाहरू निःशुल्क रूपमा उपलब्ध छ। फोन गर्नुहोस् 1-844-363-8457 (टिटिवाइ: 1-800-366-6888 वा 711)।

Français (French)

ATTENTION : Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1-844-363-8457 (ATS : 1-800-366-6888 ou 711).

한국어 (Korean)

주의: 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1-844-363-8457 (TTY: 1-800-366-6888 또는 711)번으로 전화해 주십시오.

Tagalog (Tagalog – Filipino)

PAUNAWA: Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa 1-844-363-8457 (TTY: 1-800-366-6888 o 711).

Norsk (Norwegian)

MERK: Hvis du snakker norsk, er gratis språkassistanstjenester tilgjengelige for deg. Ring 1-844-363-8457 (TTY: 1-800-366-6888 eller 711).

Diné Bizaad (Navajo)

Díí baa akó nínízin: Díí saad bee yáníłti'go Diné Bizaad, saad bee áká'ánída'áwo'déé', t'áá jii'eh, éí ná hóló, kójj' hódííłnih 1-844-363-8457 (TTY: 1-800-366-6888 éí doodagó 711.)

MEMBER SERVICES

- Questions?** Our Member Services staff is available to answer questions about your coverage –
- Call Member Services:** Monday through Friday
8:00 a.m. - 4:30 p.m. CST

1-844-363-8455
- Office Address and Hours:** You may visit our Home Office during normal business hours –

Monday through Friday
8:00 a.m. - 4:30 p.m. CST

Blue Cross Blue Shield of North Dakota
4510 13th Avenue South
Fargo, North Dakota 58121
- Mailing Address:** You may write to us at the following address –

Blue Cross Blue Shield of North Dakota
4510 13th Avenue South
Fargo, North Dakota 58121
- Internet Address:** www.BCBSND.com
- District Offices:** We invite you to contact our District Office closest to you –
- | | |
|-----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| Fargo District Office
4510 13th Avenue South
(701) 277-2232 | Jamestown Office
300 2nd Avenue Northeast
Suite 132
(701) 251-3180 |
| Bismarck District Office
1415 Mapleton Avenue
(701) 223-6348 | Dickinson Office
1674 15th Street West, Suite D
(701) 225-8092 |
| Grand Forks District Office
3570 South 42nd Street, Suite B
(701) 795-5340 | Devils Lake Office
425 College Drive South, Suite 13
(701) 662-8613 |
| Minot District Office
1308 20th Avenue Southwest
(701) 858-5000 | Williston Office
1137 2nd Avenue West, Suite 105
(701) 572-4535 |

Your employer has established a self-funded employee welfare benefit plan for Eligible Employees and their Eligible Dependents. The following Summary Plan Description is provided to you in accordance with the Employee Retirement Income Security Act of 1974. Every attempt has been made to provide concise and accurate information. This Summary Plan Description and the Service Agreement are the official benefit plan documents for the employee welfare benefit plan established by the Plan Administrator. In case of conflict between this Summary Plan Description and the Service Agreement, the provisions of the Service Agreement will control.

Although it is the intention of the Plan Administrator to continue the self-funded employee welfare benefit plan for an indefinite period of time, the Plan Administrator reserves the right, whether in an individual case or in general, to eliminate the Benefit Plan.

The Claims Administrator shall have full, final and complete discretion to construe and interpret the provisions of the Service Agreement, the Summary Plan Description and related documents, including doubtful or disputed terms and to determine all questions of eligibility; and to conduct any and all reviews of claims denied in whole or in part. The decision of the Claims Administrator shall be final, conclusive and binding upon all parties.

PLAN NAME

City of Bismarck Group Plan

NAME AND ADDRESS OF EMPLOYER (PLAN SPONSOR)

City of Bismarck
221 North 5th Street
Bismarck, North Dakota 58506-5503

PLAN SPONSOR'S IRS EMPLOYER IDENTIFICATION NUMBER

45-6002036

PLAN NUMBER ASSIGNED BY THE PLAN SPONSOR

501

TYPE OF WELFARE PLAN

Health

TYPE OF ADMINISTRATION

This is a self-funded employee welfare benefit plan with an individual stop-loss of \$75,000 and an aggregate stop-loss of 120%. This plan is funded by City of Bismarck. The Claims Administrator does not underwrite, insure or assume liability for payment of Covered Services available under the Benefit Plan up to the stop-loss points. The Claims Administrator does not assume any obligation to pay claims except from funds contributed up to the stop-loss points.

NAME AND ADDRESS OF CLAIMS ADMINISTRATOR

Blue Cross Blue Shield of North Dakota (BCBSND)
4510 13th Avenue South
Fargo, North Dakota 58121

PLAN ADMINISTRATOR'S NAME, BUSINESS ADDRESS AND BUSINESS TELEPHONE NUMBER

City of Bismarck
221 North 5th Street
Bismarck, North Dakota 58506-5503
701-222-6401

NAME AND ADDRESS OF AGENT FOR SERVICE OF LEGAL PROCESS

Plan Administrator:

Robert McConnell
PO Box 5503
Bismarck, North Dakota 58506-5503

Claims Administrator:

Don Campbell
Blue Cross Blue Shield of North Dakota
4510 13th Avenue South
Fargo, North Dakota 58121

Service of legal process may be made upon a Plan trustee or the Plan Administrator.

NAME, TITLE, AND ADDRESS OF THE PRINCIPAL PLACE OF BUSINESS OF EACH TRUSTEE OF THE PLAN

Robert W McConnell
PO Box 5503
Bismarck, North Dakota 58506-5503

TITLE OF EMPLOYEES AUTHORIZED TO RECEIVE PROTECTED HEALTH INFORMATION

Director Human Resources
HR Generalist

HR Assistant

This includes every employee, class of employees, or other workforce person under control of the Plan Sponsor who may receive the Member's Protected Health Information relating to payment under, health care operations of, or other matters pertaining to the Benefit Plan in the ordinary course of business. These identified individuals will have access to the Member's Protected Health Information only to perform the plan administrative functions the Plan Sponsor provides to the Benefit Plan. Such individuals will be subject to disciplinary action for any use or disclosure of the Member's Protected Health Information in breach or in violation of, or noncompliance with, the privacy provisions of the Benefit Plan. The Plan Sponsor shall promptly report any such breach, violation, or noncompliance to the Plan Administrator; will cooperate with the Plan Administrator to correct the breach, violation and noncompliance to impose appropriate disciplinary action on each employee or other workforce person causing the breach, violation, or noncompliance; and will mitigate any harmful effect of the breach, violation, or noncompliance on any Member whose privacy may have been compromised.

STATEMENT OF ELIGIBILITY TO RECEIVE BENEFITS

Full-time regular employees (30 hours per week) are eligible 1st or 16th of the month after 30 days of fulltime employment date.

Eligibility to receive benefits under the Benefit Plan is initially determined by the Plan Administrator. When an eligible employee meets the criteria for eligibility, an application must be completed. The Claims Administrator may review this initial determination and has full discretion to determine eligibility for benefits. The Claims Administrator's decision shall be final, conclusive and binding upon all parties.

DESCRIPTION OF BENEFITS

See the Schedule of Benefits and the Covered Services Sections. Refer to the Table of Contents for page numbers.

SOURCES OF PREMIUM CONTRIBUTIONS TO THE PLAN AND THE METHOD BY WHICH THE AMOUNT OF CONTRIBUTION IS CALCULATED

City of Bismarck pays 100% of premium.

END OF THE YEAR DATE FOR PURPOSES OF MAINTAINING THE PLAN'S FISCAL RECORDS

December 31

**HEALTH BENEFITS
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INTRODUCTION

Benefits described in this Benefit Plan are available to Members and cannot be transferred or assigned. Any attempt to transfer or assign the benefits of this Benefit Plan to ineligible persons will result in automatic termination of this Benefit Plan by the Claims Administrator.

The Plan Administrator believes this Benefit Plan is a “grandfathered health plan” under the Patient Protection and Affordable Care Act (Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered health plan can preserve certain basic health coverage that was already in effect when that law was enacted. Being a grandfathered health plan means that the Subscriber’s Benefit Plan may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any Cost Sharing Amounts. However, grandfathered health plans must comply with certain other consumer protections in the Affordable Care Act, for example, the elimination of lifetime limits on benefits.

Questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status can be directed to the Claims Administrator at the telephone number and address on the back of the Member's Identification Card. If this Benefit Plan is affected by ERISA, the Member may also contact the Employee Benefits Security Administration, U.S. Department of Labor at 1-866-444-3272 or www.dol.gov/ebsa/healthreform. This website has a table summarizing which protections do and do not apply to grandfathered health plans. Members may also contact the U.S. Department of Health and Human Services at www.healthreform.gov.

The Subscriber will receive an Identification Card displaying the Unique Member Identifier and other information about this Benefit Plan. All Members share this Unique Member Identifier. Carry the Identification Card at all times. If the Identification Card is lost, contact the Claims Administrator to request a replacement. The Subscriber must not let anyone other than an Eligible Dependent use the Identification Card. If another person is allowed to utilize the Identification Card, the Member's coverage will be terminated.

Present your Identification Card to your Health Care Provider to identify yourself as a Member. Participating Health Care Providers will submit claims on your behalf. You will be notified in writing by the Claims Administrator of benefit payments made for Covered Services. Please review your Explanation of Benefits and advise the Claims Administrator if you were billed for services you did not receive.

If you receive services from a Health Care Provider that will not submit claims on your behalf, you are responsible for the submission of a written notice of a claim for the services you received within 12 months after the date the services were provided. The written notice must include information necessary for the Claims Administrator to determine benefits.

The Subscriber hereby expressly acknowledges and understands that Blue Cross Blue Shield of North Dakota is an independent corporation operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting Blue Cross Blue Shield of North Dakota to use the Blue Cross and Blue Shield Service Marks in the state of North Dakota, and that Blue Cross Blue Shield of North Dakota is not contracting as an agent of the Association. The Subscriber further acknowledges and agrees this Benefit Plan was not entered into based upon representations by any person or entity other than Blue Cross Blue Shield of North Dakota and that no person, entity, or organization other than Blue Cross Blue Shield of North Dakota shall be held accountable or liable to the Subscriber for any of Blue Cross Blue Shield of North Dakota's obligations to the Subscriber created under this Benefit Plan. This paragraph shall not create any additional obligations whatsoever on the part of Blue Cross Blue Shield of North Dakota other than those obligations created under other provisions of this Benefit Plan.

MEMBER RIGHTS AND RESPONSIBILITIES

As a Member you have the right to:

- Receive impartial access to treatment and/or accommodations that are available or medically indicated, regardless of race, color, religious creed, handicap, ancestry, national origin, age or sex.
- Be treated with respect, dignity and privacy.
- Privacy of your personal health information that the Claims Administrator maintains in accordance with federal and state laws.
- Be informed about your health condition and to receive information regarding treatment options and their risk in order to make an informed choice regardless of cost or benefit coverage.
- Participate with your Health Care Providers about decisions regarding your treatment, including the right to refuse treatment.
- Make recommendations regarding this Member's rights and responsibilities statement.
- File a complaint or an appeal about your health plan or the services it delivers. You may do so by contacting Member Services at the telephone number on the back of your Identification Card.
- Receive information about the Claims Administrator, its products and services, its Participating Providers, and your rights and responsibilities.

As a Member you have the responsibility to:

- Know your health plan benefits and requirements.
- Timely advise the Claims Administrator of any changes that affect you or your family, such as a birth, marriage/divorce or change of address.
- Provide the necessary information to your Health Care Providers needed to determine appropriate care.
- Follow the treatment plan prescribed by your Health Care Provider.
- Timely provide the Claims Administrator the necessary information to process your claims and provide you with the benefits available to you under your plan.

**SECTION 1
SCHEDULE OF BENEFITS**

This section outlines the payment provisions for Covered Services described in Section 2, subject to the definitions, exclusions, conditions and limitations of this Benefit Plan.

The Claims Administrator shall have full discretion to interpret and determine the application of the Schedule of Benefits in each and every situation. Any decisions by the Claims Administrator regarding the Schedule of Benefits shall be final, conclusive and binding upon all parties.

1.1 COST SHARING AMOUNTS

Cost Sharing Amounts include Coinsurance, Copayment, Deductible, Infertility Services Deductible and Out-of-Pocket Maximum Amounts. A Member is responsible for the Cost Sharing Amounts. Please see Section 1.5, Outline of Covered Services, for the specific Cost Sharing Amounts that apply to this Benefit Plan. All Members contribute to the Deductible and Coinsurance Amounts. However, a Member's contribution cannot be more than the Individual Participation amount. Health Care Providers may bill you directly or request payment of Coinsurance, Copayment and Deductible Amounts at the time services are provided.

If the Claims Administrator pays amounts to the Health Care Provider that are the Member's responsibility, such as Deductibles, Copayments or Coinsurance Amounts, the Claims Administrator may collect such amounts directly from the Member. The Member agrees that the Claims Administrator has the right to collect such amounts from the Member.

Under this Benefit Plan the Deductible Amounts are:

Individual Participation	\$200 per Benefit Period
Parent and Child Participation	\$525 per Benefit Period
Parent and Children Participation	\$525 per Benefit Period
Two Person Participation	\$525 per Benefit Period
Family Participation	\$525 per Benefit Period

Under this Benefit Plan the Coinsurance Maximum Amounts are:

Individual Participation	\$1,250 per Benefit Period
Parent and Child Participation	\$3,750 per Benefit Period
Parent and Children Participation	\$3,750 per Benefit Period
Two Person Participation	\$3,750 per Benefit Period
Family Participation	\$3,750 per Benefit Period

Under this Benefit Plan the Out-of-Pocket Maximum Amounts are:

Individual Participation	\$1,450 per Benefit Period
Parent and Child Participation	\$4,275 per Benefit Period
Parent and Children Participation	\$4,275 per Benefit Period
Two Person Participation	\$4,275 per Benefit Period
Family Participation	\$4,275 per Benefit Period

Under this Benefit Plan the Copayment Amounts are:

A \$20 Copayment Amount for each Office Visit. Once a Member has paid a total of 15 Copayment Amounts, the Copayment Amount will be waived for any additional Office Visits within that Benefit Period.

A \$50 Copayment Amount for each Emergency Room Visit for Emergency Services.

Under this Benefit Plan the Lifetime Infertility Services Deductible Amount is:

\$500 per Member

1.2 LIFETIME MAXIMUM

The Lifetime Maximum for this Benefit Plan is unlimited, except for specific Covered Services as listed in the Outline of Covered Services.

1.3 SELECTING A HEALTH CARE PROVIDER

This Benefit Plan recognizes the following categories of Health Care Providers based on the Health Care Provider's relationship with the Claims Administrator:

A. Participating Health Care Providers

When Covered Services are received from a Participating Health Care Provider, the Participating Health Care Provider agrees to submit claims to the Claims Administrator on behalf of the Member. Reimbursement for Covered Services will be made directly to the Participating Health Care Provider according to the terms of this Benefit Plan and the participation agreement between the Health Care Provider and the Claims Administrator.

When Covered Services are received from a Participating Health Care Provider, a provider discount provision is in effect. This means the Allowance paid by the Claims Administrator will be considered by the Participating Health Care Provider as payment in full, except for Cost Sharing Amounts, Maximum Benefit Allowances or Lifetime Maximums.

Participating Health Care Providers have also agreed to perform authorization requirements on behalf of the Member.

B. Nonparticipating Health Care Providers

If a Member receives Covered Services from a Nonparticipating Health Care Provider, the Member will be responsible for notifying the Claims Administrator of the receipt of services by submitting a claim within 12 months after the date of the services. The written notice must include information necessary for the Claims Administrator to determine benefits. If the Claims Administrator needs copies of medical records to process the Member's claim, the Member is responsible for obtaining such records from the Nonparticipating Health Care Provider. In addition, the Member will be responsible for compliance with all required authorization provisions. See Section 3, Authorizations.

1. Nonparticipating Health Care Providers Within the State of North Dakota

If a Member receives Covered Services from a Nonparticipating Health Care Provider within the state of North Dakota, benefit payments will be based on the Allowance.

The Member is responsible for any charges in excess of the Allowance for Covered Services.

Benefit payments will be made directly to the Subscriber for Covered Services received from a Nonparticipating Health Care Provider. The Claims Administrator will not honor an assignment of benefit payments to any other person or Health Care Provider.

2. Nonparticipating Health Care Providers Outside the State of North Dakota

If a Member receives Covered Services from a Nonparticipating Health Care Provider outside the state of North Dakota, the Allowance for Covered Services will be an amount within a general range of payments made and judged to be reasonable by the Claims Administrator.

The Member is responsible for any charges in excess of the Allowance for Covered Services.

If a Member receives Covered Services from a Health Care Provider in a county contiguous to North Dakota, the benefit payment will be provided on the same basis as a Health Care Provider located in the state of North Dakota. If the Health Care Provider is a Participating Health Care Provider, the benefit payment will be as indicated in the Outline of Covered Services. If the Health Care Provider is not a Participating Health Care Provider, benefits will be available at the same level as Nonparticipating Health Care Providers within the state of North Dakota.

Payment for Covered Services received from out-of-state Health Care Providers will be made directly to the Subscriber unless a special arrangement exists between the Claims Administrator and the Health Care Provider. The Claims Administrator may designate an out-of-state Health Care Provider as Nonpayable.

An assignment of payment to an out-of-state Health Care Provider must be in writing, filed with each claim and approved by the Claims Administrator.

3. Nonparticipating Health Care Providers in a Participating Health Care Provider Setting

In certain situations, a Member may receive Covered Services Including anesthesiology, radiology, or pathology from a Nonparticipating Health Care Provider in a Participating Health Care Provider setting. When these situations occur, benefits Including anesthesiology, radiology, or pathology Covered Services from the Nonparticipating Health Care Provider will be available at the same level as a Participating Health Care Provider, and reimbursement will be based on the Allowance.

The Member is responsible for any charges in excess of the Allowance for Covered Services.

Benefit payments will be made directly to the Subscriber for Covered Services received from a Nonparticipating Health Care Provider. The Claims Administrator will not honor an assignment of benefits to any other person or Health Care Provider.

C. Nonpayable Health Care Providers

If the Claims Administrator designates a Health Care Provider as Nonpayable, no benefits will be available for Covered Services prescribed by, performed by or under the direct supervision of the Nonpayable Health Care Provider. Notice of designation as a Nonpayable Health Care Provider will be provided to Members at least 30 days prior to the effective date of designation as a Nonpayable Health Care Provider. As of the date of termination, all charges incurred by a Member for services received from the Nonpayable Health Care Provider will be the Subscriber's responsibility.

D. Inter-Plan Arrangements

BCBSND has a variety of relationships with other Blue Cross and/or Blue Shield Licensees referred to generally as "Inter-Plan Arrangements." These Inter-Plan Arrangements work based on rules and procedures issued by the Blue Cross Blue Shield Association ("Association"). Whenever a Member obtains health care services outside of the geographic area BCBSND serves, the claims for these services may be processed through one of these Inter-Plan Arrangements. The Inter-Plan Arrangements are described below.

When a Member receives care outside of the BCBSND service area, the Member will receive care from one of two kinds of health care providers. Most health care providers ("participating health care providers") contract with the local Blue Cross and/or Blue Shield Plan in that geographic area ("Host Blue"). Some health care providers ("nonparticipating health care providers") do not contract with the Host Blue. Below BCBSND explains how BCBSND pays both kinds of health care providers.

All claim types are eligible to be processed through Inter-Plan Arrangements, as described above, except for all dental care benefits and vision care benefits (except when paid as medical claims/benefits), and those prescription drug benefits that may be administered by a third party contracted by BCBSND to provide the specific service or services.

1. BlueCard® Program

Under the BlueCard Program, when a Member accesses health care services within the geographic area serviced by a Host Blue, BCBSND will remain responsible for fulfilling BCBSND's contractual obligations. However, the Host Blue is responsible for contracting with and generally handling all interactions with its participating health care providers.

When a Member obtains health care services outside the geographic area BCBSND serves and the claim is processed through the BlueCard Program, the amount the Member pays for Covered Services is calculated on the **lower** of:

- The Host Blue's participating health care provider's billed charges, or
- The negotiated price that the Host Blue makes available to BCBSND.

Often, this "negotiated price" will be a simple discount that reflects an actual price paid by the Host Blue. Sometimes it is an estimated price that takes into account special arrangements with a health care provider or with a specified group of health care providers that may include types of settlements, incentive payments, and/or other credits or charges. Occasionally, it may be an average price, based on a discount that results in expected average savings for similar types of health care providers after taking into account the same types of transactions as with an estimated price.

Estimated pricing and average pricing also take into account adjustments to correct for over- or underestimation of past pricing of claims, as noted above. However, such adjustments will not affect the price BCBSND uses for the Member's claim because they will not be applied after a claim is already paid.

2. Value-Based Programs

If a Member receives Covered Services under a Value-Based Program inside a Host Blue's service area, the Member will not be responsible for paying any of the Provider Incentives, risk-sharing, and/or Care Coordinator Fees that are a part of such an arrangement, except when a Host Blue passes these fees to BCBSND through average pricing or fee schedule adjustments.

For the purpose of this provision, the following definitions apply:

- a. Care Coordination: Organized, information-driven patient care activities intended to facilitate the appropriate responses to a Member's health care needs across the continuum of care.
- b. Care Coordinator Fees: A fixed amount paid by a Blue Cross and/or Blue Shield Plan to health care providers periodically for Care Coordination under a Value-Based Program.
- c. Provider Incentive: An additional amount of compensation paid to a health care provider by a Blue Cross and/or Blue Shield Plan, based on the health care provider's compliance with agreed-upon procedural and/or outcome measures for a particular group of covered persons.
- d. Value-Based Program: An outcomes-based payment arrangement and/or a coordinated care model facilitated with one or more local health care providers that is evaluated against cost and quality metrics/factors and is reflected in provider payment.

3. Federal/State Taxes/Surcharges/Fees

Federal or state laws or regulations may require a surcharge, tax or other fee that applies to insured accounts. If applicable, BCBSND will include any such surcharge, tax or other fee as part of the claim charge passed on to the Member.

4. Nonparticipating Health Care Providers Outside the BCBSND Service Area

When Covered Services are provided outside of BCBSND's service area by nonparticipating health care providers, the amount the Member pays for such services will generally be based on either the Host Blue's nonparticipating health care provider local payment or the pricing arrangements required by applicable state law. In these situations, the Member may be responsible for the difference between the amount that the nonparticipating health care provider bills and the payment BCBSND will make for the Covered Services as set forth in this paragraph. Federal or state law, as applicable, will govern payments for out-of-network Emergency Services.

In certain situations, BCBSND may use other payment bases, such as the payment BCBSND would make if the Covered Services had been obtained within the BCBSND service area, or a special negotiated payment to determine the amount BCBSND will pay for Covered Services provided by nonparticipating health care providers. In these situations, a Member may be liable for the difference between the amount that the nonparticipating health care provider bills and the payment BCBSND will make for the Covered Services as set forth in this paragraph.

For further information on Nonparticipating Health Care Providers within the BCBSND service area, see the Nonparticipating Health Care Providers section under Selecting a Health Care Provider in Section 1 of the Benefit Plan.

5. Blue Cross Blue Shield Global Core

If Members are outside the United States, the Commonwealth of Puerto Rico and the U.S. Virgin Islands (hereinafter: "BlueCard service area"), they may be able to take advantage of Blue Cross Blue Shield Global Core when accessing Covered Services. Blue Cross Blue Shield Global Core is not served by a Host Blue.

If a Member needs medical assistance services (including locating a doctor or hospital) outside the BlueCard service area, the Member should call the Blue Cross Blue Shield Global Core Service Center at 1-800-810-BLUE (2583) or call collect at 1-804-673-1177, 24 hours a day, seven days a week. An assistance coordinator, working with a medical professional, can arrange a physician appointment or hospitalization, if necessary.

a. Inpatient Services

In most cases, if a Member contacts the Blue Cross Blue Shield Global Core Service Center for assistance, hospitals will not require the Member to pay for covered inpatient services, except for Cost Sharing Amounts. In such cases, the hospital will submit the Member's claims to the Blue Cross Blue Shield Global Core Service Center to initiate claims processing. However, if the Member paid in full at the time of service, the Member must submit a claim to obtain reimbursement for Covered Services.

b. Outpatient Services

Physicians, urgent care centers and other outpatient health care providers located outside the BlueCard service area will typically require a Member to pay in full at the time of service. The Member must submit a claim to obtain reimbursement for Covered Services.

c. Submitting a Blue Cross Blue Shield Global Core Claim

When a Member pays for Covered Services outside the BlueCard service area, the Member must submit a claim to obtain reimbursement. For institutional and professional claims, the Member should complete a Blue Cross Blue Shield Global Core International claim form and send the claim form with the health care provider's itemized bill(s) to the Blue Cross Blue Shield Global Core Service Center address on the form to initiate claims processing. The claim form is available from BCBSND, the Blue Cross Blue Shield Global Core Service Center or online at www.bcbsglobalcore.com. If a Member needs assistance with claim submissions, the Member should call the Blue Cross Blue Shield Global Core Service Center.

E. Health Care Providers Outside the United States

The benefits available under this Benefit Plan are also available to Members traveling or living outside of the United States. The Precertification requirements will apply. See the Blue Cross Blue Shield Global Core section above for further information on services received outside the United States.

The Claims Administrator will reimburse Prescription Medications or Drugs purchased outside the United States by Members who live outside the United States where no suitable alternative exists. Reimbursement will also be made in instances where Members are traveling and new drug therapy is initiated for acute conditions or where emergency replacement of drugs originally prescribed and purchased in the United States is necessary. The reimbursable supply of drugs in travel situations will be limited to an amount necessary to assure continuation of therapy during the travel period and for a reasonable period thereafter.

F. Medicare Private Contracts

A Health Care Provider may ask a Member who is eligible for Medicare to enter into a Medicare private contract where the Member and the Health Care Provider agree that the Member is to be provided with services outside of the Medicare program. This Medicare private contract must be entered into between the Member and the Health Care Provider prior to the receipt of any services and indicate that neither the Member nor the Health Care Provider is permitted to file a request for reimbursement with Medicare for any of the services provided by the Health Care Provider and that the Health Care Provider can charge any amount agreed to by the Member for services instead of the Medicare limiting charge. Under a Medicare private contract, the Health Care Provider can set any price for services but Medicare will not pay anything. If the Member enters into a Medicare private contract, Medicare will not pay any portion of the services and the Claims Administrator will limit its payment to the amount the Claims Administrator would have paid as though Medicare was paying for such Covered Services. If a Member enters into a Medicare private contract, the Member is responsible for paying the difference between the amount billed by the Health Care Provider for Covered Services and the amount paid by the Claims Administrator.

1.4 CONTINUITY OF CARE

If a Member is receiving an active course of treatment care from a Participating Health Care Provider who becomes a Nonparticipating Health Care Provider during the active course of treatment, the Claims Administrator will authorize continuity of care at the Participating Health Care Provider level for the following conditions or situations:

- A. Continuation for up to 90 days:
 - 1. Active treatment (radiation, chemotherapy, surgery) for cancer;
 - 2. Active treatment for severe or end stage kidney disease or dialysis;
 - 3. Active treatment for mental health or substance abuse services; or
 - 4. A serious acute condition or other life threatening condition.
- B. Continuation through the first postpartum visit:
 - 1. A pregnancy beyond the first trimester; or
 - 2. A high risk pregnancy.
- C. Continuation for up to 1 year:
 - 1. A transplant or on a waiting list to receive a transplant.
- D. Continuation as long as the individual is a Member under this Benefit Plan:
 - 1. Receiving active treatment for Human Immunodeficiency Virus (HIV) or Symptomatic Acquired Immunodeficiency Syndrome (AIDS).

The Member or the Member's Authorized Representative must submit a written request for continuity of care to the Claims Administrator within 180 days of the first day the Health Care Provider is deemed a Nonparticipating Health Care Provider.

Benefit payment will be made directly to the Subscriber for Covered Services received from the Nonparticipating Health Care Provider. Charges exceeding the Claims Administrator's Allowance will be considered noncovered services and the Member is responsible for any charges in excess of the Allowance for Covered Services.

For further information, please contact Member Services at the telephone number and address on the back of the Identification Card.

1.5 OUTLINE OF COVERED SERVICES

The benefit amounts specified in this outline apply only to Covered Services received from Participating Health Care Providers. Benefit amounts for Covered Services received from a Nonparticipating Health Care Provider differ as described in Section 1.3, Selecting a Health Care Provider.

Covered Services	The Claims Administrator Pays After Deductible and Applicable Copayment Amounts
Inpatient Hospital and Medical Services	
• Inpatient Hospital Services	80% of Allowed Charge.
• Inpatient Medical Care Visits	80% of Allowed Charge.
• Ancillary Services	80% of Allowed Charge.
• Inpatient Consultations	80% of Allowed Charge.
• Concurrent Services	80% of Allowed Charge.
• Initial Newborn Care	80% of Allowed Charge.
Inpatient and Outpatient Surgical Services	
• Professional Health Care Provider Services	80% of Allowed Charge.
• Assistant Surgeon Services	80% of Allowed Charge.
• Ambulatory Surgical Facility Services	80% of Allowed Charge.
• Hospital Ancillary Services	80% of Allowed Charge.
• Anesthesia Services	80% of Allowed Charge.
• Morbid Obesity Surgery	80% of Allowed Charge subject to a Lifetime Maximum of 1 operative procedure per Member when Precertification is received from the Claims Administrator.
• Outpatient Sterilization Procedures for Females	100% of Allowed Charge. Deductible Amount is waived.
• Surgical Removal of Impacted Teeth	80% of Allowed Charge.
Transplant Services	80% of Allowed Charge when Precertification is received from the Claims Administrator. Benefits are subject to a Lifetime Maximum of 2 transplant procedures for the same condition.
Temporomandibular (TMJ) or Craniomandibular (CMJ) Joint Treatment	80% of Allowed Charge. Benefits are subject to a Lifetime Maximum of 2 surgical procedures and a Maximum Benefit Allowance of 1 splint per Member per Benefit Period.

The Claims Administrator Pays After Deductible and Applicable Copayment Amounts

Covered Services

Outpatient Hospital and Medical Services

- Home and Office Visits \$20 Copayment Amount per Office Visit, then 80% of Allowed Charge for the first 15 Office Visits. The Copayment Amount will be waived for any additional Office Visits within the Benefit Period.
- Diagnostic Services 80% of Allowed Charge.
- Emergency Accident Care 80% of Allowed Charge. Deductible Amount is waived for initial care.
- Supplement Accident Care 100% of Allowed Charge to a Maximum Benefit Allowance of \$300 for care sought within 90 days of accident care.
- Emergency Services \$50 Copayment Amount, then 80% of Allowed Charge for office or emergency room facility fee billed by a Hospital. Deductible Amount applies.
- Emergency Services \$20 Copayment Amount, then 80% of Allowed Charge for office or emergency room visit billed by a Professional Health Care Provider. Deductible Amount applies.
- Emergency Services 80% of Allowed Charge for all Ancillary Services received in an emergency room or Professional Health Care Provider's office.
- Dental Services Related to Teeth Extractions in Preparation for Radiation Treatment or Accidental Injury 80% of Allowed Charge.
- Preadmission Testing Services
 - Diagnostic Services 100% of Allowed Charge. Deductible Amount is waived.
 - Related Office Visit 100% of Allowed Charge. Deductible Amount is waived.
- Second Surgical Opinions \$20 Copayment Amount, then 100% of Allowed Charge. Deductible Amount is waived.
- Radiation Therapy and Chemotherapy 80% of Allowed Charge.
- Dialysis Treatment 80% of Allowed Charge.
- Home Infusion Therapy Services 80% of Allowed Charge.
- Visual Training for Members under age 10 80% of Allowed Charge subject to a Lifetime Maximum of 16 visits per Member.
- Allergy Services 80% of Allowed Charge.

**The Claims Administrator Pays After
Deductible and Applicable Copayment
Amounts**

Covered Services

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| <ul style="list-style-type: none"> • Phenylketonuria (PKU) - Foods and food products for the dietary treatment of Members born after 12/31/62 with maple syrup urine disease or phenylketonuria (PKU) | 80% of Allowed Charge. |
| <ul style="list-style-type: none"> • Dental Anesthesia and Hospitalization | 80% of Allowed Charge. Precertification is required for all Members age 9 and older. |

Wellness Services

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| <ul style="list-style-type: none"> • Pediatric Preventive Visits for Members through age 6 | <p>100% of Allowed Charge. Deductible Amount is waived.</p> <p>Benefits are available for pediatric preventive visits according to guidelines supported by the Health Resources and Services Administration, including:</p> <ul style="list-style-type: none"> • 11 visits for Members from birth through 35 months; • 1 visit per Benefit Period for Members age 3 through age 6. |
| <p style="padding-left: 40px;">Topical fluoride varnish applications by a medical Health Care Provider</p> | <p>100% of Allowed Charge. Deductible Amount is waived.</p> <p>Benefits are subject to a Maximum Benefit Allowance of 2 applications per Member per Benefit Period.</p> |
| <ul style="list-style-type: none"> • Immunizations | <p>100% of Allowed Charge. Deductible Amount is waived.</p> <p>Covered immunizations are those that have been published as policy by the Centers for Disease Control, including DPT (Diphtheria-Pertussis-Tetanus), MMR (Measles-Mumps-Rubella), Hemophilus Influenza B, Hepatitis, Polio, Varicella (Chicken Pox), Pneumococcal Disease, Influenza Virus, Tetanus, Meningococcal Disease and Human Papillomavirus (HPV). Certain age restrictions may apply.</p> |
| <ul style="list-style-type: none"> • Preventive Screening Services for Members age 7 and older | <p>Benefits are available for preventive screening services according to A or B Recommendations of the U.S. Preventive Services Task Force and issued by the Health Resources and Services Administration, including:</p> |
| <p style="padding-left: 40px;">Routine Physical Examination (Office Visit)</p> | <p>100% of Allowed Charge. Deductible Amount is waived.</p> |

**The Claims Administrator Pays After
Deductible and Applicable Copayment
Amounts**

Covered Services

<p>Routine Diagnostic Screenings:</p> <ul style="list-style-type: none"> ➤ Adult Aortic Aneurysm Screening for male Members age 65 and older ➤ Lipid Disorders Screening once every 5 years ➤ Osteoporosis Screening for female Members once every 2 years ➤ Sexually Transmitted Disease (STD) Screening ➤ Diabetes Screening ➤ Hepatitis C Virus (HCV) Screening for Members at high risk ➤ Lung Cancer Screening for Members age 55 through 80 with a 30 pack per year smoking history ➤ Hepatitis B Virus (HBV) Screening for Members at high risk ➤ Tuberculosis Screening <p>Breast Cancer Screening</p> <p style="padding-left: 40px;">Mammography with or without Digital Breast Tomosynthesis Screening (3D Mammography)</p> <p>Cervical Cancer Screening</p> <p style="padding-left: 40px;">Related Office Visit</p>	<p>100% of Allowed Charge. Deductible Amount is waived.</p> <p>100% of Allowed Charge. Deductible Amount is waived.</p> <ul style="list-style-type: none"> • One service for Members between the ages of 35 and 40; • One service per year for Members age 40 and older. <p>100% of Allowed Charge subject to a Maximum Benefit Allowance of 1 Pap smear per Benefit Period. Deductible Amount is waived.</p> <p>100% of Allowed Charge. Deductible Amount is waived.</p>
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The Claims Administrator Pays After Deductible and Applicable Copayment Amounts

Covered Services

<p>Colorectal Cancer Screening for Members age 50 through 75:</p> <ul style="list-style-type: none"> ➤ <u>Fecal Occult Blood Testing (FOBT), Fecal Immunochemical Tests (FIT)</u> – subject to a Maximum Benefit Allowance of 1 test per Benefit Period; and ➤ <u>FIT DNA</u> – subject to a Maximum Benefit Allowance of 1 test every 3 years; or ➤ <u>Colonoscopy</u> – subject to a Maximum Benefit Allowance of 1 test every 10 years; or ➤ <u>Sigmoidoscopy</u> – subject to a Maximum Benefit Allowance of 1 test every 5 years. 	<p>100% of Allowed Charge. Deductible Amount is waived.</p>
<p>Prostate Cancer Screening</p>	<p>80% of Allowed Charge for an annual digital rectal examination and an annual prostate-specific antigen test for an asymptomatic male age 50 and older, a black male age 40 and older, and a male age 40 and older with a family history of prostate cancer. Deductible Amount is waived.</p>
<p>Related Office Visit</p>	<p>\$20 Copayment Amount for the Office Visit, then 80% of Allowed Charge. Deductible Amount is waived.</p>
<p>Physical Therapy for community dwelling Members age 65 and older at risk for falls</p>	<p>100% of Allowed Charge. Deductible Amount is waived.</p> <p>A community dwelling Member is an individual who does not live in an assisted-living facility or nursing home.</p>
<p>Intensive Behavioral Interventions for Obesity</p>	<p>100% of Allowed Charge. Deductible Amount is waived.</p> <p>Benefits are subject to Maximum Benefit Allowances of:</p> <ul style="list-style-type: none"> • 26 visits per Member per Benefits Period for Members age 6 through age 18. • 12 visits per Member per Benefit Period for Members age 19 and older.
<p>Nutritional Counseling</p>	<p>100% of Allowed Charge. Deductible Amount is waived.</p> <ul style="list-style-type: none"> • Hyperlipidemia – Maximum Benefit Allowance of 4 visits per Member per Benefit Period.

The Claims Administrator Pays After Deductible and Applicable Copayment Amounts

Covered Services

- Gestational Diabetes – Maximum Benefit Allowance of 4 visits per Member per Benefit Period.
- Diabetes Mellitus – Maximum Benefit Allowance of 4 visits per Member per Benefit Period.
- Hypertension – Maximum Benefit Allowance of 2 visits per Member per Benefit Period.

Please refer to BCBSND's Preventive Health Guidelines (available online at www.BCBSND.com or upon request by contacting Member Services at the telephone number and address on the back of your Identification Card) for further preventive services information.

Benefits other than those recommended by the U.S. Preventive Services Task Force and issued by the Health Resources and Services Administration will be subject to Cost Sharing Amounts. See Outpatient Hospital and Medical Services.

A Health Care Provider will counsel Members as to how often preventive services are needed based on the age, gender and medical status of the Member.

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| <ul style="list-style-type: none"> • Outpatient Nutrition Care Services (Including Feeding and Eating Disorders) | <p>\$20 Copayment Amount per Office Visit, then 80% of Allowed Charge. Deductible Amount is waived. Benefits are available to the Maximum Benefit Allowance for the following diagnosed medical conditions:</p> <ul style="list-style-type: none"> • Chronic Renal Failure – Maximum Benefit Allowance of 4 Office Visits per Member per Benefit Period. • PKU – Maximum Benefit Allowance of 4 Office Visits per Member per Benefit Period. • Celiac Disease – Maximum Benefit Allowance of 2 Office Visits per Member per Benefit Period. |
| <ul style="list-style-type: none"> • Diabetes Education Services | <p>80% of Allowed Charge. Deductible Amount is waived.</p> |
| <ul style="list-style-type: none"> • Diabetes Prevention Program for Members age 18 and older | <p>100% of Allowed Charge. Deductible Amount is waived.</p> |
| <ul style="list-style-type: none"> • Dilated Eye Examination (for diabetes related diagnosis) | <p>\$20 Copayment Amount, then 80% of Allowed Charge subject to a Maximum Benefit Allowance of 1 examination per Member per Benefit Period. Deductible Amount is waived.</p> |

The Claims Administrator Pays After Deductible and Applicable Copayment Amounts

Covered Services

- Tobacco Cessation Services
 - Prescription Non-Nicotine Replacement Therapy
 - Payable Over-the-Counter (OTC) Nicotine Replacement Therapy (nicotine lozenges, patches, gum)
 - Prescription Nicotine Replacement Therapy (nicotine nasal spray, inhaler, patches)
 - Related Office Visit

Tobacco cessation services obtainable with a Prescription Order are paid at 100% of Allowed Charge. Deductible Amount is waived.

Benefits are subject to a Maximum Benefit Allowance of 2 quit attempt cycles per Member per Benefit Period. A quit attempt cycle includes 4 counseling visits and/or a 3-month supply of nicotine or non-nicotine replacement therapy.

100% of Allowed Charge. Deductible Amount is waived.

Outpatient Therapy Services

- Rehabilitative Therapy
 - Physical Therapy
 - Occupational Therapy
 - Speech Therapy
- Habilitative Therapy
 - Physical Therapy
 - Occupational Therapy
 - Speech Therapy
 - Behavioral Modification Intervention for Autism Spectrum Disorder (Including Applied Behavior Analysis (ABA))
- Other Therapy Services
 - Respiratory Therapy Services
 - Cardiac Rehabilitation Services
 - Pulmonary Rehabilitation Services

80% of Allowed Charge.

80% of Allowed Charge subject to a Maximum Benefit Allowance of 90 visits per therapy per Member per Benefit Period.

80% of Allowed Charge. Precertification is required.

80% of Allowed Charge.

80% of Allowed Charge. Deductible Amount is waived.

80% of Allowed Charge. Deductible Amount is waived.

Chiropractic Services

Benefits are available up to a Maximum Benefit Allowance of 20 visits per Member per Benefit Period.

- Home and Office Visits
 - 80% of Allowed Charge.

**The Claims Administrator Pays After
Deductible and Applicable Copayment
Amounts**

Covered Services

- Therapy and Manipulations 80% of Allowed Charge.
- Diagnostic Services 80% of Allowed Charge.

Maternity Services

- Inpatient Hospital and Medical Services 80% of Allowed Charge.
- Prenatal and Postnatal Care 80% of Allowed Charge. Deductible Amount is waived.
- Lactation Counseling 100% of Allowed Charge. Deductible Amount is waived.

Infertility Services

80% of Allowed Charge subject to a \$500 Lifetime Infertility Services Deductible Amount and a \$20,000 Lifetime Maximum per Member. This Coinsurance Amount and the Infertility Services Deductible Amount do not apply toward the Out-of-Pocket Maximum Amount. Precertification is required.

Contraceptive Services

100% of Allowed Charge. Deductible Amount is waived.

- Related Office Visit

100% of Allowed Charge. Deductible Amount is waived.

Prescription contraceptive services obtainable with a Prescription Order are paid under the Outpatient Prescription Medications or Drugs benefit.

Psychiatric and Substance Abuse Services

- Psychiatric Services

Inpatient 80% of Allowed Charge. Precertification may be required.

Residential Treatment 80% of Allowed Charge. Precertification is required.

Partial Hospitalization 80% of Allowed Charge. Precertification is required.

Intensive Outpatient Program 100% of Allowed Charge and Deductible Amount is waived for the initial 5 hours per Member per Benefit Period.

Covered Services received during the remainder of the Benefit Period are payable at 80% of Allowed Charge and are subject to the Deductible Amount.

Outpatient 100% of Allowed Charge and Deductible Amount is waived for the initial 5 hours per Member per Benefit Period.

The Claims Administrator Pays After Deductible and Applicable Copayment Amounts

Covered Services

Covered Services received during the remainder of the Benefit Period are payable at 80% of Allowed Charge and are subject to the Deductible Amount.

- Substance Abuse Services

Inpatient

80% of Allowed Charge. Precertification may be required.

Residential Treatment

80% of Allowed Charge. Precertification is required.

Partial Hospitalization

80% of Allowed Charge. Precertification is required.

Intensive Outpatient Program

100% of Allowed Charge and Deductible Amount is waived for the initial 5 visits per Member per Benefit Period.

Covered Services received during the remainder of the Benefit Period are payable at 80% of Allowed Charge and are subject to the Deductible Amount.

Outpatient

100% of Allowed Charge and Deductible Amount is waived for the initial 5 visits per Member per Benefit Period.

Covered Services received during the remainder of the Benefit Period are payable at 80% of Allowed Charge and are subject to the Deductible Amount.

Ambulance Services

80% of Allowed Charge. Deductible Amount is waived for initial accident care. Precertification may be required.

Skilled Nursing Facility Services

80% of Allowed Charge.

Home Health Care Services

80% of Allowed Charge.

Hospice Services

80% of Allowed Charge.

Private Duty Nursing Services

80% of Allowed Charge.

Medical Supplies and Equipment

80% of Allowed Charge.

- Home Medical Equipment
- Prosthetic Appliances and Limbs
- Orthotic Devices
- Supplies for Administration of Prescription Medications other than the diabetes supplies specified in Outpatient Prescription Medications or Drugs
- Oxygen Equipment and Supplies
- Ostomy Supplies
- Hearing aids for Members under age 18

Subject to a Maximum Benefit Allowance per Member of 1 hearing aid per ear every 3 years.

**The Claims Administrator Pays After
Deductible and Applicable Copayment
Amounts**

Covered Services

Breast Pumps	100% of Allowed Charge. Deductible Amount is waived. Benefits are available for the rental or purchase of 1 breast pump per pregnancy.
Eyeglasses or Contact Lenses (following a covered cataract surgery)	80% of Allowed Charge subject to a Maximum Benefit Allowance of 1 pair of eyeglasses or contact lenses per Member when purchased within 6 months following the surgery.
Transportation Expenses	80% of Allowed Charge.
Outpatient Prescription Medications or Drugs and Diabetes Supplies	
Retail Pharmacy	
<ul style="list-style-type: none"> • Formulary Drug 	\$5 Copayment Amount, then 70% of Allowed Charge. Benefits are subject to the Copayment Amount application listed below. Deductible Amount is waived.
<ul style="list-style-type: none"> • Nonformulary Drug 	\$5 Copayment Amount and 50% sanction. The sanction is 50% of the Allowed Charge. This sanction does not apply to any Cost Sharing Amounts and coordination of benefits will not be allowed. Benefits are subject to the Copayment Amount application listed below. Deductible Amount is waived.
Preferred Mail Order Pharmacy	
<ul style="list-style-type: none"> • Formulary Drug 	\$5 Copayment Amount, then 70% of Allowed Charge. Benefits are subject to the Copayment Amount application listed below. Deductible Amount is waived.
<ul style="list-style-type: none"> • Nonformulary Drug 	\$5 Copayment Amount and 50% sanction. The sanction is 50% of the Allowed Charge. This sanction does not apply to any Cost Sharing Amounts and coordination of benefits will not be allowed. Benefits are subject to the Copayment Amount application listed below. Deductible Amount is waived.

Note: Mail order prescriptions must be received from the preferred mail order pharmacy.

The Claims Administrator Pays After Deductible and Applicable Copayment Amounts

Covered Services

Dispensing Limits

Prescription Medications or Drugs and nonprescription diabetes supplies are subject to a dispensing limit of a 100-day supply.

Formulary contraceptive drugs obtainable with a Prescription Order are paid at 100% of Allowed Charge. Copayment Amounts do not apply. Deductible Amount is waived.

The Copayment Amount will apply to each Prescription Order or refill dispensed, except the following nonprescription diabetes supplies: syringes, lancets, blood glucose test strips, urine test products and control solutions.

Self-Administered Chemotherapy Prescription Medications or Drugs are paid at 100% of Allowed Charge. Cost Sharing Amounts are waived.

If a Generic Prescription Medication or Drug is the therapeutic equivalent for a Brand Name Prescription Medication or Drug, and is authorized by a Member's Professional Health Care Provider, benefits will be based on the Allowance for the Generic equivalent. If the Member does not accept the Generic equivalent the Member is responsible for the cost difference between the Generic and the Brand Name Prescription Medication or Drug and applicable Cost Sharing Amounts.

Prescription Medication or Drug Cost Sharing Amounts do not apply toward the Out-of-Pocket Maximum Amount.

To view a list of Participating Pharmacies, visit www.BCBSND.com.

SECTION 2 COVERED SERVICES

This section describes the services for which benefits are available for Medically Appropriate and Necessary services under this Benefit Plan, subject to the definitions, exclusions, conditions and limitations of this Benefit Plan, Cost Sharing Amounts, Maximum Benefit Allowances and Lifetime Maximums described in the Schedule of Benefits.

The Claims Administrator shall have full discretion to interpret and determine the application of the Covered Services in each and every situation. Any decisions by the Claims Administrator regarding the Covered Services shall be final, conclusive and binding upon all parties.

2.1 INPATIENT HOSPITAL AND MEDICAL SERVICES

Precertification may be required for Inpatient Hospital Admissions. See Section 3, Authorizations.

A. Inpatient Hospital Services include:

1. Bed, board and general nursing services.
2. Special Care Units when Medically Appropriate and Necessary.
3. Long Term Acute Care Facility, Rehabilitation Facility or Transitional Care Unit when Medically Appropriate and Necessary.
4. Ancillary Services when Medically Appropriate and Necessary, Including:
 - a. use of operating, delivery and treatment rooms;
 - b. prescribed drugs;
 - c. blood, blood substitutes and the administration of blood and blood processing;
 - d. anesthesia and related supplies and services provided by an employee of or a person under contractual agreement with a Hospital;
 - e. medical and surgical dressings, supplies, casts and splints;
 - f. Diagnostic Services; and
 - g. Therapy Services.
5. Dental anesthesia and hospitalization for dental care to Members under age 9, Members who are severely disabled or Members who have a medical condition that requires hospitalization or general anesthesia. Precertification is required for all Members age 9 and older.

B. Inpatient Medical Services include:

1. Inpatient medical care visits by a Professional Health Care Provider, including Telehealth Services, except inpatient stays related to surgery or maternity care. See Section 2.2, Inpatient and Outpatient Surgical Services and Section 2.9, Maternity Services.
2. Consultation services by another Professional Health Care Provider, including Telehealth Services, at the request of the attending Professional Health Care Provider for the purpose of advice, diagnosis or instigation of treatment requiring special skill or knowledge. Benefits are available only if a written report from a consultant is a part of the Member's medical records. Consultation benefits do not include staff consultations required by hospital rules and regulations.

3. Concurrent services including medical, surgical, maternity, Chemotherapy or Radiation Therapy provided during one inpatient stay by one Professional Health Care Provider. Benefits for concurrent services will be based on the Covered Service with the highest Allowance.

When two or more Professional Health Care Providers have attended the Member during one inpatient stay because the nature or severity of the Member's condition requires the skills of separate Professional Health Care Providers, benefits will be available for the Covered Service that carries the highest Allowance for the type of service provided by each Professional Health Care Provider, provided the service is Medically Appropriate and Necessary and would otherwise be a Covered Service under this Benefit Plan.

4. Routine nursery care and the initial inpatient examination of the newborn child by a Professional Health Care Provider, if the newborn child is a Member. The newborn child is also entitled to benefits from the moment of birth for any illness, accident, deformity or congenital conditions.

2.2 INPATIENT AND OUTPATIENT SURGICAL SERVICES

A. Inpatient Surgical Services include:

1. Surgical Services provided by a Professional Health Care Provider. Separate benefit payments will not be made for preoperative and postoperative services. Payment for these services is included in the surgical fee.
2. Assistant surgeon services by a Professional Health Care Provider who actively assists the operating surgeon in the performance of covered surgery if the type of surgery performed requires an assistant, as determined by the Claims Administrator, and no Hospital or Ambulatory Surgical Facility staff is available to provide such assistance.
3. Administration of Medically Appropriate and Necessary anesthesia for a covered surgical procedure when ordered by the attending Professional Health Care Provider and provided by or under the direct supervision of an Anesthesiologist or Professional Health Care Provider other than the operating surgeon or the assistant surgeon.

B. The benefits described above are also available for Outpatient Surgical Services in addition to:

1. Supplies used for a covered surgical procedure when performed in a Professional Health Care Provider's office, clinic or Ambulatory Surgical Facility.
2. Facility charges for covered outpatient Surgical Services performed in an Ambulatory Surgical Facility.
3. Hospital Ancillary Services and supplies used for a covered outpatient surgery, including removal of sutures, anesthesia and related supplies and services when provided by an employee of or under contractual agreement with the Hospital, other than the surgeon or assistant at surgery.

C. Benefits are available for the following special surgeries:

1. Reconstructive surgery to restore bodily function or correct deformity resulting from disease, trauma, congenital or developmental anomalies or previous therapeutic processes.

Benefits include reconstructive breast surgery performed as a result of a partial or total mastectomy subject to Benefit Plan Cost Sharing Amounts. Benefits also include reconstructive breast surgery on the nondiseased breast to establish symmetry with the reconstructed diseased breast. Benefits for prostheses and treatment of physical complications at all stages of the mastectomy, including lymphedemas, are allowed under Section 2.17, Medical Supplies and Equipment. Benefits will be allowed in a manner determined in consultation with the attending Professional Health Care Provider and the Member.

Cosmetic surgery will not qualify as reconstructive surgery when performed for the treatment of a psychological or psychiatric condition.

2. Sterilization procedures. Procedures to evaluate and reverse sterilization are not covered under this Benefit Plan.
3. Bariatric surgery for morbid obesity when Precertification is received from the Claims Administrator. Benefits are subject to a Lifetime Maximum of 1 operative procedure for morbid obesity per Member. Guidelines and criteria are available upon request.

Benefits for all proposed surgical procedures for the treatment of complications resulting from any or all types of surgical morbid obesity procedures are available only when Precertification is received from the Claims Administrator.

4. Surgical procedures for the removal of impacted teeth.

2.3 TRANSPLANT SERVICES

- A. Subject to the exclusions of this Benefit Plan, benefits are available for the following transplant procedures based on medical criteria if the recipient is a Member under this Benefit Plan. Benefits are not available under this Benefit Plan if the Member is the donor for transplant services. Benefits are subject to a Lifetime Maximum of 2 transplant procedures for the same condition. Precertification is required.

1. Heart
2. Heart-lung
3. Lung (single or double)
4. Liver
5. Pancreas
6. Small bowel
7. Kidney - Precertification is only required when Inpatient Admission is necessary.
8. Cornea - Precertification is only required when Inpatient Admission is necessary.
9. Bone marrow/stem cell transplants with related services and supplies are covered subject to medical policy or medical guidelines.

Please contact the Claims Administrator to ensure benefits are available for specific transplant procedures. In administering this Benefit Plan, as technology changes medical policy or medical guidelines for these services may be modified as appropriate.

If a Member chooses to receive Covered Services from a program not approved by the Claims Administrator, the Member will be responsible for any charges over the Allowance.

- B. Covered Services include:

1. One evaluation is allowed per transplant procedure. Services must be performed at a qualified transplant center.
2. Inpatient and outpatient Hospital and Medical Services for the recipient and the donor.
3. Surgical Services Including the evaluation and removal of the donor organ as well as transplantation of the organ or tissue into the recipient. Separate payment will not be made for the removal of an organ for transplantation at a later date.
4. Compatibility testing services provided to the donor.
5. Supportive medical procedures and clinical management services, Including postoperative procedures to control rejection and infection.
6. Transportation costs by air ambulance, commercial carrier or charter when a Member must be transported within a restricted time frame to obtain a covered transplant procedure. Benefits are subject to the Maximum Benefit Allowance listed in the Schedule of Benefits, Section 1.

- C. Benefits are not available for artificial organs, donor search services or organ procurement if the organ or tissue is not donated.

2.4 TEMPOROMANDIBULAR OR CRANIOMANDIBULAR JOINT TREATMENT

Temporomandibular (TMJ) or craniomandibular (CMJ) joint treatment, Including surgical and nonsurgical services, when such care and treatment is Medically Appropriate and Necessary as determined by the Claims Administrator. Benefits are subject to the Lifetime Maximum and the Maximum Benefit Allowance listed in the Schedule of Benefits, Section 1.

2.5 OUTPATIENT HOSPITAL AND MEDICAL SERVICES

Outpatient Hospital and Medical Services include:

- A. Home and Office Visits and consultations, including Telehealth Services, for the examination, diagnosis and treatment of an illness or injury, Including administered Prescription Medications or Drugs.
- B. Diagnostic Services when ordered by a Professional Health Care Provider.
- C. Emergency Accident Care.
- D. Supplement Accident Benefits are available subject to the Maximum Benefit Allowance listed in the Schedule of Benefits, Section 1, Including:
 - 1. Medical or surgical treatment (including Office Visits) by a licensed Professional Health Care Provider, including medications administered during such treatment;
 - 2. Services of a Registered Nurse (R.N.) when ordered by a Professional Health Care Provider;
 - 3. Laboratory and X-ray examinations;
 - 4. Medically Appropriate and Necessary supplies and Home Medical Equipment Services;
 - 5. Take Home Prescription Medications and Drugs;
 - 6. Outpatient Hospital Services and supplies.
- E. Emergency Services.
- F. Dental services provided by a Dentist (D.D.S.) in an office setting, including extractions done in preparation for radiation treatment for neoplastic diseases involving the jaw or as a result of an accidental injury to the jaw, sound natural teeth, dentures, mouth or face. Covered Services for the jaw, sound natural teeth, dentures, mouth or face as a result of an accidental injury must be initiated within 12 months of the date of injury and completed within 24 months of the start of treatment or longer if a dental treatment plan approved by the Claims Administrator is in place. An accidental injury is defined as an injury that is the result of an external force causing a specific impairment to the jaw, sound natural teeth, dentures, mouth or face. Injury as a result of chewing or biting is not considered an accidental injury.
- G. Surgical preadmission testing for Medically Appropriate and Necessary preoperative tests and studies provided on an outpatient basis prior to a Member's scheduled Admission to the Hospital as an Inpatient for surgery.

Benefits are available only under the following conditions:

- 1. The tests or studies would have been provided on an inpatient basis for the same condition; and
- 2. The tests or studies are not repeated upon the Member's Admission to the Hospital.

- H. Second surgical opinion consultations on covered elective surgery recommended by a Health Care Provider and those directly related Diagnostic Services required for a valid second surgical opinion. A second surgical opinion must be provided by a Professional Health Care Provider qualified to perform the suggested surgery and whose practice is unrelated to the Member's original Health Care Provider.
- I. Radiation and Chemotherapy Services, except as limited by this Benefit Plan.
- J. Dialysis Treatment.
- K. Home Infusion Therapy services. Covered Services include the provision of nutrients, antibiotics, and other drugs and fluids intravenously, through a feeding tube, or by inhalation; all Medically Appropriate and Necessary supplies; and therapeutic drugs or other substances. Covered Services also include Medically Appropriate and Necessary enteral feedings when such feedings are the primary source of nutrition for a Member age 1 and older.
- L. Visual training services, Including orthoptics and pleoptic training, provided to Members under age 10 for the treatment of amblyopia. Benefits are subject to the Lifetime Maximum listed in the Schedule of Benefits, Section 1.
- M. Allergy Services, Including serum, direct skin testing and patch testing when ordered by a Professional Health Care Provider and performed in accordance with medical guidelines and criteria established by the Claims Administrator. Guidelines and criteria for Medically Appropriate and Necessary services are available from a Participating Health Care Provider or the Claims Administrator.
- N. Foods and food products for the dietary treatment of Members born after 12/31/62 with maple syrup urine disease or phenylketonuria (PKU). The following foods and food products are available:
 - 1. Low protein modified food product means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a Physician for the dietary treatment of an inherited metabolic disease. The term does not include a natural food that is naturally low in protein.
 - 2. Medical food means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a Physician.
- O. Dental anesthesia and hospitalization for dental care to Members under age 9, Members who are severely disabled or Members who have a medical condition that requires hospitalization or general anesthesia. Precertification is required for all Members age 9 and older.

2.6 WELLNESS SERVICES

- A. Pediatric preventive visits for Members through age 6 according to the guidelines supported by the Health Resources and Services Administration and in accordance with the schedule listed in the Schedule of Benefits, Section 1.
- B. Immunizations that have been published as policy by the Centers for Disease Control as listed in the Schedule of Benefits, Section 1.
- C. Preventive screening services for Members age 7 and older according to A or B Recommendations of the U.S. Preventive Services Task Force and issued by the Health Resources and Services Administration, Including those services listed in the Schedule of Benefits, Section 1. A Health Care Provider will counsel Members as to how often preventive services are needed based on the age, gender and medical status of the Member.
- D. Outpatient nutrition care services provided by a Licensed Registered Dietitian when ordered by a Professional Health Care Provider. Covered Services include assessment of food practices and dietary/nutritional status and diet counseling for preventive and therapeutic needs for the diagnosed medical conditions listed in the Schedule of Benefits, Section 1.

E. Diabetes care services including:

1. Outpatient Home and Office Visits, Diagnostic Services, Outpatient Nutritional Care Services, Diabetes Education Services, Dilated Eye Examinations and Outpatient Prescription Medications or Drugs and Diabetes Supplies.
2. Diabetes Prevention Program services for Members age 18 and older meeting certain medical criteria of having a high risk of developing type 2 diabetes when enrolled through a Diabetes Prevention Provider. Coverage is limited to one enrollment in a Diabetes Prevention Program per year, regardless of whether the Member completes the Diabetes Prevention Program.

Benefits are subject to the Maximum Benefit Allowances listed in the Schedule of Benefits, Section 1.

F. Tobacco cessation services subject to the guidelines listed in the Schedule of Benefits, Section 1. Benefits include the related Office Visit.

2.7 **OUTPATIENT THERAPY SERVICES**

A. Rehabilitative Therapy

Rehabilitative Physical Therapy, Occupational Therapy and Speech Therapy services that are designed to restore function following a surgery or medical procedure, injury or illness. Benefits are available as listed in Section 1, Schedule of Benefits, when performed by or under the direct supervision of the respective licensed Physical Therapist, licensed Occupational Therapist or licensed Speech Therapist. Services must be provided in accordance with a prescribed plan of treatment ordered by a Professional Health Care Provider. Benefits are not available for Maintenance Care.

B. Habilitative Therapy

Habilitative Physical Therapy, Occupational Therapy, Speech Therapy or Behavioral Modification Intervention for Autism Spectrum Disorder (Including Applied Behavior Analysis (ABA)). Therapy is care provided for conditions which have limited the normal age appropriate motor, sensory or communication development. To be considered habilitative, functional improvement and measurable progress must be made toward achieving functional goals within a predictable period of time toward a Member's maximum potential.

Functional skills are defined as essential activities of daily life common to all Members such as dressing, feeding, swallowing, mobility, transfers, fine motor skills, age appropriate activities and communication. Problems such as hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance, an orthopedic impairment, autism spectrum disorders, traumatic brain injury, deaf-blindness, or multiple disabilities may warrant Habilitative Therapies.

Measurable progress emphasizes accomplishment of functional skills and independence in the context of the Member's potential ability as specified within a care plan or treatment goals.

Benefits are subject to the Maximum Benefit Allowance listed in the Schedule of Benefits, Section 1, for each type of therapy under an individual medical plan (IMP) developed for each Member. Benefits are not available for Maintenance Care. Extensions of therapy may be granted on a case by case basis for extenuating circumstances.

Precertification is required for Behavioral Modification Intervention for Autism Spectrum Disorder (Including Applied Behavior Analysis (ABA)).

C. Other Therapy Services

1. Respiratory Therapy services performed by or under the direct supervision of a registered respiratory care practitioner for the treatment, management, control and care of patients with deficiencies and abnormalities of the cardiorespiratory system. Services must be provided in accordance with an order from a Professional Health Care Provider.
2. Cardiac rehabilitation services.
3. Pulmonary rehabilitation services.

2.8 CHIROPRACTIC SERVICES

Chiropractic services provided on an inpatient or outpatient basis when Medically Appropriate and Necessary as determined by the Claims Administrator and within the scope of licensure and practice of a Chiropractor, to the extent services would be covered if provided by a Physician. Benefits are subject to the Maximum Benefit Allowance listed in the Schedule of Benefits, Section 1. Benefits are not available for maintenance care.

2.9 MATERNITY SERVICES

Benefits are available for Covered Services for pregnancy and complications of pregnancy. Benefits are limited to 2 ultrasounds per pregnancy unless, based on the Member's condition and history, additional services are determined to be Medically Appropriate and Necessary.

Benefits for inpatient maternity services allow a minimum stay of 48 hours for a vaginal delivery and 96 hours for a cesarean delivery. The Health Care Provider, after consulting with the mother, may discharge the mother and newborn earlier than 48 hours following a vaginal delivery or 96 hours following a cesarean section.

Benefits for Outpatient Nutrition Care Services for Gestational Diabetes are available. See Outpatient Nutrition Care Services in the Schedule of Benefits, Section 1.

Benefits for lactation counseling are available.

If the newborn child is a Member, benefits are available from the moment of birth for routine nursery care and the treatment of any illness, accident, deformity or congenital condition.

Prenatal Plus Program

The prenatal plus program is designed to identify women at higher risk for premature birth and to prevent the incidence of preterm birth through assessment, intervention and education. Participation in the prenatal plus program is voluntary.

To participate, the Member must notify a Member Services representative after the first prenatal visit; preferably before the 12th week. The number to call regarding prenatal plus is on the back of the Identification Card. A Member Services representative will obtain the Member's name, Unique Member Identifier and telephone number and request a medical management representative contact the Member.

A medical management representative will review the preterm labor risk assessment questionnaire with the Member. The questionnaire will take approximately ten minutes to complete. The information needed to complete this form is the Member's Unique Member Identifier, Professional Health Care Provider's name, address and telephone number and the Member's expected due date.

As a program participant, the Member will receive a packet containing information concerning pregnancy and prenatal care.

2.10 **INFERTILITY SERVICES**

Benefits are available for services, supplies and drugs related to artificial insemination (AI) and assisted reproductive technology (ART), including gamete intrafallopian transfer (GIFT), zygote intrafallopian transfer (ZIFT), intracytoplasmic sperm injection (ICSI) or in vitro fertilization (IVF), subject to the Cost Sharing Amounts and Lifetime Maximum listed in the Schedule of Benefits, Section 1. Guidelines and criteria for Medically Appropriate and Necessary services are available from the Claims Administrator. In administering this Benefit Plan, as technology changes medical policy or medical guidelines for these services may be modified as appropriate.

Precertification is required for assisted reproductive technology for GIFT, ZIFT, ICSI and IVF.

2.11 **CONTRACEPTIVE SERVICES**

Contraceptive services include Prescription Medications or Drugs and Payable Over-the-Counter (OTC) Drugs, birth control devices prescribed and dispensed by a Health Care Provider and related Office Visits provided by a Health Care Provider. Benefits Include:

- A. Injections for birth control purposes.
- B. Diaphragm or cervical cap.
- C. Surgical implantation and removal of a contraceptive device.
- D. Insertion and removal of an Intrauterine Device (IUD).
- E. Outpatient surgical sterilization and related services. See Inpatient and Outpatient Surgical Services.
- F. Contraceptive Prescription Medications and Drugs and Payable Over-the-Counter (OTC) Drugs, including birth control pills, patches and vaginal rings. See Outpatient Prescription Medications or Drugs benefit.

In administering this Benefit Plan, as technology changes medical policy or medical guidelines for these services may be modified as appropriate.

2.12 **PSYCHIATRIC AND SUBSTANCE ABUSE SERVICES**

Guidelines and criteria for Medically Appropriate and Necessary services are available from the Claims Administrator.

A. **Psychiatric Services**

1. **Inpatient**

Benefits are available for the inpatient treatment of psychiatric illness when provided by an appropriately licensed and credentialed Hospital or Psychiatric Care Facility. Precertification may be required for Inpatient Hospital Admissions. See Section 3, Authorizations.

2. **Residential Treatment**

Benefits are available for the Residential Treatment of psychiatric illness when provided at an appropriately licensed and credentialed residential treatment center. Precertification is required.

3. **Partial Hospitalization**

Benefits are available for the Partial Hospitalization of psychiatric illness when provided at an appropriately licensed and credentialed facility. Precertification is required.

4. **Intensive Outpatient Program**

Benefits are available in an Intensive Outpatient Program for psychiatric illness when provided by an appropriately licensed and credentialed Intensive Outpatient Program.

5. Outpatient

Benefits include diagnostic, evaluation and treatment services when provided by a licensed and credentialed independent provider in accordance with the Health Care Provider's scope of licensure as provided by law.

B. Substance Abuse Services

1. Inpatient

Benefits are available for the inpatient treatment of substance abuse, including medically managed inpatient detoxification, medically monitored inpatient detoxification, medically managed intensive inpatient treatment or medically monitored intensive inpatient treatment, when provided at an appropriately licensed and credentialed Substance Abuse Facility.

No benefits are available for social detoxification.

Precertification may be required for Inpatient Hospital Admissions. See Section 3, Authorizations.

2. Residential Treatment

Benefits are available for the Residential Treatment of substance abuse when provided at an appropriately licensed and credentialed residential treatment center. Precertification is required.

3. Partial Hospitalization

Benefits are available for the Partial Hospitalization of substance abuse when provided at an appropriately licensed and credentialed facility. Precertification is required.

4. Intensive Outpatient Program

Benefits are available in an Intensive Outpatient Program for substance abuse when provided by an appropriately licensed and credentialed Intensive Outpatient Program.

5. Outpatient

Benefits include diagnostic, evaluation and treatment services provided by a licensed and credentialed independent provider in accordance with the Health Care Provider's scope of licensure as provided by law.

C. **The Claims Administrator may designate an out-of-state Health Care Provider as Nonpayable.**

2.13 **AMBULANCE SERVICES**

Medically Appropriate and Necessary Ambulance Services to the nearest facility equipped to provide the required level of care, including transportation:

- from the home or site of an Emergency Medical Condition.
- between Hospitals.
- between a Hospital and Skilled Nursing Facility.

Benefits for air transportation are available only when ground transportation is not Medically Appropriate and Necessary as determined by the Claims Administrator.

2.14 **SKILLED NURSING FACILITY SERVICES**

The benefits available under this Benefit Plan for Inpatient Hospital and Medical Services are also available for Skilled Nursing Services and supplies customarily provided to an Inpatient of a Skilled Nursing Facility when the condition requires daily Skilled Nursing Services that are Medically Appropriate and Necessary and such services can only be provided in a Skilled Nursing Facility. Precertification is required. Benefits are not available for Maintenance Care or Custodial Care.

2.15 **HOME HEALTH CARE SERVICES**

Home Health Care when provided to a Member in the Member's place of residence. The services must be provided on a part-time visiting basis according to a Professional Health Care Provider's prescribed plan of treatment approved by the Claims Administrator prior to Admission to Home Health Care. Precertification is required.

A. Covered Services include:

1. The professional services of an R.N., Licensed Vocational Nurse or L.P.N.;
2. Physical, Occupational or Speech Therapy;
3. Medical and surgical supplies;
4. Administration of prescribed drugs;
5. Oxygen and the administration of oxygen; and
6. Health aide services for a Member who is receiving covered Skilled Nursing Services or Therapy Services.

B. No Home Health Care benefits will be provided for:

1. Dietitian services;
2. Homemaker services;
3. Social worker services;
4. Maintenance Care;
5. Custodial Care;
6. Food or home delivered meals; or
7. Respite care.

2.16 **HOSPICE SERVICES**

The benefits available under this Benefit Plan for Inpatient Hospital and Medical Services, Outpatient Hospital and Medical Services, Therapy Services, Skilled Nursing Facility Services, Home Health Care Services and Private Duty Nursing Services are also available when coordinated or provided through an organized and approved hospice program. Hospice benefits are provided only for the treatment of Members diagnosed with a condition where there is a life expectancy of 6 months or less. Precertification is required.

2.17 **PRIVATE DUTY NURSING SERVICES**

Private Duty Nursing Services provided by an actively practicing Registered Nurse (R.N.) or Licensed Practical Nurse (L.P.N.) when ordered by a Professional Health Care Provider. The nurse must not ordinarily reside in the Member's home or be a member of the Member's Immediate Family. Benefits are not available for Maintenance Care.

2.18 **MEDICAL SUPPLIES AND EQUIPMENT**

Benefits are available for Medically Appropriate and Necessary medical supplies and equipment.

A. Home Medical Equipment

The rental or purchase, at the option of the Claims Administrator of new, used or refurbished Home Medical Equipment, including wheelchairs, hospital-type beds, infusion pumps and related supplies, crutches and canes when prescribed by a Professional Health Care Provider and Medically Appropriate and Necessary. The rental cost shall not exceed the Allowance of such equipment. No benefits are available for motorized equipment, except wheelchairs when Precertification is received from the Claims Administrator. No benefits are available for batteries required for Home Medical Equipment, except for wheelchair batteries. Covered Services include replacement and repairs when Medically Appropriate and Necessary.

Benefits will not be provided for any Home Medical Equipment required for leisure or recreational activity or to allow a Member to participate in a sport activity.

B. Prosthetic Appliances and Limbs

The purchase, fitting and necessary adjustments of Prosthetic Appliances or Limbs and supplies that replace all or part of an absent body part. Benefits are available for standard Prosthetic Appliances and Limbs only. Covered Services include replacement and repairs when Medically Appropriate and Necessary.

Benefits are not available for dental appliances, artificial organs or Prosthetic Appliances and Limbs intended only for cosmetic purposes.

C. Orthotic Devices

Medically Appropriate and Necessary Orthotic Devices when ordered by a Professional Health Care Provider. Guidelines and criteria for Medically Appropriate and Necessary custom molded foot orthotics are available from the Claims Administrator.

Benefits will not be provided for any Orthotic Devices required for leisure or recreational activity or to allow a Member to participate in a sport activity.

D. Supplies for Administration of Prescription Medications or Drugs

Therapeutic devices or appliances related to the administration of Prescription Medications or Drugs in the home, such as hypodermic needles and syringes. See Outpatient Prescription Medications or Drugs for diabetes supplies.

E. Oxygen

Administration of oxygen, including the rental of equipment.

F. Ostomy Supplies

G. Hearing aids for Members under age 18 subject to the Maximum Benefit Allowance listed in the Schedule of Benefits, Section 1.

2.19 **BREAST PUMPS**

Benefits are available for the rental or purchase of a breast pump when provided by a participating Home Medical Equipment Supplier. The rental cost shall not exceed the Allowance of such equipment. No benefits are available for supplies required for the breast pump. Covered Services include replacement and repairs when Medically Appropriate and Necessary.

2.20 EYEGASSES OR CONTACT LENSES

One pair of eyeglasses or contact lenses if received within 6 months of a covered cataract surgery.

2.21 TRANSPORTATION EXPENSES

A. Benefits are available for transportation and lodging to obtain proper medical treatment at a medical clinic located more than 150 miles one way from the Member's place of residence, when such treatment is referred by a Professional Health Care Provider and not available locally. Travel expenses will be covered to the lesser of:

1. 21.5 cents per mile; or
2. Round trip coach air fare.

B. Lodging will be reimbursed at the single room rate, not to exceed a Maximum Benefit Allowance of \$75 per night.

C. Approval from the Plan Administrator is required.

2.22 OUTPATIENT PRESCRIPTION MEDICATIONS OR DRUGS

Benefits are available for Prescription Medications or Drugs approved by the Claims Administrator and that are Medically Appropriate and Necessary for the treatment of a Member and dispensed on or after the effective date of coverage. Benefits include diabetes supplies prescribed by a Health Care Provider.

Prescription Medications or Drugs and diabetes supplies will be categorized by the Claims Administrator as a Formulary Drug, Nonformulary Drug, Nonpayable Drug, Payable Over-the-Counter (OTC) Drug, Restricted Use Drug or Specialty Drug. Restricted Use Drugs require Precertification and/or are subject to a limited dispensing amount or a Step Therapy requirement. Benefits may vary based on the various categories. A list of the various categories of Prescription Medications or Drugs may be obtained by visiting our website at www.BCBSND.com or by calling Member Services. See the telephone number on the back of the Identification Card.

The Claims Administrator utilizes a formulary listing. This listing contains both Brand Name and Generic Prescription Medications or Drugs. If a Member receives a Nonformulary Drug the Nonformulary Drug sanction will apply.

A Member may be responsible for payment of the Cost Sharing Amounts at the time the Prescription Medication or Drug is dispensed. A Participating Pharmacy agrees not to charge or collect any amount from the Member that exceeds the Cost Sharing Amounts. All claims must be submitted by the Participating Pharmacy. If the Member submits a claim for services received at a Participating Pharmacy, charges in excess of the Allowed Charge are the Subscriber's responsibility.

Note: Specialty Drugs must be received from the preferred specialty pharmacy network. Mail order prescriptions must be received from the preferred mail order pharmacy.

If a Member receives Prescription Medications or Drugs from a Nonparticipating Pharmacy, the Member is responsible for payment of the Prescription Order or refill in full at the time it is dispensed and to submit appropriate reimbursement information to the Claims Administrator. Payment for covered Prescription Medications or Drugs will be sent to the Subscriber. Any charges in excess of the Allowed Charge are the Subscriber's responsibility.

A Member may call the toll-free number on the Identification Card to obtain information on Pharmacies participating in the Claims Administrator's preferred pharmacy network, preferred mail order pharmacy network and preferred specialty pharmacy network.

SECTION 3 AUTHORIZATIONS

This section describes the authorization requirements for specific Covered Services and the Member's responsibilities for these authorizations. The Member's medical care is between the Member and the Member's Health Care Provider. **The ultimate decision on the Member's medical care must be made by the Member and the Member's Health Care Provider. The Claims Administrator only has the authority to determine the extent of benefits available for Covered Services under this Benefit Plan. The Claims Administrator's decision in this regard shall be final, conclusive and binding upon all parties.**

In an effort to control rising health care costs, the Claims Administrator reserves the option to implement cost management and/or disease management programs. If a cost management and/or disease management program is implemented, the Claims Administrator will establish policies and procedures governing the program.

A Member seeking Covered Services from a Health Care Provider requiring Precertification grants to that Health Care Provider authority to act on behalf of the Member as the Member's Authorized Representative. As an Authorized Representative, the Health Care Provider assumes responsibility to act on behalf of the Member in pursuing a Claim for Benefits or appeal of an adverse benefit determination from a Claim for Benefits. See Section 6, Claims for Benefits, Appeals and Grievances.

The designation of a Health Care Provider as an Authorized Representative is limited in scope and not an assignment of benefits, nor does it grant the Health Care Provider any of the Member's rights and privileges under the terms of this Benefit Plan.

3.1 PRECERTIFICATION PROCESS

This Benefit Plan requires Members to obtain Precertification before benefits are available for specified services, including:

- air ambulance (non-emergent)
- artificial intervertebral disc
- assisted reproductive technology for GIFT, ZIFT, ICSI and IVF
- autologous chondrocyte implantation
- bariatric surgery for morbid obesity
- Behavioral Modification Intervention for Autism Spectrum Disorder (Including Applied Behavior Analysis (ABA))
- bone growth stimulator (electrical or ultrasound)
- chimeric antigen receptor (CAR) t-cell therapy
- chronic pain management program
- cochlear implant
- deep brain stimulator
- dental anesthesia and hospitalization for all Members age 9 and older
- electric wheelchairs
- gender reassignment surgery
- growth hormone therapy/treatment
- Home Health Care
- Hospice
- Inpatient Admission to a Rehabilitation Facility
- Inpatient Admissions to a Health Care Provider not participating with the Claims Administrator
- insulin infusion pump, patient owned continuous glucose monitoring systems and artificial pancreas device systems
- limb lengthening
- Long Term Acute Care Facility
- molecular and genomic testing
- negative pressure wound therapy in an outpatient setting
- oral appliance for obstructive sleep apnea
- oscillatory devices for respiratory conditions

- osseointegrated dental implants
- positron emission tomography (PET) scan
- programmable lymphedema pumps
- Prosthetic Limbs controlled by microprocessors and any Prosthetic Limb replacement within 5 years
- proton beam therapy
- Psychiatric and Substance Abuse Admissions, including Partial Hospitalization or Residential Treatment
- repetitive transcranial magnetic stimulation (rTMS)
- Restricted Use Drugs
- sacral nerve stimulator (trial placement and permanent placement)
- services or procedures which could be considered Cosmetic Services
- Skilled Nursing Facility
- spinal cord stimulator (trial placement and permanent placement)
- surgical treatment of obstructive sleep apnea
- total ankle replacement
- Transitional Care Unit
- transplants, except cornea and kidney
- vagus nerve stimulator
- wearable cardioverter defibrillators
- wireless capsule endoscopy

To request Precertification, the Member or the Member's representative, on the Member's behalf, must notify the Claims Administrator of the Member's intent to receive services requiring Precertification. The Member's Health Care Provider must provide the necessary information to establish the requested services are Medically Appropriate and Necessary.

A Member seeking Covered Services requiring Precertification designates the Authorized Representative to act and receive notices and information related to a Claim for Benefits on behalf of the Member pursuing a Claim for Benefits or appeal of an adverse benefit determination from a Claim for Benefits. The Member agrees that all information and notifications related to the Claim for Benefits requiring Precertification is to be directed solely to the Authorized Representative unless the Member specifically requests that any notices or information also be delivered to the Member.

Receipt of Precertification does not guarantee payment of benefits. All services provided are subject to further review by the Claims Administrator to ensure the services are Medically Appropriate and Necessary. Benefits will be denied if the Member is not eligible for coverage under this Benefit Plan on the date services are provided or if services received are not Medically Appropriate and Necessary as determined by the Claims Administrator in its sole discretion. Benefits for authorized services are subject to the definitions, conditions, limitations and exclusions of this Benefit Plan. ALL DETERMINATIONS BY THE CLAIMS ADMINISTRATOR ARE FINAL, CONCLUSIVE AND BINDING UPON ALL PARTIES.

Precertification is required prior to obtaining services.

Admissions for maternity services do not require Precertification.

If the Member's medical condition does not allow the Member to obtain Precertification due to an emergency Admission, the Member or the Member's representative is requested to notify the Claims Administrator of the Admission during the next business day of the Claims Administrator or as soon thereafter as reasonably possible to obtain authorization.

To inquire on the Precertification process, please contact Member Services at the telephone number and address on the back of the Identification Card.

Notification Responsibility

If a Member seeks Covered Services from a Health Care Provider that participates with the Claims Administrator, the Participating Health Care Provider assumes responsibility for all Precertification requirements.

If a Member seeks Covered Services from a Health Care Provider that does not participate with the Claims Administrator, compliance with Precertification requirements is the Member's responsibility.

The Claims Administrator will issue a notice of approval or denial following review of the Precertification request.

3.2 CONCURRENT REVIEW

Concurrent review is the ongoing review of the Medical Appropriateness and Necessity of the required Admissions outlined in Section 3.1 to an Institutional Health Care Provider. The Claims Administrator will monitor the inpatient Admission to determine whether benefits will be available for continued inpatient care.

If the Claims Administrator in its sole discretion determines benefits are not available because the continued stay is not Medically Appropriate and Necessary, the Claims Administrator will provide notice to the Member, the Member's attending Professional Health Care Provider or the Institutional Health Care Provider. No benefits will be available for services received after the date provided in the Claims Administrator's notice of the termination of benefits.

Benefits will be denied if the Claims Administrator in its sole discretion determines the services are not Medically Appropriate and Necessary.

3.3 DISCHARGE PLANNING

Discharge planning is the process of assessing the availability of benefits after a hospitalization. The Claims Administrator supports discharge planning by providing information on benefits available for those services determined to be Medically Appropriate and Necessary for the Member's continued care and treatment.

3.4 CASE MANAGEMENT

Case management is a collaborative process that assesses, plans, implements, coordinates, monitors and evaluates the options and services required to meet an individual's health needs, using communication and available resources to promote quality, cost effective outcomes.

Cases are identified for possible case management involvement based on a request for review or the presence of a number of parameters, such as:

- admissions that exceed the recommended or approved length of stay;
- utilization of health care services that generates ongoing and/or excessively high costs;
- conditions that are known to require extensive and/or long term follow up care and/or treatment.

The Claims Administrator's case management process may include a flexible benefits option. This option allows professional case managers to assist Members with certain complex and/or chronic health issues by coordinating complicated treatment plans and other types of complex patient care plans. Through the flexible benefits option, case managers may identify a less costly alternative treatment plan for the Member. Members who are eligible to receive services through the flexible benefits option are asked to provide verbal consent for the alternative plan. If the Member and the Member's Health Care Provider agree with the plan, alternative benefits will begin immediately and the Member will be asked to sign an alternative benefits agreement that includes the terms listed below, in addition to any other terms specified in the agreement.

Alternative benefits will be made available for a limited period of time and are subject to the Claims Administrator's ongoing review. The Member must cooperate with the review process.

If the Claims Administrator approves alternative benefits, the Claims Administrator does not guarantee that these will be extended beyond the limited time period and/or scope of treatment initially approved or that these will be approved in the future.

The decision to offer alternative benefits is solely the Claims Administrator's and any extension of alternative benefits beyond the specified approved service and/or dates is not subject to the appeals process.

All decisions made by case management are based on the individual circumstances of that Member's case. Each case is reviewed on its own merits and any benefits provided are under individual consideration.

SECTION 4 EXCLUSIONS

No benefits are available for services listed in this section. The following list is not a complete list. In addition to these general exclusions, limitations and conditions there may be others that apply to specific Covered Services that can be found in the Covered Services section and elsewhere in this Benefit Plan. If a benefit or service is not covered, then all services, treatments, devices or supplies provided in conjunction with that benefit or service are not covered. Please read this section carefully before seeking services and submitting a Claim for Benefits. Please contact Member Services at the telephone number listed on the back of the Identification Card if you have any questions.

The Claims Administrator shall have full discretion to interpret and determine the application of the Exclusions in each and every situation. Any decisions by the Claims Administrator regarding the Exclusions shall be final, conclusive and binding upon all parties.

4.1 EXCLUSIONS

No benefits are available for:

1. Services not prescribed or performed by or under the direct supervision of a Professional Health Care Provider consistent with the Professional Health Care Provider's licensure and scope of practice.
2. Services provided and billed by a registered nurse (other than an Advanced Practice Registered Nurse), intern (professionals in training), licensed athletic trainer or other paramedical personnel.
3. Inpatient Admission services received prior to the effective date of the Member's eligibility under this Benefit Plan.
4. Services for private room accommodations.
5. Special education for learning disorders or intellectual disability.
6. Education programs or tutoring services (not specifically defined elsewhere), including education on self-care or home management.
7. Developmental delay care, including services or supplies, regardless of where or by whom they are provided, that:
 - Are less than two standard deviations from the norm as defined by standardized, validated developmental screening tests, such as the Denver Developmental Screening Test; or
 - Are educational in nature; vocational and job rehabilitation, recreational therapy; orSpecial education, including lessons in sign language to instruct a Member whose ability to speak has been lost or impaired to function without that ability.
8. Counseling or therapy services, including bereavement, codependency, marital dysfunction, family dysfunction, sex or interpersonal relationships.
9. Counseling services for the treatment of a gambling addiction.
10. Pharmacological detoxification management, except as specified in Section 2.11.
11. Clinically managed Residential Treatment detoxification, including social detoxification.

12. Services or treatments for conditions that, according to generally accepted professional standards, are not amenable to favorable modification, except initial evaluation to establish a diagnosis, crisis intervention services and treatment to prevent or halt deterioration or injury or slow the rate of functional loss.
13. Any drug, device, medical service, treatment or procedure that, in the sole discretion of the Claims Administrator, is Experimental or Investigative.
14. Services, treatments or supplies that the Claims Administrator determines in its sole discretion are not Medically Appropriate and Necessary.
15. Transplants, except as specified in this Benefit Plan. Benefits are not available for donor organs or tissue other than human donor organs or tissue.
16. Services that are related to annual, periodic or routine examinations, except as specifically allowed in the Covered Services Section of this Benefit Plan.
17. Immunizations, testing or other services required for foreign travel.
18. Inpatient services performed primarily for diagnostic examinations, Physical Therapy, rest cure, convalescent care, Custodial Care, Maintenance Care or sanitarium care.
19. Services by a vocational residential rehabilitation center, a community reentry program, Halfway House or Group Home.

For the purpose of this exclusion, the following definitions apply:

Halfway House - a facility for the housing or rehabilitation of persons on probation, parole, or early release from correctional institutions, or other persons found guilty of criminal offenses.

Group Home - a facility for the housing or rehabilitation of developmentally, mentally or severely disabled persons that does not provide skilled or intermediate nursing care.

20. The surgical or nonsurgical treatment of temporomandibular (TMJ) or craniomandibular (CMJ) joint disorder(s), except as specifically allowed in the Schedule of Benefits and Covered Services Sections of this Benefit Plan. No benefits will be provided for orthodontic services (except as determined Medically Appropriate and Necessary) or osseointegrated dental implant surgery or related services performed for the treatment of temporomandibular or craniomandibular joint disorder(s).
21. Contraceptive products that do not require a Prescription Order or dispensing by a Health Care Provider.
22. Evaluations and related procedures to evaluate sterilization reversal procedures and the sterilization reversal procedure.
23. Abortions, except for those necessary to prevent the death of the woman. No benefits are available for removal of all or part of a multiple gestation.

24. Donor eggs including any donor treatment and retrieval costs, donor sperm, cryopreservation or storage of sperm, embryos or unfertilized eggs, Surrogate pregnancy and delivery, Gestational Carrier pregnancy and delivery, and preimplantation genetic diagnosis testing.

For the purpose of this exclusion, the following definitions apply:

Gestational Carrier - an adult woman who enters into an agreement to have a fertilized egg, gamete, zygote or embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.

Surrogate - an adult woman who enters into an agreement to bear a child conceived through assisted conception for intended parents.

25. Genetic testing when performed in the absence of symptoms or high risk factors for a heritable disease; genetic testing when knowledge of genetic status will not affect treatment decisions, frequency of screening for the disease, or reproductive choices; genetic testing that has been performed in response to direct-to-consumer marketing and not under the direction of the Member's physician.
26. Medications obtained without a Prescription Order or for any charges for the administration of legend drugs or insulin that may be self-administered unless such administration is Medically Appropriate and Necessary.
27. Dietary management programs, food items and dietary supplements for obesity, except as specifically allowed in the Covered Services Section of this Benefit Plan. Benefits for bariatric surgical services performed for the treatment of morbid obesity are available only when Precertification is obtained from the Claims Administrator. Benefits are subject to a Lifetime Maximum of 1 operative procedure for morbid obesity per Member.
28. Cosmetic Services. For the purpose of this exclusion the following definition applies:

Services or procedures with the primary purpose to improve appearance and not primarily to restore bodily function or correct deformity resulting from disease, trauma, congenital or developmental anomalies or previous therapeutic processes, or which primarily improve or alter body features which are variations of normal development.
29. Standby services provided or billed by a Health Care Provider.
30. Alternative treatment therapies, including acupuncture, aquatic whirlpool therapy, chelation therapy, massage therapy, naturopathy, homeopathy, holistic or integrative medicine, hypnotism, hypnotherapy, hypnotic anesthesia, music therapy, equine therapy or therapeutic touch. No benefits are available for acupuncture services, except as specifically allowed under this Benefit Plan.
31. All forms of thermography for all uses and indications.
32. Testicular prostheses regardless of the cause of the absence of the testicle.
33. Orthotic Devices, including orthopedic shoes and Home Medical Equipment required for leisure or recreational activities or to allow a Member to participate in sport activities unless Medically Appropriate and Necessary and approved by the Claims Administrator.
34. Palliative or cosmetic foot care, foot support devices (except custom made support devices) or subluxations of the foot, care of corns, bunions (except for capsular or bone surgery), calluses, toenails, fallen arches, weak feet, chronic foot strain and symptomatic complaints of the feet. Benefits are available for the care of corns, calluses and toenails when Medically Appropriate and Necessary for Members with diabetes or circulatory disorders of the legs or feet.

35. Dentistry or dental processes and related charges, including extraction of teeth, dental appliances including orthodontia placed in relation to a covered oral surgical procedure, root canal therapy or procedures relating to the structures supporting the teeth, gingival tissues or alveolar processes, except as specifically allowed in the Schedule of Benefits and Covered Services Sections of this Benefit Plan.
36. Eyeglasses or contact lenses and the vision examination for prescribing or fitting eyeglasses or contact lenses, except as specifically allowed in the Schedule of Benefits and Covered Services Sections of this Benefit Plan. No benefits are available for routine vision examinations. No benefits are available for refractive eye surgery when used in otherwise healthy eyes to replace eyeglasses or contact lenses.
37. Hearing aids or examinations for the prescription or fitting of hearing aids. Benefits are available for hearing aids for Members under age 18. No benefits are available for routine hearing examinations except as specifically allowed under this Benefit Plan. No benefits are available for a tinnitus masker.
38. Services when benefits are provided by any governmental unit or social agency, except for Medicaid or when payment has been made under Medicare Part A or Part B. Medicare Part A and Part B will be considered the primary payor with respect to benefit payments unless otherwise required by federal law.
39. Illness or injury caused directly or indirectly by war or an act of war or sustained while performing military services, if benefits for such illness or injury are available under the laws of the United States or any political subdivision thereof.
40. Illness or bodily injury that arises out of and in the course of a Member's employment if benefits or compensation for such illness or injury are available under the provisions of a state workers' compensation act, the laws of the United States or any state or political subdivision thereof.
41. Loss caused or contributed by a Member's commission or attempted commission of a felony (except losses caused or contributed by an act of domestic violence or any health condition) or a Member's involvement in an illegal occupation following the Member's enrollment in this Benefit Plan.
42. Any services when benefits are provided by a dental or medical department maintained by or on behalf of an employer, mutual benefit association, labor union, trust, similar person or group.
43. Services provided by a Health Care Provider who is a member of the Member's Immediate Family.
44. The following allergy testing modalities: nasal challenge testing, provocative/neutralization testing for food and food additive allergies, leukocyte histamine release, Rebeck skin window test, passive transfer or Prausnitz-Kustner test, cytotoxic food testing, metabisulfite testing, candidiasis hypersensitivity syndrome testing, IgG level testing for food allergies, general volatile organic screening test and mauve urine test.

The following methods of desensitization treatment: provocation/neutralization therapy for food/chemical or inhalant allergies by sublingual, intradermal and subcutaneous routes, Urine Autoinjections, Repository Emulsion Therapy, Candidiasis Hypersensitivity Syndrome Treatment or IV Vitamin C Therapy.

This exclusion also includes clinical ecology, orthomolecular therapy, vitamins or dietary nutritional supplements, or related testing provided on an inpatient or outpatient basis.
45. Telephone consultations or charges for failure to keep a scheduled visit or charges for completion of any forms required by the Claims Administrator.

46. Items or services provided primarily for the comfort and convenience of the Member, including personal hygiene or convenience items, air conditioners, humidifiers, physical fitness equipment or modifications to home or automobile.
47. Repair, replacement or upgrade of Home Medical Equipment if items are damaged, destroyed, lost or stolen due to Member misuse, abuse or carelessness. No benefits are available for replacement or upgrade of Home Medical Equipment when requested for Member convenience or to upgrade to a newer technology when the current components remain functional.
48. Health screening assessment programs or health education services, including all forms of communication media whether audio, visual or written.
49. Health and athletic club membership or facility use, and all services provided by the facility, including Physical Therapy, sports medicine therapy and physical exercise.
50. Artificial organs, donor search services or organ procurement if the organ or tissue is not donated.
51. Prosthetic Limbs or components intended only for cosmetic purposes or customized coverings for terminal devices. Benefits are not available for Prosthetic Limbs or components required for work-related tasks, leisure or recreational activities or to allow a Member to participate in sport activities.
52. Physical Therapy Maintenance Care, Occupational Therapy Maintenance Care or Speech Therapy Maintenance Care, work hardening programs, prevocational evaluation, functional capacity evaluations or group speech therapy services.
53. Chiropractic maintenance care that is typically long-term, by definition not therapeutically necessary but is provided at preferably regular intervals to prevent disease, prolong life, promote health and enhance the quality of life. This includes care provided after maximum therapeutic improvement, without a trial of withdrawal of treatment, to prevent symptomatic deterioration or it may be initiated with patients without symptoms in order to promote health and to prevent further problems.
54. Complications resulting from noncovered services received by the Member.
55. Services prescribed by, performed by or under the direct supervision of a Nonpayable Health Care Provider.
56. Services that a Member has no legal obligation to pay in the absence of this or any similar coverage.
57. Cost Sharing Amounts.
58. Services when Precertification was required but not obtained.
59. Brand Name prescription tobacco deterrents if Generic equivalent is available.
60. Low protein modified food products or medical food for maple syrup urine disease or phenylketonuria (PKU), to the extent those benefits are available under a department of health program or other state agency.
61. Food items for medical nutrition therapy, except as specifically allowed in the Covered Services Section of this Benefit Plan.
62. Collection and storage of umbilical cord blood.
63. Services, treatments or supplies not specified as a Covered Service under this Benefit Plan.

SECTION 5 GENERAL PROVISIONS

The Claims Administrator shall have full discretion to interpret and determine the application of the General Provisions in each and every situation. Any decisions by the Claims Administrator regarding the General Provisions shall be final, conclusive and binding upon all parties.

5.1 STATUS OF MEMBER ELIGIBILITY

The Plan Administrator agrees to furnish the Claims Administrator with any information required by the Claims Administrator for the purpose of enrollment. Any changes affecting a Member's eligibility for coverage must be provided to the Claims Administrator by the Plan Administrator and/or the Member immediately, but in any event the Plan Administrator and/or the Member shall notify the Claims Administrator within 31 days of the change.

Statements made on applications are deemed representations and not warranties. No statements made on the application may be used in any contest unless a copy has been furnished to that person, or in the event of the death or incapacity of that person, to the individual's beneficiary or personal representative. The Subscriber is provided a copy of the application at the time of completion.

A Member making a statement (including the omission of information) on the application or in relation to any of the terms of this Benefit Plan constituting fraud or an intentional misrepresentation of a material fact will result in the rescission of this Benefit Plan by the Claims Administrator. A rescission is a cancellation or discontinuance of coverage, including any benefits paid, that has a retroactive effect of voiding this Benefit Plan or any benefits paid under the terms of this Benefit Plan.

5.2 PHYSICAL EXAMINATIONS

The Claims Administrator at its own expense may require a physical examination of the Member as often as necessary during the pendency of a claim and may require an autopsy in case of death if the autopsy is not prohibited by law.

5.3 LIMITATION OF ACTIONS

No legal action may be brought for payment of benefits under this Benefit Plan prior to the expiration of 60 days following the Claims Administrator's receipt of a claim or later than 3 years after the expiration of the time within which notice of a claim is required by this Benefit Plan.

5.4 NOTIFICATION REQUIREMENTS AND SPECIAL ENROLLMENT PROVISIONS

A. The Subscriber is responsible for notifying the Plan Administrator and the Claims Administrator of any mailing address change within 31 days of the change.

B. The Subscriber is responsible for notifying the Plan Administrator and the Claims Administrator of any change in marital status within 31 days of the change.

1. If the Subscriber marries, Eligible Dependents may be added as a Member if an application is submitted within 31 days of the date of marriage. If the application is not submitted within the 31-day period, the Eligible Dependent may apply for coverage during the Annual Enrollment Period.

If the application is submitted within 31 days of the date of marriage, the effective date of coverage for the Eligible Dependents will be the first day of the month following enrollment.

2. If, because of legal separation, divorce, annulment or death, the Subscriber's spouse is no longer eligible for coverage under this Benefit Plan, the Subscriber's spouse must apply within 10 days of legal separation, divorce, annulment or death to be eligible for continuous health coverage. See Section 5.7.

Coverage for the Subscriber's spouse under Two Person or Family Participation will cease effective the first day of the month immediately following timely notice of legal separation, divorce or annulment.

- C. The Subscriber is responsible for notifying the Plan Administrator and the Claims Administrator of any change in family status within 31 days of the change.

The effective date of coverage for dependents added to this Benefit Plan within the designated time period will be the date of birth, physical placement or court order. If an application is not submitted within the designated time period, the Eligible Dependent may apply for coverage during the Annual Enrollment Period. The effective date of coverage will be the Group's anniversary date. The following provisions will apply:

1. At the time of birth, natural children will automatically be added to the Subscriber's Benefit Plan if Family Participation is in force. If the Subscriber is enrolled under another Contract Type, the Subscriber must submit an application for the newborn child within 31 days of the date of birth. If the application is not submitted within the designated time period, the child may apply for coverage during the Annual Enrollment Period.
2. Adopted children may be added to this Benefit Plan if an application, accompanied by a copy of the placement agreement or court order, is submitted to the Claims Administrator within 31 days of physical placement of the child. If the application is not submitted within the designated time period, the child may apply for coverage during the Annual Enrollment Period.
3. Children for whom the Subscriber or the Subscriber's living, covered spouse have been appointed legal guardian may be added to this Benefit Plan by submitting an application within 31 days of the date legal guardianship is established by court order. If the application is not submitted within the designated time period, the child may apply for coverage during the Annual Enrollment Period.
4. Children for whom the Subscriber or the Subscriber's living, covered spouse are required by court order to provide health benefits may be added to this Benefit Plan by submitting an application within 31 days of the date established by court order. If the application is not submitted within the designated time period, the child may apply for coverage during the Annual Enrollment Period.
5. If any of the Subscriber's children beyond the age of 26 are medically certified as intellectually disabled or physically disabled, the Subscriber may continue their coverage under Parent and Child, Parent and Children or Family Participation. Coverage will remain in effect as long as the child remains disabled, unmarried and financially dependent on the Subscriber or the Subscriber's living, covered spouse. The Claims Administrator may request annual verification of a child's disability after coverage for a disabled child has been in effect for 2 years.

The Subscriber must provide proof of incapacity and dependency of a child's disability within 31 days after the end of the month in which a child turns 26 or, if a child is beyond age 26, at the time of initial enrollment. If proof of incapacity and dependency for the dependent's disability is not made within 31 days and a lapse in coverage occurs, the child will be required to apply for coverage under a separate benefit plan.

6. If a child is no longer an Eligible Dependent under this Benefit Plan, the child must apply within 10 days of the loss of eligibility to be eligible for continuous health coverage under a separate benefit plan. See Section 5.7.
7. At the time of birth or adoption, Eligible Dependents may be added to this Benefit Plan if an application is submitted to the Claims Administrator within 31 days of birth or physical placement of the adopted child. If the application is not received in accordance with this provision, the Eligible Dependent may apply for coverage during the Annual Enrollment Period.

- D. Employees and/or dependents who previously declined coverage under this Benefit Plan will be able to enroll under this Benefit Plan if each of the following conditions are met:
1. During the initial enrollment period the employee or dependent states in writing that coverage under a group health plan or health insurance coverage was the reason for declining enrollment at such time.
 2. The employee's or dependent's coverage under a group health plan or other health insurance coverage:
 - a. was either terminated as a result of loss of eligibility (Including loss as a result of legal separation, divorce, death, termination of employment or reduction of hours, loss as a result of having a subsequent opportunity for late enrollment [including the Annual Enrollment Period] or special enrollment under the Benefit Plan but again choosing not to enroll, loss of other coverage triggered by a claim that meets or exceeds a lifetime benefit limitation or the Lifetime Maximum) or employer contributions toward such coverage were terminated; or
 - b. was under COBRA and the coverage was exhausted.
 3. The employee requests such enrollment within 31 days after the exhaustion or termination of coverage.

The effective date of coverage for an employee and/or dependent who previously declined coverage under this Benefit Plan and is enrolling pursuant to this provision will be the first day immediately following the exhaustion or termination of the employee's and/or dependent's previous coverage. The employee and/or dependent shall be responsible for any and all premium payments from the effective date of coverage under this provision through the date the employee and/or dependent requests enrollment under the terms of this Benefit Plan.

If the application is not received in accordance with this provision, the employee or dependent may apply for coverage during the Annual Enrollment Period. The effective date of coverage will be the Group's anniversary date.

- E. Employees and/or dependents will be able to enroll under this Benefit Plan if either of the following conditions is met:
1. The employee or dependent is covered under a Medicaid plan under Title XIX of the Social Security Act or under a state child health plan under Title XXI of the Social Security Act and the employee's or dependent's coverage under such a plan is terminated as a result of loss of eligibility. The employee must request enrollment within 60 days of the date of termination of coverage.
 2. The employee or dependent becomes eligible for premium assistance under a Medicaid plan under Title XIX of the Social Security Act or under a state child health plan under Title XXI of the Social Security Act. The employee must request enrollment within 60 days of the date the employee or dependent is determined to be eligible for premium assistance.

The effective date of coverage under this Benefit Plan for an employee and/or dependent enrolling pursuant to this provision will be the first day immediately following the termination of coverage or eligibility for premium assistance. The employee and/or dependent shall be responsible for any and all premium payments from the effective date of coverage under this provision through the date the employee and/or dependent requests enrollment under the terms of this Benefit Plan.

5.5 QUALIFIED MEDICAL CHILD SUPPORT ORDERS

This provision applies to Members affected by ERISA. See Section 5.8.

This Benefit Plan shall provide benefits in accordance with the applicable requirements of a Qualified Medical Child Support Order (QMCSO) pursuant to the provisions of §609 of the Employee Retirement Income Security Act (ERISA) and §1908 of the Social Security Act and any other applicable laws.

The term "child" as used in this provision means any child of a Subscriber who is recognized under a medical child support order as having a right to enrollment under this Benefit Plan with respect to such Subscriber. In connection with any adoption, or placement for adoption, of the child, the term "child" means an individual who has not attained the age of 18 as of the date of such adoption or placement for adoption.

A. A Medical Child Support Order (MCSO) is any judgment, decree or order (including approval of a settlement agreement) issued by a court of competent jurisdiction that:

1. Provides for child support with respect to a child of a Subscriber under a group health plan or provides for health benefit coverage to such a child, is made pursuant to a state domestic relations law (including a community property law) and relates to benefits under such plan; or
2. Enforces a state law relating to medical child support described in §1908 of the Social Security Act with respect to a group health plan.

B. A Qualified Medical Child Support Order is a Medical Child Support Order that:

1. Creates or recognizes the existence of a child's right to, or assigns to a child the right to, receive benefits for which a Subscriber or Member is eligible under the health plan; and
2. Clearly specifies:
 - a. the name and last known mailing address (if any) of the Subscriber and the name and mailing address of each child covered by the order;
 - b. a reasonable description of the type of coverage to be provided by the plan to each such child, or the manner in which such type of coverage is to be determined;
 - c. the period to which such order applies; and
 - d. each plan to which such order applies.

A MCSO qualifies as a QMCSO only if such order does not require the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, except to the extent necessary to meet the requirements of a law relating to medical child support described in §1908 of the Social Security Act.

C. The MCSO shall be submitted to the Plan Administrator for review. The Plan Administrator shall determine whether the MCSO qualifies as a QMCSO. The Plan Administrator shall promptly notify the Subscriber and each person specified in a MCSO as eligible to receive benefits under this Benefit Plan, (at the address included in the MCSO) of the receipt of the MCSO and the Plan Administrator's procedures for determining whether the MCSO is a QMCSO. Within 30 days or such other reasonable period after receipt of the MCSO, the Plan Administrator shall determine whether the MCSO is a QMCSO and notify the Subscriber and each child of such determination.

If the Plan Administrator determines that the MCSO qualifies as a QMCSO, the Plan Administrator shall immediately notify the Claims Administrator of that determination and of the name and mailing address of all children who are to be covered under this Benefit Plan. The Claims Administrator will forward all appropriate forms to each child for enrollment in this Benefit Plan. The forms must be completed by or on behalf of the child and returned to the Claims Administrator.

A child under a QMCSO shall be considered a Member under this Benefit Plan for purposes of any provision of ERISA. A child under any MCSO shall be considered a Subscriber of this Benefit Plan for purposes of the reporting and disclosure requirements of Part I of ERISA. A child may designate a representative for receipt of copies of notices that are sent to the child with respect to a MCSO.

Any payment for benefits made by this Benefit Plan pursuant to a MCSO in reimbursement for expenses paid by a child or a child's custodial parent or legal guardian shall be made to the child or the child's custodial parent or legal guardian.

5.6 **MEDICAID ELIGIBILITY**

This provision applies to Members affected by ERISA. See Section 5.8.

- A. When enrolling an individual as a Member, or in determining or making any payment for benefits, this Benefit Plan will not take into account the fact the Member is eligible for or covered by Medicaid.
- B. This Benefit Plan will make payment for benefits in accordance with any assignment of rights made by or on behalf of the Member.
- C. If Medicaid covers a Member and Medicaid pays benefits that should have been paid by this Benefit Plan, this Benefit Plan will pay those benefits directly to Medicaid rather than to the Member.

5.7 **CONTINUATION AND CONVERSION**

A. Conversion inside the Claims Administrator's Service Area

If the Subscriber becomes ineligible for group membership under this Benefit Plan due to an inability to meet the Claims Administrator's requirements and enrollment regulations, coverage will be canceled at the end of the last month that premium was received from the Plan Administrator. Exceptions may be made if:

- 1. The Plan Administrator cancels coverage. Conversion coverage will not be offered to a Subscriber, if on the date of conversion the Plan Administrator through which the Subscriber is eligible has terminated coverage with the Claims Administrator and the Plan Administrator has enrolled with another insurance carrier.
- 2. The Plan Administrator no longer meets the Claims Administrator's group coverage requirements. The Subscriber will be given the right to convert to the Claims Administrator's nongroup benefit plan, subject to premiums and benefit plan provisions in effect, if application for such coverage is made within 10 days after the termination date of the previous benefit plan.
- 3. Ineligibility occurs because the Subscriber elects to discontinue employment, is terminated or is otherwise no longer covered under the group health plan. The Subscriber may elect continuation coverage through the Plan Administrator in accordance with state and federal law.
- 4. Ineligibility occurs because the Subscriber is no longer eligible to continue coverage under group membership as provided in Section 5.7 (A.)(3.). The Subscriber may elect conversion coverage on a nongroup basis, subject to premiums and benefit plan provisions for nongroup coverage then in effect, if the Subscriber applies for the Claims Administrator's nongroup coverage within 10 days after the termination date of the previous group health plan coverage.

B. North Dakota Continuation and Conversion

This provision applies to Members not affected by COBRA. See Section 5.7 (C.).

1. If the Subscriber is a member of a group health plan, North Dakota law provides that the Subscriber and the Subscriber's Eligible Dependents, who were continuously covered under this Benefit Plan during a 3-month period immediately preceding termination of membership, may continue coverage under this Benefit Plan. The Subscriber or the Subscriber's Eligible Dependents must request continuation coverage in writing to the Plan Administrator within 10 days after the later of the date of termination or the day the Subscriber is given notice of the right to continuation coverage. Members must elect continuation coverage within 31 days of date of termination.
2. The Subscriber will be responsible for payment of premiums to the Plan Administrator. The initial premium payment must be made within 31 days after the date of termination.
3. Continuation coverage is not available for any person who is covered under Medicare.
4. Continuation coverage will terminate upon the occurrence of one of the following:
 - a. The date 39 weeks after the date of termination of the Member's coverage under this Benefit Plan.
 - b. Failure to pay premiums as required by the Plan Administrator.
 - c. The Plan Administrator terminates this Benefit Plan for all employees of the Group.
5. If an individual is totally disabled on the date coverage is discontinued or replaced, coverage for the totally disabled person will continue upon the individual's payment of premium until the earliest of the following:
 - a. The date 12 months after the date of discontinuation of the Group's coverage;
 - b. The date the individual is no longer totally disabled; or
 - c. The date a succeeding carrier provides replacement coverage to the individual without limitation as to the disabling condition.
6. If because of death, legal separation, divorce, annulment or age, a dependent is no longer eligible for coverage under this Benefit Plan, the dependent may apply to continue or convert coverage.
 - a. If the dependent is enrolled through a group health plan and becomes ineligible for coverage due to the death of the Subscriber, continuation and conversion will be provided in accordance with Sections 5.7 (A.)(4.) and (B.)(1.)-(4.).
 - b. If the dependent is enrolled through a group health plan and becomes ineligible for coverage due to an annulment of marriage, legal separation or divorce and a court order requires the Subscriber provide continuing coverage, the former spouse and dependent children may continue coverage under the Benefit Plan for a specified period of time, not to exceed 36 months. The former spouse must be covered under a separate benefit plan.

If the court order does not require the Subscriber to provide continuation coverage for the former spouse and dependent children or upon expiration of the 36-month continuation period, the former spouse and dependent children have the right to convert to a nongroup benefit plan, subject to premiums and benefit plan provisions in effect. The conversion coverage must provide comparable benefits if an application and premium payment are made within 31 days of notice of termination of the prior coverage. A benefit plan providing reduced benefits at a lesser premium may be elected.

- c. If the dependent is enrolled through a group health plan and becomes ineligible because of age, the dependent has the right to convert to a nongroup benefit plan, subject to premium and benefit plan provisions in effect, if an application is submitted within 31 days of the date of ineligibility.

C. Federal Continuation (COBRA)

This provision applies under amendments to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et seq. and the Public Health Service Act, 42 U.S.C. §300bb-1, et seq. These amendments are collectively referred to as "COBRA". COBRA provides for optional continuation coverage for certain Subscribers and/or Eligible Dependents under certain circumstances if the employer maintaining the group health plan normally employed 20 or more employees on a typical business day during the preceding calendar year. This provision is intended to comply with the law and any pertinent regulations and its interpretation is governed by them. This provision is not intended to provide any options or coverage beyond what is required by federal law. Subscribers should consult their Plan Administrator to find out if and how this provision applies to them and/or their Eligible Dependents.

A Subscriber covered by this Benefit Plan may have the right to choose continuation coverage if the Subscriber's group coverage is terminated because of a reduction in hours of employment or the termination of employment for reasons other than gross misconduct.

The spouse of the Subscriber covered by this Benefit Plan may have the right to choose continuation coverage if group coverage is terminated for any of the following reasons:

1. The death of the Subscriber;
2. A termination of the Subscriber's employment for reasons other than gross misconduct or a reduction in hours of employment;
3. Divorce or legal separation; or
4. The Subscriber becomes entitled to Medicare benefits.

A dependent child of the Subscriber covered by this Benefit Plan may have the right to continuation coverage if group coverage is terminated for any of the following reasons:

1. The death of the Subscriber;
2. The termination of the Subscriber's employment for reasons other than gross misconduct or reduction in a parent's hours of employment;
3. Parent's divorce or legal separation;
4. The Subscriber becomes entitled to Medicare; or
5. The dependent ceases to be an Eligible Dependent under this Benefit Plan.

A child who is born to a Subscriber or is placed for adoption with the Subscriber during the period of continuation coverage is eligible for COBRA coverage.

Continuation may apply in the event of a bankruptcy of the Group for certain retired Subscribers and their Eligible Dependents under certain conditions. If there is a bankruptcy of the Group, retired Subscribers and their Eligible Dependents should contact their Plan Administrator for more information.

The Subscriber or the Subscriber's Eligible Dependents have the responsibility to inform the Plan Administrator within 60 days of a divorce, legal separation or a child losing dependent status under this Benefit Plan. Where the Subscriber or an Eligible Dependent have been determined to be disabled under the Social Security Act, they must inform the Plan Administrator of such determination within 60 days after the date of the determination. The Subscriber or the Subscriber's Eligible Dependents are responsible for notifying the Plan Administrator within 30 days after the date of any final determination under the Social Security Act that the Subscriber or Eligible Dependent is no longer disabled.

When the Plan Administrator is notified that one of these events has occurred or has knowledge of the Subscriber's death, termination of employment, reduction in hours or Medicare entitlement, the Plan Administrator will notify the Subscriber or Eligible Dependents, as required by law of the right to choose continuation coverage. The Subscriber or Eligible Dependents has 60 days from the date coverage is lost, because of one of the events described above or 60 days from the date the Subscriber or Eligible Dependent is sent notice of his or her right to choose continuation coverage, whichever is later, to inform the Plan Administrator of the decision to continue coverage. If the Subscriber or Eligible Dependent does not choose continuation coverage, group coverage will terminate.

If the Subscriber chooses continuation coverage, the Plan Administrator is required to provide coverage identical to the coverage provided under the plan to similarly situated employees or family members. If group coverage is lost because of a termination of employment or reduction in hours, the Subscriber and Eligible Dependents may maintain continuation of coverage for 18 months. The law requires Eligible Dependents be given the opportunity to maintain continuation of coverage for 36 months in the event of the Subscriber's death, divorce, legal separation, or Medicare entitlement, or a child's loss of dependent status.

An 18-month extension of coverage is available to Eligible Dependents who elect continuation coverage if a second event occurs during the first 18 months of continuation coverage. The maximum amount of continuation coverage available when a second event occurs is 36 months. A second event includes loss of dependency status. A second event occurs only if it causes an Eligible Dependent to lose coverage under the Plan as if the first event had not occurred. Eligible Dependents must notify the Plan Administrator within 60 days after the second event occurs. If group coverage is lost because of a termination of employment or reduction in hours and the Subscriber becomes entitled to Medicare benefits less than 18 months before the termination or reduction in hours, Eligible Dependents may maintain continuation coverage for up to 36 months after the date of Medicare entitlement.

A Subscriber or Eligible Dependent determined to have been disabled for Social Security purposes at the time of termination of employment or reduction in hours or who becomes disabled at any time during the first 60 days of COBRA continuation coverage and who provides notice of such determination to the Plan Administrator, may be entitled to receive up to an additional 11 months of continuation coverage, for a total maximum of 29 months. The disability must last at least until the end of the 18-month period of continuation coverage. If the individual entitled to the disability extension has nondisabled family members who are entitled to continuation coverage, those nondisabled family members also may be entitled to extend the continuation coverage to 29 months.

There is a second 60-day election period for certain individuals who lose group health coverage and are eligible for federal trade adjustment assistance. The second election period applies only to those individuals who did not elect continuation coverage under the initial 60-day election period and who meet federal trade adjustment assistance eligibility guidelines. The second 60-day election period begins on the first day of the month in which the individual is determined to be eligible for trade adjustment assistance, but in no event may elections be made later than 6 months after the loss of group coverage. If elected, continuation coverage will be measured from the date of loss of group coverage.

Notwithstanding the availability of continuation coverage, the law also provides that continuation coverage may be terminated for any of the following reasons:

1. The Group no longer provides group coverage to any of its employees;
2. Failure to make the premium payment;
3. The person receiving continuation coverage becomes covered under another benefit plan providing the same or similar coverage (as an employee or otherwise) that does not contain any exclusion or limitation with respect to any preexisting condition of such person; (for plan years beginning on or after July 1, 1997, or later for certain plans maintained pursuant to one or more collective bargaining agreements, if the other benefit plan limits or excludes benefits for preexisting conditions but because of new rules applicable under the Health Insurance Portability and Accountability Act of 1996 those limits or exclusions would not apply to (or would be satisfied by) an individual receiving COBRA continuation coverage under this benefit plan, then this benefit plan can stop making the COBRA continuation coverage available to the individual); or
4. Entitlement to Medicare benefits.

Under the law a Subscriber may have to pay all or part of the premium for continuation coverage.

5.8 ERISA RIGHTS

As a Subscriber of this Benefit Plan enrolled through a group health plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Subscribers shall be entitled to:

A. Receive Information About Your Plan and Benefits.

1. Examine without charge at the Plan Administrator's office and at other specified locations, such as work sites and union halls, all documents governing the Benefit Plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan Administrator with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.
2. Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Benefit Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The Plan Administrator may make a reasonable charge for copies.
3. Receive a summary of the annual financial report of the Benefit Plan. The Plan Administrator is required by law to furnish each Subscriber with a copy of this summary annual report.

B. Continue Group Health Plan Coverage.

Continue health care coverage for yourself, spouse or dependents if there is a loss of coverage under the Benefit Plan as a result of a qualifying event. You or your dependents may have to pay for such coverage. Review your summary plan description and the document governing the Benefit Plan on the rules governing your COBRA continuation coverage rights.

C. Prudent Actions by Plan Fiduciaries.

In addition to creating rights for Subscribers, ERISA imposes duties upon the people who are responsible for the operation of the Benefit Plan. The people who operate the Benefit Plan, called "fiduciaries" of the Benefit Plan, have a duty to do so prudently and in the interest of the Members. No one, including the employer, union, or any other person, may fire or otherwise discriminate against the Subscriber in any way to prevent them from obtaining a benefit or exercising rights under ERISA.

D. Enforce Your Rights.

If a Claim for Benefits is denied or ignored, in whole or in part, the Subscriber has a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA there are steps that can be taken to enforce the above rights. For instance, if a Subscriber requests a copy of plan documents or the latest annual report from the Benefit Plan and does not receive them within 30 days, the Subscriber may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and to pay the Subscriber up to \$110 a day until the Subscriber receives the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If the Subscriber has a Claim for Benefits that is denied or ignored, in whole or in part, the Subscriber may file suit in a state or federal court. In addition, if you disagree with the plan's decision or lack thereof concerning the qualified status of a domestic relations order or medical child support order, you may file suit in federal court. If it should happen that Benefit Plan fiduciaries misuse the plan's money, or if the Subscriber is discriminated against for asserting their rights, the Subscriber may seek assistance from the U.S. Department of Labor, or the Subscriber may file suit in a federal court. The court will decide who should pay court costs and legal fees. If the Subscriber is successful, the court may order the person sued to pay these costs and fees. If the Subscriber loses, the court may order the Subscriber to pay these costs and fees, for example, if it finds the Subscriber's claim frivolous.

E. Assistance with Your Questions.

If the Subscriber has any questions about the Benefit Plan, the Subscriber should contact the Plan Administrator. If the Subscriber has any questions about this statement or about their rights under ERISA, or if the Subscriber needs assistance in obtaining documents from the Plan Administrator, the Subscriber should contact the nearest area office of the Employee Benefits Security Administration, U.S. Department of Labor listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. The Subscriber may also obtain certain publications about their rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

5.9 **AMENDMENT OF BENEFIT PLAN**

The terms of this Benefit Plan may be amended at any time by the Plan Administrator. However, any liability of the Claims Administrator under the stop-loss portion of this Benefit Plan shall be limited to the terms of the benefit plan document as written and approved by the Plan Administrator and the Claims Administrator regardless of whether any court determines that the terms of this Benefit Plan or any amendments thereof are invalid with respect to the Plan Administrator. The Claims Administrator shall not incur any liability for benefits, expenses or other payments under this Benefit Plan as a result of any amendment of this Benefit Plan nor shall any such amendment be considered in determining the stop-loss attachment point/coverage unless and until the Claims Administrator is notified in writing by certified mail of the amendment and the President and Chief Executive Officer of the Claims Administrator has agreed to the amendment in writing and the stop-loss coverage is modified accordingly. The Plan Administrator will furnish a summary description to each Member who is receiving benefits under the Benefit Plan in accordance with ERISA §104 and applicable regulations. The Claims Administrator is not responsible for notifying Members of any amendments nor is the Claims Administrator responsible for any other duties assigned to the Plan Administrator by ERISA or the terms of this Benefit Plan.

5.10 **CANCELLATION OF THIS OR PREVIOUS BENEFIT PLANS**

If the Benefit Plan is terminated, modified or amended, coverage is automatically terminated, modified or amended for all enrolled Members of the group health plan. It is the Plan Administrator's responsibility to notify Members of the termination of coverage.

5.11 NOTICE TO MOTHERS AND NEWBORNS

Group health plans and health insurance issuers generally may not, under federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, federal law generally does not prohibit the mother's or newborn's attending Health Care Provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under federal law, require that a Health Care Provider obtain authorization from the plan or the insurance issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

5.12 MEMBER - PROVIDER RELATIONSHIP

Benefits are available only for Medically Appropriate and Necessary services while under the care and treatment of a Health Care Provider. Nothing herein contained shall interfere with the professional relationship between the Member and his or her Health Care Provider.

If the Member remains in an institution after advice is received from the attending Physician that further hospitalization is unnecessary, the Subscriber shall be solely responsible to the institution for all charges incurred after he or she has been so advised. Further, the Claims Administrator may at any time request the attending Physician to certify the necessity of further confinement. If the attending Physician does not certify that further confinement is necessary, the Member is not entitled to further benefits during the confinement.

Each Member is free to select a Health Care Provider and discharge such Health Care Provider. Health Care Providers are free to provide medical care according to his or her own judgment. Nothing contained in this Benefit Plan will interfere with the ordinary relationship that exists between a Health Care Provider and patient or obligate the Claims Administrator in any circumstances to supply a Health Care Provider for any Member. The provision of medical care and/or the decision not to provide medical care may have a financial impact on the Health Care Provider. The Member should consult with his/her Health Care Provider regarding the nature and extent of such a financial impact, if any, as well as how it might affect medical care decisions.

A Member's medical care is between the Member and the Member's Health Care Provider, and this Benefit Plan only explains what is or is not covered, not what medical care the Member should seek.

Costs relating to any services subject to the authorization provisions that are not approved by the Claims Administrator will not be covered. **The ultimate decision on the Member's medical care must be made by the Member and the Member's Health Care Provider. The Claims Administrator only has the authority and discretion to determine the extent of benefits available for Covered Services under this Benefit Plan.**

The Member agrees to conform to the rules and regulations of the Hospital in which he or she is a patient, including those rules governing Admissions and types and scope of services furnished by said Hospital.

5.13 CLAIMS ADMINISTRATOR'S RIGHT TO RECOVERY OF PAYMENT

All Members expressly consent and agree to reimburse the Claims Administrator for benefits provided or paid for which a Member was not eligible under the terms of this Benefit Plan. Such reimbursement shall be due and payable immediately upon notification and demand by the Claims Administrator. Further, at the option of the Claims Administrator, benefits or the Allowance therefore may be diminished or reduced as an off set toward such reimbursement. Acceptance of membership fees, or providing or paying benefits by the Claims Administrator, shall not constitute a waiver of their rights to enforce these provisions in the future.

5.14 **CONFIDENTIALITY**

All Protected Health Information (PHI) maintained by the Claims Administrator under this Benefit Plan is confidential. Any PHI about a Member under this Benefit Plan obtained by the Claims Administrator from that Member or from a Health Care Provider may not be disclosed to any person except:

- A. Upon a written, dated, and signed authorization by the Member or prospective Member or by a person authorized to provide consent for a minor or an incapacitated person;
- B. If PHI identifies the Health Care Provider, upon a written, dated, and signed approval by the Health Care Provider. However, the Claims Administrator may disclose PHI to the Health Care Data Committee for the enhancement of price competition in the health care market. The Claims Administrator may also disclose to a Health Care Provider, as part of a contract or agreement in which the Health Care Provider is a party, data or information that identifies a Health Care Provider as part of mutually agreed upon terms and conditions of the contract or agreement;
- C. If the data or information does not identify either the Member or prospective Member or the Health Care Provider, the data or information may be disclosed upon request for use for statistical purposes or research;
- D. Pursuant to statute or court order for the production or discovery of evidence; or
- E. In the event of a claim or litigation between the Member or prospective Member and the Claims Administrator in which the PHI is pertinent.

This section may not be construed to prevent disclosure necessary for the Claims Administrator to conduct health care operations, including utilization review or management consistent with state law, to facilitate payment of a claim, to analyze health plan claims or health care records data, to conduct disease management programs with Health Care Providers, or to reconcile or verify claims under a shared risk or capitation arrangement. This section does not apply to PHI disclosed by the Claims Administrator as part of a research project approved by an institutional review board established under federal law. This section does not apply to PHI disclosed by the Claims Administrator to the insurance commissioner for access to records of the Claims Administrator for purposes of enforcement or other activities related to compliance with state or federal laws.

5.15 **PRIVACY OF PROTECTED HEALTH INFORMATION**

The Claims Administrator will not disclose the Member's Protected Health Information (PHI) to the Group unless the Group certifies that the Benefit Plan has been amended to incorporate the privacy restrictions required under federal and state law, and agrees to abide by them.

The Claims Administrator will disclose the Member's PHI to the Group to carry out administrative functions under the terms of the Benefit Plan, but only in accordance with applicable federal and state law. Any disclosure to and use by the Group of the Member's PHI will be subject to and consistent with this section. The Claims Administrator will not disclose the Member's PHI to the Group unless such disclosures are included in a notice of privacy practices distributed to the Member. The Claims Administrator will not disclose the Member's PHI to the Group for actions or decisions related to the Member's employment or in connection with any other benefits made available to the Member.

The following restricts the Group's use and disclosure of the Member's PHI:

- A. The Group will neither use nor further disclose the Member's PHI except as permitted by the Benefit Plan or required by law.
- B. The Group will ensure that anyone who receives the Member's PHI agrees to the restrictions and conditions of the Benefit Plan with respect to the Member's PHI.

- C. The Group will not use or disclose the Member's PHI for actions or decisions related to the Member's employment or in connection with any other benefit made available to the Member.
- D. The Group will promptly report to the Plan Administrator any use or disclosure of the Member's PHI that is inconsistent with the uses and disclosures allowed under this section upon learning of such inconsistent use or disclosure.
- E. In accordance with federal law, the Group will make PHI available to the Member who is the subject of the information. Such information is subject to amendment and, upon proper notice, the Group will amend the Member's PHI where appropriate.
- F. The Group will document disclosures it makes of the Member's PHI so the Plan Administrator is able to provide an accounting of disclosures as required under applicable state and federal law.
- G. The Group will make its internal practices, books, and records relating to its use and disclosure of the Member's PHI available to the Plan Administrator and to the U.S. Department of Health and Human Services as necessary to determine compliance with federal law.
- H. The Group will, where feasible, return or destroy all Members PHI in whatever form or medium received from the Plan Administrator, including all copies of and any data or compilations derived from and allowing identification of any Member when the Member's PHI is no longer needed for the plan administration functions for which the disclosure was made. If it is not feasible to return or destroy all Member PHI, the Group will limit the use or disclosure of any Member PHI to those purposes that make the return or destruction of the information infeasible.

5.16 **NOTICE OF PRIVACY PRACTICES**

The Claims Administrator maintains a Notice of Privacy Practices. This Notice of Privacy Practices outlines the Claims Administrator's uses and disclosures of PHI, sets forth the Claims Administrator's legal duties with respect to PHI and describes a Member's rights with respect to PHI. Members can obtain a Notice of Privacy Practices by contacting Member Services at the telephone number and address on the back of the Identification Card or by visiting the Claims Administrator's website.

5.17 **SECURITY MEASURES FOR ELECTRONIC PROTECTED HEALTH INFORMATION**

- A. The Group will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Members' electronic PHI that the Group creates, receives, maintains, or transmits on the Plan Administrator's behalf.
- B. The Group will report to the Plan Administrator any attempted or successful (1) unauthorized access, use, disclosure, modification, or destruction of Members' electronic PHI or (2) interference with the Group's system operations in the Group's information systems, of which the Group becomes aware, except any such security incident that results in disclosure of Members' PHI not permitted by the Benefit Plan must be reported to the Plan Administrator as required by 5.15 (D).
- C. The Group will support the adequate separation between the Group and the Plan Administrator, as specified in the Benefit Plan, with reasonable and appropriate security measures.

5.18 RETROSPECTIVE DISCOUNT PAYMENT DISCLOSURE

A Member may be required to pay Cost Sharing Amounts for each Prescription Medication or Drug provided under the terms of this Benefit Plan. A Member will pay these Cost Sharing Amounts directly to the Health Care Provider at the time the Prescription Medication or Drug is dispensed or administered.

In some cases, drug manufacturers may offer retrospective discount payments on certain specific Prescription Medications and Drugs dispensed or administered to Members under the terms of this Benefit Plan. Such retrospective discount payments from the manufacturer are not determined or paid by the manufacturer until at least one year following the date a Prescription Medication or Drug was provided to a Member under the terms of this Benefit Plan. A portion of these retrospective discount payments, if offered, is retained by an entity that performs pharmaceutical manufacturer discount program services through a contract with the Claims Administrator on behalf of this Benefit Plan. Another portion of these retrospective discount payments, if offered, is paid to the Claims Administrator.

Pharmaceutical manufacturer discount program services include the following: processing and handling of pharmaceutical manufacturer retrospective discounts for applicable claims; billing and collecting appropriate retrospective discounts on those claims from manufacturers; distributing payments in accordance with the terms of manufacturer discount program service agreements; formulary development, use and communication; benefit design analysis and consultation; annual analysis of claims data and recommendations; monthly utilization reporting; formulary appeals; and clinical services including physician and disease-state education programs.

**SECTION 6
CLAIMS FOR BENEFITS, APPEALS AND GRIEVANCES**

The Claims Administrator shall have full discretion to interpret and determine the application of Claims for Benefits and Appeals in each and every situation. Any decisions by the Claims Administrator regarding Claims for Benefits and Appeals shall be final, conclusive and binding upon all parties.

A Member may submit a Claim for Benefits by contacting the Claims Administrator at the telephone number or address listed on the back of the Identification Card. The Member is responsible for providing the Claims Administrator with a Claim for Benefits within 18 months after the date the benefits or services offered under this Benefit Plan were incurred. A Claim for Benefits must include the information necessary for the Claims Administrator to determine benefits or services.

The Member may designate an Authorized Representative to pursue a Claim for Benefits or appeal an adverse determination from a Claim for Benefits. The designation of an Authorized Representative is limited in scope and not an assignment of benefits. It does not grant the Authorized Representative any of the Member's rights and privileges under the terms of this Benefit Plan. See Section 3, Authorizations.

Upon receipt of a Claim for Benefits under this Benefit Plan from a Member and/or the Member's Authorized Representative, the following claims review and appeals process applies:

Maximum Time Limits for Claim for Benefits Processing

Type of Notice	Emergency Claim for Benefits	Pre-Service Claim for Benefits	Post-Service Claim for Benefits	Ongoing Course of Treatment Claim for Benefits
Initial Determinations (Plan) Extensions	72 Hours NONE	15 Days 15 Days	30 Days 15 Days	Notification "sufficiently in advance" of reduction or termination of benefits.*
Improperly Filed Claims (Plan)	24 Hours	5 Days	NONE	N/A
Additional Information Request (Plan)	24 Hours	15 Days	30 Days	N/A
Response to Request For Additional Information (Claimant)	48 Hours	45 Days	45 Days	N/A
Request for Appeal (Claimant)	180 Days	180 Days	180 Days	N/A
Appeal Determinations (Plan) Extensions	72 Hours NONE	30 Days NONE	60 Days NONE	As appropriate to the type of Claim for Benefits.

*If Claim for Benefits is made at least 24 hours before expiration of treatment and the Claim for Benefits involves an urgent care Claim for Benefits, the Claims Administrator's decision must be made within 24 hours of receipt of the Claim for Benefits.

6.1 CLAIMS FOR BENEFITS INVOLVING PRECERTIFICATION (PRESERVICE CLAIMS FOR BENEFITS)

A. Claims for Benefits Requiring Precertification.

1. Claims for Benefits Requiring Precertification. Upon receipt of a Claim for Benefits under the Benefit Plan from a Member and/or a Member's Authorized Representative that is conditioned on a Member obtaining approval in advance of obtaining the benefit or service, the Claims Administrator will notify the Member and/or the Member's Authorized Representative of its determination within a reasonable period of time but no later than 15 days from receiving the Claim for Benefits. The Claims Administrator may extend this initial time period an additional 15 days if the Claims Administrator is unable to make a determination due to circumstances beyond its control after giving the Member and/or the Member's Authorized Representative notice of the need for additional time prior to the expiration of the initial 15-day time period.

If the Member and/or the Member's Authorized Representative improperly submits a Claim for Benefits, the Claims Administrator will notify the Member and/or the Member's Authorized Representative as soon as possible but no later than 5 days after receipt of the Claim for Benefits and provide the Member and/or the Member's Authorized Representative with the proper procedures to be followed when filing a Claim for Benefits. The Claims Administrator may also request additional or specified information after receiving a Claim for Benefits, but any such request will be made prior to the expiration of the initial 15-day time period after receiving the Claim for Benefits. Upon receiving notice of an improperly filed Claim for Benefits or a request for additional or specified information, the Member and/or the Member's Authorized Representative has 45 days in which to properly file the Claim for Benefits and submit the requested information. After receiving the properly filed Claim for Benefits or additional or specified information, the Claims Administrator shall notify the Member and/or the Member's Authorized Representative of its determination within a reasonable period of time but no later than 15 days after receipt of the properly filed Claim for Benefits and additional information.

2. Claims for Benefits Involving an Ongoing Course of Treatment or Number of Treatments. For services or benefits involving an ongoing course of treatment taking place over a period of time or number of treatments, the Claims Administrator will provide the Member and/or the Member's Authorized Representative with notice that the services or benefits are being reduced or terminated at a time sufficiently in advance to permit the Member and/or the Member's Authorized Representative to request extending the course of treatment or number of treatments. Upon receiving a Claim for Benefits from a Member and/or a Member's Authorized Representative to extend such treatment, the Claims Administrator will notify the Member and/or the Member's Authorized Representative of its determination as soon as possible prior to terminating or reducing the benefits or services.
3. Appeals of Claims for Benefits Requiring Precertification. The Member and/or the Member's Authorized Representative have up to 180 days to appeal the Claims Administrator's benefit determination of a Claim for Benefits requiring Precertification of benefits or services. Upon receipt of an appeal from a Member and/or a Member's Authorized Representative, the Claims Administrator will notify the Member and/or the Member's Authorized Representative of its determination within a reasonable period of time but no later than 30 days after receiving the Member's and/or the Member's Authorized Representative's request for review.

B. Claims for Benefits Involving Emergency Care or Treatment

1. Claims for Benefits for Emergency Services. Upon receipt of a Claim for Benefits for Emergency Services from a Member and/or a Member's Authorized Representative, the Claims Administrator will notify the Member and/or the Member's Authorized Representative of its determination as soon as possible but no later than 72 hours after receiving the Claim for Benefits.

If the Member and/or the Member's Authorized Representative improperly submits a Claim for Benefits or the Claim for Benefits is incomplete and the Claims Administrator requests additional or specified information, the Claims Administrator will notify the Member and/or the Member's Authorized Representative as soon as possible but no later than 24 hours after receipt of the Claim for Benefits. Upon receiving notice of an improperly filed Claim for Benefits or the request from the Claims Administrator for additional or specified information, the Member and/or the Member's Authorized Representative has 48 hours to properly file the Claim for Benefits or to provide the requested information. After receiving the properly filed Claim for Benefits or requested information, the Claims Administrator shall notify the Member and/or the Member's Authorized Representative of its determination as soon as possible but no later than 48 hours after receipt of the additional or specified information requested by the Claims Administrator or within 48 hours after expiration of the Member's time period to respond.

2. Appeals of Claims for Benefits for Emergency Services. The Member and/or the Member's Authorized Representative have up to 180 days to appeal the Claims Administrator's benefit determination of a Claim for Benefits for Emergency Services. Upon receipt of an appeal from a Member and/or a Member's Authorized Representative, the Claims Administrator will notify the Member and/or the Member's Authorized Representative of its determination, whether adverse or not, as soon as possible but no later than 72 hours after receiving the Member's and/or the Member's Authorized Representative's request for review. A Member and/or a Member's Authorized Representative may request an appeal from a determination involving a Claim for Benefits for Emergency Services orally or in writing, and the Claims Administrator will accept needed materials by telephone or facsimile.

6.2 ALL OTHER CLAIMS FOR BENEFITS (POST SERVICE CLAIM FOR BENEFITS)

- A. Claims for Benefits for All Other Services or Benefits. Upon receipt of a Claim for Benefits under the Benefit Plan from a Member and/or a Member's Authorized Representative, the Claims Administrator will notify the Member and/or the Member's Authorized Representative of its determination within a reasonable period of time but no later than 30 days from receiving the Claim for Benefits and only if the determination is adverse to the Member. The Claims Administrator may extend this initial time period in reviewing a Claim for Benefits an additional 15 days if the Claims Administrator is unable to make a determination due to circumstances beyond its control after giving the Member and/or the Member's Authorized Representative notice of the need for additional time prior to the expiration of the initial 30-day time period.

The Claims Administrator may request additional or specified information after receiving a Claim for Benefits, but any such request will be made prior to the expiration of the initial 30-day time period after receiving the Claim for Benefits. Upon receiving a request for additional or specified information, the Member and/or the Member's Authorized Representative has 45 days in which to submit the requested information. After receiving the additional or specified information, the Claims Administrator shall notify the Member and/or the Member's Authorized Representative of its determination within a reasonable period of time but no later than 30 days after receipt of the additional information.

- B. Claims for Benefits Involving an Ongoing Course of Treatment or Number of Treatments. For a Claim for Benefits involving services or benefits involving an ongoing course of treatment taking place over a period of time or number of treatments, the Claims Administrator will provide the Member and/or the Member's Authorized Representative with notice that the services or benefits are being reduced or terminated at a time sufficiently in advance to permit the Member and/or the Member's Authorized Representative to request extending the course of treatment or number of treatments. Upon receiving a Claim for Benefits from a Member and/or a Member's Authorized Representative to extend such treatment, the Claims Administrator will notify the Member and/or the Member's Authorized Representative of its determination as soon as possible prior to terminating or reducing the benefits or services.

- C. Appeals from Initial Claims for Benefits Determinations for All Other Claims for Services or Benefits. The Member and/or the Member's Authorized Representative have up to 180 days to appeal the Claims Administrator's benefit determination of a Claim for Benefits. Upon receipt of an appeal from a Member and/or a Member's Authorized Representative, the Claims Administrator will notify the Member and/or the Member's Authorized Representative of its determination within a reasonable period of time but no later than 60 days after receiving the Member's and/or the Member's Authorized Representative's request for review.

To inquire on the Claims for Benefits and Appeals process, please contact Member Services at the telephone number and address on the back of the Identification Card.

6.3 **GRIEVANCES**

In certain situations, a Member and/or the Member's Authorized Representative may file a grievance with the Claims Administrator. A "grievance" is a written or oral complaint, if the complaint is submitted by or on behalf of a Member and/or the Member's Authorized Representative, that involves one of the following:

- A. Quality of Care Grievance - a complaint related to the quality of health care services provided by a Health Care Provider;
- B. Quality of Service Grievance - a complaint related to the non-clinical services received by a Member that may include but are not limited to complaints regarding access to care, waiting times, claims payment or reimbursement for health care services; or
- C. Administrative Grievance - any complaint involving the terms of coverage and plan services administered by the Claims Administrator.

The Member and/or the Member's Authorized Representative can file a grievance or receive assistance with filing and/or completing a grievance by contacting Member Services at Blue Cross Blue Shield of North Dakota, PO Box 1570, Fargo, North Dakota 58107-1570 or telephone 1-844-363-8455.

Grievances may be filed orally or in writing no later than 180 days after the incident. The Member and/or the Member's Authorized Representative will receive a response within 30 days.

SECTION 7 OTHER PARTY LIABILITY

This section describes the Claims Administrator's Other Party Liability programs and coordinating benefits and services when a Member has other health care coverage available, and outlines the Member's responsibilities under these programs. The Claims Administrator shall determine the interpretation and application of the following Other Party Liability provisions in each and every situation.

7.1 COORDINATION OF BENEFITS

This provision applies when a Member is enrolled under another plan (defined below), whether insured or self-funded, with a similar coordination of benefits provision. If the sum of benefits payable under this Benefit Plan and the other plan exceed the total allowable expense for Covered Services, the benefits payable under this Benefit Plan will be reduced so the sum of benefits payable under all plans does not exceed 100% of the total allowable expense for Covered Services.

For the purposes of this coordination of benefits provision, the following definitions apply:

"Allowable expense" means a health care expense, including deductibles, coinsurance and copayments (if required as part of a plan), that is covered at least in part by any plan covering a Member. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid. An expense not covered by any plan covering a Member is not an allowable expense. In addition, any expense that a health care provider by law or in accordance with a contractual agreement is prohibited from charging a Member is not an allowable expense. The following are examples of expenses that are not allowable expenses:

- (1) The difference between the cost of a semiprivate hospital room and a private hospital room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.
- (2) If a Member is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology, any amount in excess of the highest reimbursement amount for a specific benefit is not an allowable expense.
- (3) If a Member is covered by two or more plans that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an allowable expense.
- (4) If a Member is covered by one plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different from the primary plan's payment arrangement and if the provider's contract permits, the negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits.
- (5) The amount of any benefit reduction by the primary plan because a Member has failed to comply with the plan provisions is not an allowable expense. Examples of these types of plan provisions include second surgical opinions, precertification of admissions, and preferred provider arrangements.

"Closed panel plan" means a plan that provides health care benefits to Members primarily in the form of services through a panel of health care providers that have contracted with or are employed by the plan, and that excludes coverage for services provided by other health care providers, except in cases of emergency or referral by a panel member.

"Custodial parent" means the parent awarded physical custody by a court order or, in the absence of a court order, the parent with whom the child resides more than one-half of the calendar year excluding any temporary visitation.

"Plan" includes any of the following that provides benefits or services for medical or dental care or treatment: group and nongroup insurance contracts, health maintenance organization contracts, closed panel plans or other forms of group or group-type coverage; medical care components of long-term care contracts, such as skilled nursing care; and Medicare or any other federal government plan, as permitted by law. A "plan" does not include any of the following: hospital indemnity coverage or other fixed indemnity coverage; accident-only coverage; medical benefits under group or individual automobile contracts; specified disease or specified accident coverage; limited benefit health coverage, as defined by state law; school accident-type coverage; benefits for nonmedical components of long-term care policies; Medicare supplement policies; Medicaid policies; or coverage under other federal governmental plans, unless permitted by law.

- A. Order of Benefits Determination Rules. The order of benefits determination rules govern the order in which this Benefit Plan and another plan will pay benefits. The plan that pays first is called the primary plan. The primary plan must pay benefits in accordance with its policy terms without regard to the possibility that another plan may cover some expenses. The secondary plan may reduce the benefits it pays so that the benefits payable under all plans do not total more than 100% of the total allowable expense for Covered Services.

A plan that does not contain a coordination of benefits provision that is consistent with this Benefit Plan's provision is always primary unless the rules of both plans state that this Benefit Plan is primary. An exception exists for coverage that is obtained by virtue of membership in a group that is designed to supplement part of a basic package of benefits and provides that the supplementary coverage shall be excess to any other parts of the plan provided by the policyholder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

If a Claim for Benefits or any other request for reimbursement is submitted under this Benefit Plan the order of payment will be the first of the following rules that apply:

1. Nondependent or dependent. The plan that covers the person other than as a dependent, for example as an employee, member, subscriber, policyholder or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan.

However, if the person is a Medicare beneficiary, and, as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, Medicare is:

- a. Secondary to the plan covering the person as a dependent; and
- b. Primary to the plan covering the person as other than a dependent (e.g., a retired employee).

Then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan.

2. Dependent child covered under more than one plan. Unless there is a court order stating otherwise, plans covering a dependent child shall determine the order of benefits as follows:
 - a. For a dependent child whose parents are married or are living together, whether or not they have ever been married:
 - (1) The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or
 - (2) If both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

- b. For a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married:
 - (1) If a court order states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, but that parent's spouse does, that parent's spouse's plan is the primary plan. This paragraph shall not apply with respect to any plan year during which Covered Services are paid or provided before the entity has actual knowledge of the court order provision. A copy of the court order must be provided to the Claims Administrator upon request;
 - (2) If a court order states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of Section 7.1(A.)(2.)(a.) shall determine the order of benefits;
 - (3) If a court order states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of Section 7.1(A.)(2.)(a.) shall determine the order of benefits; or
 - (4) If there is no court order allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child are as follows:
 - a. The plan covering the custodial parent;
 - b. The plan covering the custodial parent's spouse;
 - c. The plan covering the non-custodial parent; and then
 - d. The plan covering the non-custodial parent's spouse.
- c. For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits shall be determined, as applicable, under Section 7.1(A.)(2.)(a.) or Section 7.1(A.)(2.)(b.) as if those individuals were parents of the child.

- 3. Active employee or retired or laid-off employee. The plan that covers a person as an active employee that is, an employee who is neither laid off nor retired, or as a dependent of an active employee is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule is ignored. Also, this rule does not apply if the rule in Section 7.1(A.)(1.) can determine the order of benefits.

- 4. COBRA or state continuation coverage. If a person whose coverage is provided pursuant to COBRA or under a right of continuation pursuant to state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber, policyholder or retiree or covering the person as a dependent of an employee, member, subscriber, policyholder or retiree is the primary plan and the plan covering that same person pursuant to COBRA or under a right of continuation pursuant to state or other federal law is the secondary plan.

If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule is ignored. Also, this rule does not apply if the rule in Section 7.1(A.)(1.) can determine the order of benefits.

5. Longer or shorter length of coverage. If the preceding rules do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan.

To determine the length of time a person has been covered under a plan, two successive plans shall be treated as one if the covered person was eligible under the second plan within 24 hours after coverage under the first plan ended.

The start of a new plan does not include:

- a. A change in the amount or scope of a plan's benefits;
- b. A change in the entity that pays, provides or administers the plan's benefits; or
- c. A change from one type of plan to another, such as from a single employer plan to a multiple employer plan.

The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group must be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

6. If none of the preceding rules determines the order of benefits, the allowable expenses shall be shared equally between the plans.
- B. If it is determined this Benefit Plan is secondary, the benefits of this Benefit Plan will be reduced so that the total benefits paid or provided by all plans during a Benefit Period are not more than the total allowable expenses. In determining the amount to be paid for any claim, this Benefit Plan will calculate the benefits it would have paid in the absence of coverage under another plan and apply that calculated amount to the allowable expense under this Benefit Plan that is unpaid by the primary plan. The benefits of this Benefit Plan will then be reduced so that they and the benefits payable under the other plans for the claim do not total more than 100% of the total allowable expense for that claim. When the benefits of this Benefit Plan are reduced as described in this subsection, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of this Benefit Plan. In addition, if this Benefit Plan has a deductible and/or coinsurance, the deductible and/or coinsurance will be credited with any amounts that would have been credited in the absence of the other plan.

The ultimate responsibility of the Claims Administrator for payment of Covered Services will never exceed the amount payable in the absence of other coverage.

RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION

Certain facts about health care coverage and services are needed to administer this coordination of benefits provision and to determine benefits payable under this Benefit Plan and other plans. The Claims Administrator may obtain the facts it needs from or give them to other organizations or persons for the purpose of administering this provision. The Claims Administrator need not tell, or obtain the consent of, any person to do this. Each Member claiming benefits under this Benefit Plan must provide the Claims Administrator with any facts it needs to administer this provision and determine benefits payable.

FACILITY OF PAYMENT

A payment made under another plan may include an amount that should have been paid under this Benefit Plan. If it does, the Claims Administrator may pay that amount to the organization that made the payment. The amount will then be treated as though it were a benefit paid under this Benefit Plan. The Claims Administrator will not have to pay that amount again.

RIGHT OF RECOVERY

If payments have been made by the Claims Administrator for Covered Services in excess of the amount payable under this Benefit Plan, the Claims Administrator may recover the excess from any persons to or for whom such payments were made, including any Member, provider or other organization. The Member agrees to execute and deliver any documentation requested by the Claims Administrator to recover excess payments.

7.2 **AUTOMOBILE NO-FAULT OR MEDICAL PAYMENT BENEFIT APPLICATION**

If a Member is eligible for basic automobile no-fault benefits or other automobile medical payment benefits as the result of accidental bodily injury arising out of the operation, maintenance or use of a motor vehicle, the benefits available under this Benefit Plan will be reduced by the basic automobile no-fault benefits or other automobile medical payment benefits.

7.3 **MEDICAL PAYMENT BENEFIT COORDINATION**

If a Member is eligible for medical payment benefits provided by any other collectible insurance as a result of an injury, the benefits available under this Benefit Plan will be reduced by and coordinated with the medical payment benefits provided by any other collectible insurance not prohibited from coordination of benefits.

7.4 **RIGHTS OF SUBROGATION, REIMBURSEMENT AND ASSIGNMENT**

If the Claims Administrator on behalf of the Group pays benefits for Covered Services to or for a Member for any injury or condition caused or contributed to by the act or omission of any third party, the Claims Administrator on behalf of the Group shall have certain rights of assignment, subrogation and/or reimbursement as set forth below. The Claims Administrator has full discretionary authority to determine whether to exercise any or all of said rights.

A Member must notify the Claims Administrator of the circumstances of the injury or condition, cooperate with the Claims Administrator in doing whatever is necessary to enable the Claims Administrator to assert these rights, and do nothing to prejudice them. The rights stated herein apply automatically in any applicable situation. The Claims Administrator has no obligation to notify a Member of the Claims Administrator's intent to exercise one or more of these rights and the Claims Administrator's failure to provide such a notice shall not constitute a waiver of these rights.

If a Member does not comply with these provisions or otherwise prejudices the rights of the Claims Administrator on behalf of the Group to assignment, subrogation or reimbursement, the Claims Administrator shall have full discretion to withhold payment of any future benefits to or for the Member and to off set the benefits already paid to or for the Member against the payment of any future benefits to or for the Member regardless of whether or not said future benefits are related to the injury or condition. The Claims Administrator shall have full discretion to interpret these provisions and to determine their application in each and every situation. Any decisions by the Claims Administrator regarding the application of the above provisions shall be final, conclusive and binding upon all parties.

- A. Right of Assignment and/or Subrogation: If a Member fails to bring a claim against a third party (including any person, firm or corporation which may be liable for or on behalf of the third party), the Claims Administrator on behalf of the Group has the right to bring said claim as the assignee and/or subrogee of the Member and to recover any benefits paid under this Benefit Plan.

- B. Right of Reimbursement: If a Member makes any recovery from a third party (including any person, firm or corporation which may be liable for or on behalf of the third party), whether by judgment, settlement or otherwise, the Member must notify the Claims Administrator of said recovery and must reimburse the Claims Administrator on behalf of the Group to the full extent of any benefits paid by the Claims Administrator, not to exceed the amount of the recovery. This right of reimbursement shall apply to any such recovery to the extent of any benefits paid under this Benefit Plan even if the Member has not received full compensation for the injury or condition. Any recovery the Member may obtain is conclusively presumed to be for the reimbursement of benefits paid by the Claims Administrator on behalf of the Group until the Claims Administrator has been fully reimbursed.

The Member agrees to not transfer any right to any recovery to a third party or otherwise attempt to avoid the rights of the Claims Administrator on behalf of the Group under this Benefit Plan. The Member agrees that any recovery shall be held in trust for the Claims Administrator on behalf of the Group until the Claims Administrator on behalf of the Group has been fully reimbursed and/or that the Claims Administrator on behalf of the Group shall have a lien on any recovery to the full extent of any benefits paid under this Benefit Plan. The Member agrees that to enforce its rights under this section, the Claims Administrator on behalf of the Group may pursue any and all remedies, legal or equitable, available under state or federal law, including subrogation, breach of contract, constructive trust, equitable lien, injunction, restitution and any other remedies.

7.5 **WORKERS' COMPENSATION**

If benefits or compensation are available, in whole or in part, under provisions of a state workers' compensation act, laws of the United States or any state or political subdivision thereof, the benefits under this Benefit Plan will be reduced by and coordinated with such other benefits or compensation available to a Member.

If a Member is injured or suffers any condition caused or contributed to by the Member's employment, the Member must notify the Claims Administrator of the circumstances of the injury and condition, cooperate with the Claims Administrator and the United States or any state or political subdivision thereof in doing whatever is necessary to determine the availability of such benefits or compensation, and do nothing to prejudice them.

In the event of the failure of a Member to comply with this provision or if a Member prejudices that Member's right or entitlement to benefits or compensation available under such a program, the Claims Administrator shall have full discretion to withhold payment of any future benefits to or for the Member and to off set the benefits already paid to or for the Member against the payment of any future benefits to or for the Member regardless of whether or not said future benefits are related to the injury or condition.

SECTION 8 DEFINITIONS

This section defines the terms used in this Benefit Plan. These terms will be capitalized throughout this Benefit Plan when referred to in the context defined. The Claims Administrator shall have full discretion to interpret and determine the application of the Definitions in each and every situation. Any decisions by the Claims Administrator regarding the Definitions shall be final, conclusive and binding upon all parties.

ADMISSION - entry into a facility as an Inpatient or Outpatient for treatment and care when ordered by a Health Care Provider with admitting privileges. An Admission ends when a Member is discharged or released from the facility and is no longer registered as a patient.

ALLOWANCE OR ALLOWED CHARGE - the maximum dollar amount that payment for a procedure or service is based on as determined by the Claims Administrator.

AMBULATORY (OUTPATIENT) SURGERY - surgery performed in the outpatient department of a Hospital, Ambulatory Surgical Facility or Professional Health Care Provider's office.

ANCILLARY SERVICES - services required for the treatment of a Member in a Hospital, other than room, board and professional services.

ANNUAL ENROLLMENT PERIOD - a period of time an eligible employee or Eligible Dependent may apply for coverage under this Benefit Plan after the initial enrollment period. The Annual Enrollment Period will be a period of 31 days prior to the Group's anniversary date.

AUTHORIZED REPRESENTATIVE - a Health Care Provider or other individual authorized by the Member to inquire or request information on a Member.

BENEFIT PERIOD - a specified period of time when benefits are available for Covered Services under this Benefit Plan. A claim will be considered for payment only if the date of service or supply was within the Benefit Period. All benefits are determined on a calendar year (January 1 through December 31) Benefit Period.

BENEFIT PLAN - the agreement with the Claims Administrator, including the Subscriber's application, Identification Card, the Service Agreement, this Summary Plan Description and any supplements, endorsements, attachments, addenda or amendments.

BLUECARD PROGRAM - The Blue Cross and Blue Shield Association, of which the Claims Administrator is an independent licensee, has implemented the BlueCard Program. This allows Members seeking medical services outside the Claims Administrator's (Home Plan) service area, access to the Health Care Provider discounts of the local Blue Cross and/or Blue Shield entity (Host Plan) participating in the BlueCard Program.

CLAIM FOR BENEFITS - a request for a benefit or benefits under the terms of this Benefit Plan made by a Member in accordance with the Claims Administrator's reasonable procedures for filing a Claim for Benefits as outlined in Section 6, Claims for Benefits, Appeals and Grievances. A Claim for Benefits includes Claims for Benefits requiring Precertification (Preservice Claim for Benefits) and all other Claims for Benefits (Post Service Claim for Benefits). A Claim for Benefits involving payment of a claim shall be made promptly and in accordance with state law.

CLAIMS ADMINISTRATOR - Blue Cross Blue Shield of North Dakota. Also referred to as BCBSND.

CONTRACT TYPE - the type of coverage the Subscriber is enrolled under, identifying who is eligible to receive benefits for Covered Services under this Benefit Plan. Contract Types are as follows:

- A. **Individual Participation** - Subscriber only.
- B. **Parent and Child Participation** - Subscriber and one eligible child.
- C. **Parent and Children Participation** - Subscriber and eligible children.
- D. **Two Person Participation** - Subscriber and spouse.
- E. **Family Participation** - Subscriber and Eligible Dependents.

COST SHARING AMOUNTS - the dollar amount a Member is responsible for paying when Covered Services are received from a Health Care Provider. Cost Sharing Amounts include Coinsurance, Copayment and Deductible Amounts. Health Care Providers may bill you directly or request payment of Coinsurance, Copayment and Deductible Amounts at the time services are provided. See Section 1, Schedule of Benefits for the specific Cost Sharing Amounts that apply to this Benefit Plan.

- A. **Coinsurance Amount** - a percentage of the Allowed Charge for Covered Services that is a Member's responsibility.

Any Coinsurance Amount(s) met during the last 3 months of a Benefit Period is carried forward and applied toward the Coinsurance Amount for the following Benefit Period.

The Claims Administrator shall calculate Coinsurance Amounts on behalf of Members obtaining Covered Services within the Claims Administrator's service area on the lesser of (1) billed charges or (2) provider negotiated payment rates (Allowed Charge).

If Covered Services are obtained by a Member out of the Claims Administrator's service area, the local Blue Cross Blue Shield Plan's (Host Plan) provider contract may require coinsurance calculation that is not based on the discounted price the Health Care Provider has agreed to accept from the Host Plan. Rather, it may be based on the Health Care Provider's billed charges. This may result in a significantly higher Coinsurance Amount for certain services a Member incurs out of the Claims Administrator's service area. It is not possible to provide specific information for each out-of-area Health Care Provider because of the many different arrangements between Host Plans and Health Care Providers. However, if a Member contacts the Claims Administrator prior to incurring out-of-area services, the Claims Administrator may be able to provide information regarding specific Health Care Providers.

- B. **Coinsurance Maximum Amount** - the total Coinsurance Amount that is a Member's responsibility during a Benefit Period. The Coinsurance Maximum Amount renews on January 1 of each consecutive Benefit Period.
- C. **Copayment Amount** - a specified dollar amount payable by the Member for certain Covered Services. Health Care Providers may request payment of the Copayment Amount at the time of service. Copayment Amounts do not apply toward the Out-of-Pocket Maximum Amount.
- D. **Deductible Amount** - a specified dollar amount payable by the Member for certain Covered Services received during the Benefit Period. The Deductible Amount renews on January 1 of each consecutive Benefit Period. Copayment Amounts do not apply toward the Deductible Amount.

Any Deductible Amount(s) met during the last 3 months of a Benefit Period is carried forward and applied toward the Deductible Amount for the following Benefit Period.

- E. **Out-of-Pocket Maximum Amount** - the total Deductible and Coinsurance Amounts for certain Covered Services that are a Member's responsibility during a Benefit Period. When the Out-of-Pocket Maximum Amount is met, this Benefit Plan will pay 100% of the Allowed Charge for Covered Services, less Copayment Amounts incurred during the remainder of the Benefit Period. The Out-of-Pocket Maximum Amount renews on January 1 of each consecutive Benefit Period. Copayment Amounts and the Outpatient Prescription Medication or Drug Cost Sharing Amounts do not apply toward the Out-of-Pocket Maximum Amount.

F. Infertility Services Deductible Amount - a specified dollar amount payable by the Member during their lifetime for infertility services. The Infertility Services Deductible Amount does not apply toward the Out-of-Pocket Maximum Amount.

COVERED SERVICE - Medically Appropriate and Necessary services and supplies for which benefits are available when provided by a Health Care Provider.

CUSTODIAL CARE - care that the Claims Administrator in its sole discretion determines is designed essentially to assist the patient in meeting the activities of daily living and not primarily provided for its therapeutic value in the treatment of an illness, disease, injury or condition.

DIABETES PREVENTION PROGRAM - a 12-month lifestyle change program using the Centers for Disease Control's research-based approved curriculum for Members age 18 and older at a high risk of developing type 2 diabetes.

DIABETES PREVENTION PROVIDER - a Participating Health Care Provider, or an individual or entity affiliated or associated with a Participating Health Care Provider, using trained lifestyle coaches to provide a Diabetes Prevention Program.

DIAGNOSTIC SERVICE - a test or procedure provided because of specific symptoms and directed toward the determination of a definite condition. A Diagnostic Service must be ordered by a Professional Health Care Provider. Diagnostic Services include, but are not limited to X-ray and other imaging services, laboratory and pathology services, cardiographic, encephalographic and radioisotope tests.

ELIGIBLE DEPENDENT - a dependent of the Subscriber, or a dependent's dependent (grandchild), who qualifies for membership under this Benefit Plan in accordance with the requirements specified below:

- A. The Subscriber's spouse under a legally existing marriage.
- B. The Subscriber's or the Subscriber's living, covered spouse's children under the age of 26 years. Children are considered under age 26 until the end of the month in which the child becomes 26 years of age. The term child or children includes:
 - 1. Children physically placed with the Subscriber for adoption or whom the Subscriber or the Subscriber's living, covered spouse has legally adopted.
 - 2. Children living with the Subscriber for whom the Subscriber or the Subscriber's living, covered spouse has been appointed legal guardian by court order.
 - 3. The Subscriber's grandchildren or those of the Subscriber's living, covered spouse if: (a) the parent of the grandchild is unmarried, (b) the parent of the grandchild is covered under this Benefit Plan and (c) the parent is primarily dependent on the Subscriber for support. If a lapse in coverage occurs due to ineligibility of the parent under this Benefit Plan, the grandchild cannot be reenrolled unless the Subscriber has been appointed legal guardian.
 - 4. Children for whom the Subscriber or the Subscriber's living, covered spouse are required by court order to provide health benefits.
 - 5. Children beyond the age of 26 who are incapable of self support because of intellectual disability or physical handicap that began before the child attained age 26 and who are primarily dependent on the Subscriber or the Subscriber's spouse for support. Coverage for such a disabled child will continue for as long as the child remains unmarried, disabled and the Subscriber's dependent for federal income tax purposes. The Subscriber may be asked periodically to provide evidence satisfactory to the Claims Administrator of these disabilities.

EMERGENCY MEDICAL CONDITION - a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson acting reasonably and possessing an average knowledge of health and medicine to believe that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily function, serious dysfunction of any bodily organ or part or would place the person's health, or with respect to a pregnant woman the health of the woman or her unborn child, in serious jeopardy.

EMERGENCY SERVICES - health care services, supplies or treatments furnished or required to screen, evaluate and treat an Emergency Medical Condition.

EXPERIMENTAL OR INVESTIGATIVE - a drug, device, medical service, treatment or procedure is Experimental or Investigative if:

- A. the drug or device cannot be lawfully marketed without the approval of the U.S. Food and Drug Administration and approval for marketing has not been given at the time the drug or device is furnished; or
- B. the drug, device, medical service, treatment or procedure, or the patient informed consent document utilized with the drug, device, medical service, treatment or procedure was reviewed and approved by the treating facility's institutional review board as required by federal law; or
- C. the Claims Administrator in its sole discretion determines that there exists reliable evidence that the drug, device, medical service, treatment or procedure
 - 1. is the subject of ongoing phase 1 or phase 2 clinical trials,
 - 2. is the research, experimental, study or investigational arm of an ongoing phase 3 clinical trial, or
 - 3. is otherwise under study to determine its maximum tolerated dose, its toxicity, its safety, its efficacy or its efficacy as compared with a standard means of treatment or diagnosis; or
- D. the Claims Administrator in its sole discretion determines that there exists reliable evidence with respect to the drug, device, medical service, treatment or procedure and that further studies or clinical trials are necessary to determine its maximum tolerated dose, its toxicity, its safety, its efficacy or its efficacy as compared with a standard means of reliable treatment or diagnosis; or
- E. the Claims Administrator in its sole discretion determines that based on prevailing medical evidence the drug, device, medical service, treatment or procedure is Experimental or Investigative.

Reliable evidence shall mean only published reports and articles in the authoritative medical and scientific literature; the written protocol or protocols used by the treating facility or the protocol(s) of another facility studying substantially the same drug, device, medical service, treatment or procedure; or the written informed consent used by the treating facility or by another facility studying substantially the same drug, device, medical service, treatment or procedure.

EXPLANATION OF BENEFITS - a document sent to the Member by the Claims Administrator after a claim for reimbursement has been processed. It includes the patient's name, claim number, type of service, Health Care Provider, date of service, charges submitted for the services, amounts covered by this Benefit Plan, noncovered services, Cost Sharing Amounts and the amount of the charges that are the Subscriber's responsibility. This form should be carefully reviewed and kept with other important records.

GROUP - the Plan Sponsor that has signed an agreement with the Claims Administrator to provide health care benefits for its eligible employees and Eligible Dependents.

HEALTH CARE PROVIDER - Institutional or Professional Health Care Providers providing Covered Services to Members as listed below. The Health Care Provider must be licensed, registered or certified by the appropriate state agency where the Covered Services are performed and provided in accordance with the Health Care Provider's scope of licensure as provided by law. Where there is no appropriate state agency, the Health Care Provider must be registered or certified by the appropriate professional body. A Health Care Provider includes but is not limited to:

- A. **Advanced Practice Registered Nurse** - Including a Clinical Nurse Specialist, Certified Registered Nurse Anesthetist (CRNA), Certified Nurse Midwife or Nurse Practitioner.
- B. **Ambulance** - a specially designed or equipped vehicle used only for transporting the critically ill or injured to a health care facility. The ambulance service must meet state and local requirements for providing transportation for the sick or injured and must be operated by qualified personnel who are trained in the application of basic life support.
- C. **Ambulatory Surgical Facility** - a facility with an organized staff of Professional Health Care Providers that:
 1. has permanent facilities and equipment for the primary purpose of performing surgical procedures on an outpatient basis;
 2. provides treatment by or under the direct supervision of a Professional Health Care Provider;
 3. does not provide inpatient accommodations; and
 4. is not, other than incidentally, a facility used as an office or clinic for the private practice of a Professional Health Care Provider.
- D. **Audiologist.**
- E. **Certified Diabetes Educator (C.D.E.).**
- F. **Chiropractor** - a Doctor of Chiropractic (D.C.).
- G. **Dentist** - a Doctor of Dental Surgery (D.D.S.) or Doctor of Dental Medicine (D.M.D.).
- H. **Home Health Agency** - an agency providing, under the direction of a Professional Health Care Provider, skilled nursing and related services to persons in their place of residence.
- I. **Home Infusion Therapy Provider.**
- J. **Home Medical Equipment Supplier.**
- K. **Hospice** - an organization that provides medical, social and psychological services in the home or inpatient facility as palliative treatment for patients with a terminal illness and life expectancy of less than 6 months.
- L. **Hospital** - an institution that is engaged in providing inpatient and outpatient diagnostic and therapeutic services for the diagnosis, treatment and care of sick and injured persons by or under the direct supervision of Professional Health Care Providers.
- M. **Independent Clinical Laboratory** - a medical laboratory providing Diagnostic Services that is approved for reimbursement by the Claims Administrator and is not affiliated or associated with a Hospital or Professional Health Care Provider otherwise providing patient services.
- N. **Licensed Addiction Counselor.**
- O. **Licensed Assisted Behavior Analyst.**
- P. **Licensed Behavior Analyst.**
- Q. **Licensed Certified Social Worker.**
- R. **Licensed Clinical Psychologist** - a licensed psychologist with a doctorate degree in psychology who is eligible for listing in the National Register of Health Service Providers in Psychology.

- S. **Licensed Independent Clinical Social Worker** - an individual who has a doctorate or master's degree in social work from a college or university and who has fulfilled the requirements for licensure or has been registered by the North Dakota Board of Social Work Examiners for third party reimbursement before August 1, 1997.
- T. **Licensed Professional Clinical Counselor.**
- U. **Licensed Professional Counselor.**
- V. **Licensed Registered Dietitian.**
- W. **Long Term Acute Care Facility** - a facility that provides long-term acute hospital care for medically complex conditions or specialized treatment programs.
- X. **Mobile Radiology Supplier.**
- Y. **Occupational Therapist.**
- Z. **Optometrist** - a Doctor of Optometry (O.D.).
- AA. **Oral Pathologist** - a Doctor of Dental Surgery (D.D.S.) meeting all formal requirements for certification by the American Board of Oral Pathologists.
- BB. **Oral Surgeon** - a Doctor of Dental Surgery (D.D.S.) meeting all formal requirements for certification by the American Board of Oral Surgery.
- CC. **Pain Treatment Facility** - a facility that has satisfied the CARF accreditation requirements of a chronic pain management program.
- DD. **Pharmacist.**
- EE. **Pharmacy** - an establishment where the profession of pharmacy is practiced by a Pharmacist.
- FF. **Physical Therapist.**
- GG. **Physician** - a Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.).
- HH. **Physician Assistant.**
- II. **Podiatrist** - a Doctor of Podiatry (D.P.), a Doctor of Surgical Chiropody (D.S.C.), a Doctor of Podiatric Medicine (D.P.M.) or a Doctor of Surgical Podiatry (D.S.P.).
- JJ. **Psychiatric Care Facility** - an institution or a distinct part of an institution providing diagnostic and therapeutic services for the inpatient treatment of mental illness under the direct supervision of a Professional Health Care Provider.
- KK. **Rehabilitation Facility** - an institution or a distinct part of an institution providing Rehabilitative Therapy.
- LL. **Respiratory Therapist.**
- MM. **Skilled Nursing Facility** - an institution or a distinct part of an institution providing skilled nursing and related services to persons on an inpatient basis under the direct supervision of a Professional Health Care Provider.
- NN. **Sleep Lab.**
- OO. **Speech Therapist.**

PP. **Substance Abuse Facility** - an institution or a distinct part of an institution with nursing and medical professionals providing medically managed inpatient detoxification, medically monitored inpatient detoxification, medically managed intensive inpatient treatment or medically monitored intensive inpatient treatment at an appropriately licensed and credentialed Substance Abuse Facility. Precertification is required.

QQ. **Transitional Care Unit** - a sub-acute unit of a Hospital that provides skilled services necessary for the transition between Hospital and home or to a lower level of care.

HOME HEALTH CARE - Skilled Nursing Services, Physical Therapy, Occupational Therapy and Speech Therapy provided under active Physician and nursing management through a central administrative unit coordinated by a registered nurse to a Member in the Member's place of residence.

HOME MEDICAL EQUIPMENT - items that can withstand repeated use and are primarily used to serve a medical purpose outside of a health care facility. Such items would not be of use to a person in the absence of illness, injury or disease.

IDENTIFICATION CARD - a card issued in the Subscriber's name identifying the Unique Member Identifier of the Member. If a Member is also enrolled in a primary Medicare Part D Plan, a card for this Benefit Plan may be issued in the Member's name.

IMMEDIATE FAMILY - a person who ordinarily resides in a Member's household or is related to the Member, including a Member's parent, sibling, child or spouse, whether the relationship is by blood or exists in law.

INCLUDING - means including, but not limited to.

INPATIENT - a person confined as a registered patient in a Hospital, Skilled Nursing Facility, Substance Abuse Facility, Psychiatric Care Facility or other Institutional Health Care Provider.

INSTITUTIONAL HEALTH CARE PROVIDER - an Ambulance, Home Health Agency, Home Medical Equipment Supplier, Hospital, Long Term Acute Care Facility, Mobile Radiology Supplier, Pain Treatment Facility, Pharmacy, Psychiatric Care Facility, Rehabilitation Facility, residential treatment center, Skilled Nursing Facility, Sleep Lab, Substance Abuse Facility or Transitional Care Unit.

INTENSIVE OUTPATIENT PROGRAM - a structured, short term multidisciplinary treatment for psychiatric illness and/or substance abuse provided by a Health Care Provider. The treatment is more intensive than Outpatient treatment but less intensive than Partial Hospitalization.

LIFETIME MAXIMUM - the maximum amount of benefits, including procedures, days, visits or dollars for certain Covered Services an eligible Member may receive during a lifetime while enrolled under a Benefit Plan sponsored by the Group. The benefit amounts received under all previous Benefit Plans sponsored by the Group will be applied toward the Lifetime Maximum for such Covered Services under this Benefit Plan.

MAINTENANCE CARE - treatment provided to a Member whose condition/progress has ceased improvement or could reasonably be expected to be managed without the skills of a Health Care Provider. Exception: periodic reassessments are not considered Maintenance Care.

MAXIMUM BENEFIT ALLOWANCE - the maximum amount of benefits, including procedures, days, visits or dollars available under this Benefit Plan for a specified Covered Service.

MEDICALLY APPROPRIATE AND NECESSARY - services, supplies or treatments provided by a Health Care Provider to treat an illness or injury that satisfy all the following criteria as determined by the Claims Administrator in its sole discretion:

- A. The services, supplies or treatments are medically required and appropriate for the diagnosis and treatment of the Member's illness or injury;
- B. The services, supplies or treatments are consistent with professionally recognized standards of health care; and

C. The services, supplies or treatments do not involve costs that are excessive in comparison with alternative services that would be effective for diagnosis and treatment of the Member's illness or injury.

MEMBER - the Subscriber and, if another Contract Type is in force, the Subscriber's Eligible Dependents.

NONPARTICIPATING HEALTH CARE PROVIDER - a Health Care Provider that does not have a participation agreement with the Claims Administrator. Nonparticipating Health Care Providers (Including Psychiatric Care Facility, Substance Abuse Facility, Inpatient, Institutional Health Care Provider, Intensive Outpatient Program, Partial Hospitalization, or Residential Treatment) must meet the same programmatic, staffing and intensity of services treatment components as defined by the Claims Administrator for participating providers, and payment for these services will be specific to that level of care.

NONPAYABLE HEALTH CARE PROVIDER - a Health Care Provider that is not reimbursable by the Claims Administrator. No benefits will be available for Covered Services prescribed by, performed by or under the direct supervision of a Nonpayable Health Care Provider.

OFFICE VISIT - a professional service, Including an examination for the purpose of diagnosing or treating an illness or injury or the determination, initiation or monitoring of a treatment plan provided in an outpatient setting by a Professional Health Care Provider.

ORTHOTIC DEVICES - any rigid or semi-rigid supportive device that restricts or eliminates the motion of a weak or diseased body part.

OUTPATIENT - a person treated as a registered Outpatient at a Hospital, clinic or in a Professional Health Care Provider's office, who is not, at the time of treatment, a registered patient in a Hospital, Skilled Nursing Facility, Substance Abuse Facility, Psychiatric Care Facility or other Institutional Health Care Provider.

PARTIAL HOSPITALIZATION - continuous structured multidisciplinary treatment of mental illness or substance abuse by a Health Care Provider, usually held during the daytime hours and generally providing 20 or more hours per week to treat multidimensional instability not requiring 24-hour care. Precertification is required.

PARTICIPATING HEALTH CARE PROVIDER - a Health Care Provider that has entered into a participation agreement with the Claims Administrator to provide Covered Services to a Member for an agreed upon payment.

PARTICIPATING PHARMACY - a Pharmacy, preferred mail order pharmacy or preferred specialty drug provider that has entered into an agreement with the Claims Administrator's preferred pharmacy network, preferred mail order pharmacy network or preferred specialty pharmacy network.

PLAN ADMINISTRATOR - the administrator of the Plan as defined by Section 3(16) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

PRECERTIFICATION - the process of the Member or the Member's representative notifying the Claims Administrator of the Member's intent to receive services requiring Precertification. The Member's Health Care Provider must provide the necessary information to establish the requested services are Medically Appropriate and Necessary in order to receive benefits for such services. Eligibility for benefits for services requiring Precertification is contingent upon compliance with the provisions of Section 3. Precertification does not guarantee payment of benefits.

PRESCRIPTION MEDICATION OR DRUG - any legend drug, Payable Over-the-Counter (OTC) Drug, biologic or insulin that is lawfully dispensed according to federal laws upon receipt of a Prescription Order and is approved by the U.S. Food and Drug Administration for the treatment of the disease or illness for which the Member is receiving care.

- A. **Brand Name** - the registered trademark name of a Prescription Medication or Drug by its manufacturer, labeler or distributor.
- B. **Formulary Drug** - a Brand Name or Generic Prescription Medication, Drug, or diabetes supply that is a safe, therapeutically effective, high quality and cost effective drug as determined by a committee of Physicians and Pharmacists.
- C. **Generic** - the established name or official chemical name of the drug, drug product or medicine.
- D. **Nonformulary Drug** - a Prescription Medication, Drug, or diabetes supply that is not a Formulary Drug.
- E. **Nonpayable Drug** - a Prescription Medication or Drug that is not reimbursed by the Claims Administrator or is included in Section 4, Exclusions.
- F. **Payable Over-the-Counter (OTC) Drug** - a medication or drug approved by the U.S. Food and Drug Administration for marketing without a Prescription Order and approved by the Claims Administrator when dispensed by a Pharmacist upon the receipt of a Prescription Order.
- G. **Restricted Use Drug** - a Prescription Medication or Drug that may require Precertification and/or be subject to a limited dispensing amount or a Step Therapy requirement.
- H. **Specialty Drug** - an Outpatient Prescription Medication or Drug listed on the Specialty Drug list.
- I. **Step Therapy** - the process of trying another proven, cost-effective medication before coverage may be available for the drug included in the Step Therapy program. Many Brand Name drugs have a less-expensive Generic or Brand Name alternative that might be an option. There must be documented evidence that another eligible medication in the same or different drug class has been tried before the Step Therapy medication will be paid under the Outpatient Prescription Medication or Drug benefit.

PRESCRIPTION ORDER - the order for a Prescription Medication or Drug issued by a Professional Health Care Provider licensed to make such order in the ordinary course of professional practice.

PROFESSIONAL HEALTH CARE PROVIDER - an Advanced Practice Registered Nurse, Ambulatory Surgical Facility, Audiologist, Certified Diabetes Educator, Chiropractor, Dentist, Home Infusion Therapy Provider, Independent Clinical Laboratory, Licensed Addiction Counselor, Licensed Assisted Behavior Analyst, Licensed Behavior Analyst, Licensed Certified Social Worker, Licensed Clinical Psychologist, Licensed Independent Clinical Social Worker, Licensed Professional Clinical Counselor, Licensed Professional Counselor, Licensed Registered Dietitian, Occupational Therapist, Optometrist, Oral Pathologist, Oral Surgeon, Pharmacist, Physical Therapist, Physician, Physician Assistant, Podiatrist, Respiratory Therapist or Speech Therapist as defined.

PROSTHETIC APPLIANCE OR LIMB - a fixed or removable artificial body part that replaces an absent natural part.

PROTECTED HEALTH INFORMATION (PHI) - individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:

- A. is created by or received from a Health Care Provider, health care employer, or health care clearinghouse;
- B. relates to a Member's past, present or future physical or mental health or condition;
- C. relates to the provision of health care to a Member;
- D. relates to the past, present, or future payment for health care to or on behalf of a Member; or
- E. identifies a Member or could reasonably be used to identify a Member.

Educational records and employment records are not considered PHI under federal law.

RESIDENTIAL TREATMENT - 24-hour care under the clinical supervision of a Health Care Provider, in a residential treatment center other than an acute care hospital, for the active treatment of chemically dependent or mentally ill persons and to stabilize multidimensional imminent risk. Precertification is required.

SELF-ADMINISTERED - a Prescription Medication or Drug taken by mouth or injection that does not require professional administration.

SKILLED NURSING SERVICES - services that can be safely and effectively performed only by or under the direct supervision of licensed nursing personnel and under the direct supervision of a Professional Health Care Provider.

SPECIAL CARE UNIT - a section, ward or wing within a Hospital operated exclusively for critically ill patients and provides special supplies, equipment and constant observation and care by registered nurses or other highly trained personnel, excluding any section, ward or wing within a Hospital maintained for the purpose of providing normal postoperative recovery treatment services.

SUBSCRIBER - an employee whose application for membership has been accepted, whose coverage is in force with the Claims Administrator and in whose name the Identification Card is issued. A Subscriber is an eligible employee or other individual who meets and continues to meet all applicable eligibility requirements and who is enrolled and actually covered under this Benefit Plan.

SURGICAL SERVICES - the performance of generally accepted operative and cutting procedures by a Professional Health Care Provider.

TELEHEALTH SERVICES - the use of interactive audio, video or other telecommunications technology delivered over a secure connection that complies with the requirements as determined by the Claims Administrator. Telehealth Services are provided by a Health Care Provider at a Distant Site providing Covered Services to the Member at an Originating Site. This includes the use of Store-and-Forward Technology. Telehealth Services do not include the use of audio-only telephone, electronic mail or facsimile transmissions.

The following definitions apply to Telehealth Services:

Distant Site - a site at which a Health Care Provider or health care facility is located while providing medical services via interactive audio video telecommunications technology.

Originating Site - a site at which a patient is located at the time health services are provided to the patient via interactive audio video telecommunications technology.

Store-and-Forward Technology - the electronic information, imaging and communication that is transferred, recorded or otherwise stored in order to be reviewed at a Distant Site at a later date by a Health Care Provider or health care facility without the patient present in real time. The term includes telehome monitoring and interactive audio, video and data communication.

THERAPY SERVICES - the following services when provided according to a prescribed plan of treatment ordered by a Professional Health Care Provider and used for the treatment of an illness or injury to promote recovery of the Member:

- A. **Behavioral Modification Intervention for Autism Spectrum Disorder (Including Applied Behavior Analysis (ABA))** - the principles and techniques by a Licensed Behavior Analyst or Licensed Assisted Behavior Analyst to design, supervise, implement, modify and evaluate environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behavior, including the use of direct observation, measurement and functional analysis.
- B. **Chemotherapy** - the treatment of malignant disease by chemical or biological antineoplastic agents approved and administered in accordance with the approval granted by the U.S. Food and Drug Administration and/or listed as an accepted unlabeled use by the current edition of the USPDI Drug Information for the Health Care Professional and is determined by the Claims Administrator to have been administered in accordance with standard medical practice.

- C. **Dialysis Treatment** - the process of diffusing blood across a semipermeable membrane to remove toxic materials and to maintain fluid, electrolyte and acid-base balance in cases of impaired kidney function or absence of the kidneys.
- D. **Habilitative Therapy** - Habilitative Physical Therapy, Occupational Therapy, Speech Therapy or Behavioral Modification Intervention for Autism Spectrum Disorder (Including Applied Behavior Analysis (ABA)) is care provided for conditions which have limited the normal age appropriate motor, sensory or communication development. To be considered habilitative, functional improvement and measurable progress must be made toward achieving functional goals within a predictable period of time toward a Member's maximum potential.

Functional skills are defined as essential activities of daily life common to all Members such as dressing, feeding, swallowing, mobility, transfers, fine motor skills, age appropriate activities and communication. Problems such as hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance, an orthopedic impairment, autism spectrum disorders, traumatic brain injury, deaf-blindness, or multiple disabilities may warrant Habilitative Therapies.

Measurable progress emphasizes accomplishment of functional skills and independence in the context of the Member's potential ability as specified within a care plan or treatment goals.

- E. **Occupational Therapy** - the treatment of physical or psychological dysfunction by or under the direct supervision of a licensed Occupational Therapist designed to improve and maximize independence in perceptual-motor skills, sensory integrative functioning, strength, flexibility, coordination, endurance, essential activities of daily life and preventing the progression of a physical or mental disability.
- F. **Physical Therapy** - the treatment of disease, injury or medical condition by the use of therapeutic exercise and other interventions by or under the direct supervision of a licensed Physical Therapist that focuses on improving posture, locomotion, strength, endurance, balance, coordination, joint mobility, flexibility, age appropriate motor skills, alleviating pain and preventing the progression of a physical or mental disability.
- G. **Radiation Therapy** - the treatment of disease by the flow of a radiation beam of therapeutically useful radiant energy, through a defined area; Including emission of X-rays, gamma rays, electrons or other radiations from a treatment machine.
- H. **Rehabilitative Therapy** - therapy designed to restore function following a surgery or medical procedure, injury or illness.
- I. **Respiratory Therapy** - the introduction of dry or moist gases into the lungs when performed by or under the direct supervision of a registered or certified Respiratory Therapist.
- J. **Speech Therapy** - the treatment of speech and language disorders that result in communication disabilities and swallowing disorders when provided by or under the direct supervision of a certified and licensed Speech Therapist. Speech Therapy services facilitate the development of human communications and swallowing through assessment, diagnosis and treatment when disorders occur due to disease, surgery, trauma, congenital anomaly or prior therapeutic process.

UNIQUE MEMBER IDENTIFIER - a number assigned by the Claims Administrator and listed on the Identification Card that identifies the Subscriber for administrative purposes.

City of Bismarck

January 1, 2020 through December 31, 2020

**STOP-LOSS CONTRACT
(INCURRED BASIS)**

This Stop-Loss Contract ("Contract") is entered into between City of Bismarck ("Insured") and Blue Cross Blue Shield of North Dakota ("BCBSND"), the terms of which are as follows:

WITNESSETH:

WHEREAS, the Insured has established and maintains a self-funded employee welfare benefit plan known as the City of Bismarck Group Plan ("the Plan"), which provides, among other things, various benefits to Members in the Plan, as set forth in the attached Exhibit "A"; and

WHEREAS, benefits under the Plan are paid from the general assets of the Insured, or trust assets ("the Trust"), or a combination of such general assets and trust assets; and

WHEREAS, BCBSND provides certain services to the Plan pursuant to the Administrative Service Agreement dated January 1, 2020, a copy of which is attached; and

WHEREAS, the Insured desires to protect its general assets or trust assets or a combination of such general assets and trust assets from catastrophic losses under the Plan; and

WHEREAS, the Insured and BCBSND intend this Contract to be between themselves and for the benefit of each other; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Contract, the parties agree as follows:

I. CONTRACT PERIOD

The effective date of this Contract is January 1, 2020. The Contract will continue in effect through December 31, 2020, unless it is terminated by one of the parties as specified in Section X. TERMINATION.

II. DEFINITIONS

This section defines the terms used in this Contract. These terms will be capitalized throughout this Contract when referred to in the context defined.

- A. **AGGREGATE STOP-LOSS ATTACHMENT POINT** - the total dollar amount of Plan Benefits for all Members, incurred during the Contract Period, beyond which BCBSND will reimburse the Insured. A Plan Benefit is incurred on the date the service is provided to the Member by the health care provider. In no instance will the Aggregate Stop-Loss Attachment Point be less than the Minimum Aggregate Deductible. The Aggregate Stop-Loss Attachment Point is set forth in Section VII. PAYMENT OF PREMIUMS.
- B. **ERISA** - the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, et seq.
- C. **INDIVIDUAL STOP-LOSS ATTACHMENT POINT** - the total dollar amount of Plan Benefits, per Member, incurred during the Contract Period, beyond which BCBSND will reimburse the Insured. A Plan Benefit is incurred on the date the service is provided to the Member by the health care provider. The Individual Stop-Loss Attachment Point is set forth in Section VII. PAYMENT OF PREMIUMS.

- D. **MEMBER** - the Subscriber and any dependent of a Subscriber or any other person designated by a Subscriber or by the terms of the Plan who is or may become entitled to a benefit under the Plan. The term shall also include any proprietor, partner, or owner of the Insured, if any, who is designated by the terms of the Plan who is or may become entitled to a benefit under the Plan. Notwithstanding the above, in no case shall the term Member include any person not otherwise entitled to coverage under the terms of the Plan.

For the purposes of determining the various benefits and restrictions or other limitations thereto made available to a Member under the terms of the Plan, all benefits under any Plan option or tier (and any restrictions or other limitations thereto) made available to or received by a Member shall accumulate toward that Member's benefits and any restrictions and other limitations thereto.

- E. **MINIMUM AGGREGATE DEDUCTIBLE** - the minimum total dollar amount of Plan Benefits for all Members, incurred during the Contract Period, beyond which BCBSND will reimburse the Insured. A Plan Benefit is incurred on the date the service is provided to the Member by the health care provider. The Minimum Aggregate Deductible is set forth in Section VII. PAYMENT OF PREMIUMS.
- F. **PLAN BENEFITS** - the amount of benefits paid or payable pursuant to the terms of the Plan to or on behalf of a Member. A Plan Benefit is incurred on the date the service is provided to the Member by the health care provider. The term will not include a payment which BCBSND determines was made in error. The Insured will reimburse BCBSND for any Plan Benefits subsequently repaid to the Plan, the Insured and/or the Trust, if any.
- G. **SUBSCRIBER** - any employee of the Insured who is or may become eligible to receive a benefit under the Plan. The term includes all common law employees as well as any proprietors, partners, or other owners who work for the Insured, if any, and who are otherwise entitled to coverage under the Plan. Notwithstanding the above, in no case shall the term Subscriber include any person not otherwise entitled to coverage under the terms of the Plan.

III. **STOP-LOSS COVERAGE**

- A. BCBSND agrees to reimburse the Insured for Plan Benefits that exceed the Individual Stop-Loss Attachment Point and/or the greater of the Minimum Aggregate Deductible or the Aggregate Stop-Loss Attachment Point during a Contract Period only when and to the extent the Plan Benefits are actually paid. A Plan Benefit is deemed to have been paid as of the date the payment instrument issued by the Insured is tendered for payment and subsequently honored within a reasonable time. Benefits that are incurred other than during the Contract Period are not eligible for reimbursement under this Contract.
- B. BCBSND shall not have any responsibility or obligation under this Contract to directly reimburse or pay benefits to or on behalf of a Member or to any provider of services. This Contract is solely between BCBSND and the Insured and shall not create any rights or legal relationship between BCBSND and any Member or agent or assignee thereof. BCBSND's sole liability hereunder is to the Insured, subject to the terms, conditions and limitations of this Contract. It is the Insured's intent that the Insured shall be the sole beneficiary of this Contract so as to enable the Insured to stabilize funding of the Plan against losses in excess of the Individual Stop-Loss Attachment Point and/or the greater of the Minimum Aggregate Deductible or the Aggregate Stop-Loss Attachment Point set forth herein. The Insured is the Administrator of the Plan as defined at section 2(16)(A) of ERISA, with all of the duties and responsibilities applicable to plan administrators under ERISA, including but not necessarily limited to compliance with any and all administrative, reporting, and disclosure requirements. BCBSND is not the plan administrator and is not responsible for any of the duties assigned to the plan administrator by ERISA or by the terms of the Plan unless delegated to BCBSND by the terms of the Plan.

- C. BCBSND shall not reimburse the Insured for any loss or expense caused by or resulting from any of the following:
1. Expenses incurred while the Plan is not in effect with respect to the Member and/or while a Member is not eligible for coverage under the Plan;
 2. Expenses that BCBSND, or an independent review organization pursuant to an applicable external review process under the Plan, determines are not covered under the terms of the Plan;
 3. Expenses or losses covered by amendments to the Plan that are incurred prior to the effective date of BCBSND's written consent as described in Section VI. ENTIRE STOP-LOSS CONTRACT AND MODIFICATION as to such Plan amendments;
 4. Liability assumed by the Insured under any contract or agreement other than the Plan;
 5. Expenses or losses incurred as a result of a determination by the Insured to reimburse a Member for a health care treatment or service previously determined by BCBSND, or an independent review organization pursuant to an applicable external review process under the Plan, not to be Plan Benefits covered under the terms of the Plan. If, at the time of BCBSND's or an independent external review organization's final decision under the terms of the Plan, Plan Benefits have not met or exceeded the Individual Stop-Loss Attachment Point and/or the greater of the Minimum Aggregate Deductible or Aggregate Stop-Loss Attachment Point and payment of the disputed benefits will not cause Plan Benefits to meet or exceed the Individual Stop-Loss Attachment Point and/or the greater of the Minimum Aggregate Deductible or Aggregate Stop-Loss Attachment Point, any further appeals of decisions to deny Plan Benefits shall be directed to the Insured in compliance with the procedures and time frames established by the Plan. The Insured shall render a final decision on appeal at such time as the Insured determines that the information submitted on appeal is sufficient to render a decision. As between the Member and Insured only, the Insured shall serve as the final review committee and the Insured shall have all discretion necessary to construe and interpret the terms of the Plan and the exclusive authority and responsibility to make factual determinations. All decisions by the Insured shall be final and binding on the Member. With respect to any dispute between the Insured and the Member only, any decision by the Insured must be upheld in a court of law unless it is arbitrary and capricious or an abuse of discretion. The Insured shall notify the Member and BCBSND of its final determination. To the extent that the Insured determines that a claim for benefits should be granted in accordance with the procedure outlined herein, said benefits shall not constitute Plan Benefits for purposes of determining the Individual Stop-Loss Attachment Point and/or the Minimum Aggregate Deductible or Aggregate Stop-Loss Attachment Point or for purposes of determining reimbursement under the terms of the Stop-Loss Contract.
 6. Expenses incurred as a result of the acts or omissions of the Insured, or the Trust, or other party other than BCBSND that are not otherwise payable under the terms of the Plan;
 7. Services rendered or supplies furnished which are in violation of any law or regulation;
 8. Settlements, judgments and interest on judgments; or
 9. Court costs, fines, penalties, and/or legal expenses, whether incurred in an attempt to obtain medical treatment or an attempt to recover or defend a claim for benefits under the Plan, or otherwise.

IV. PAYMENT OF CLAIMS

The Insured shall provide written proof of loss satisfactory to BCBSND of any claims for reimbursement under this Contract. Such proof of loss shall be provided to BCBSND as soon as is reasonably possible but no later than 31 days after Plan Benefits exceed the Individual Stop-Loss Attachment Point for any Member and/or the greater of the Minimum Aggregate Deductible or the Aggregate Stop-Loss Attachment Point and after Plan Benefits have been paid as defined in Section III.(A) above.

Where the Insured seeks reimbursement for Plan Benefits under this Contract, BCBSND shall have exclusive discretion to determine whether the benefits for which reimbursement is sought were payable under the terms of the Plan, whether the Member was eligible for benefits under the Plan, and the amount of benefits payable under the Plan, if any. In determining whether to reimburse the Insured under this Contract, BCBSND shall not be bound by any benefit determinations under the Plan made by parties other than BCBSND. Notwithstanding the preceding, BCBSND shall accept the final decision of an independent review organization made pursuant to an applicable external review process under the Plan, and any benefits provided as a result of the external review process shall be considered Plan Benefits under this Contract.

The amounts otherwise payable under this Contract shall be reduced by the amount of any other reimbursement, recovery, or indemnity which the Insured, the Plan, or the Trust, if any, may be entitled to receive with respect to any Plan Benefits.

V. SUBROGATION AND REIMBURSEMENT

To the extent the Insured, the Plan and/or the Trust, if any, becomes subrogated to or has a claim for restitution or reimbursement of Plan Benefits for which the Insured, the Plan and/or the Trust, if any, has obtained or seeks subrogation, restitution, or reimbursement, under this Contract, BCBSND shall be entitled to a pro rata share of any recovery by settlement, judgment, or otherwise based on the ratio of its payment under this Contract as it relates to the Plan Benefits. Any reasonable attorney fees or other reasonable legal costs incurred in the subrogation, restitution, or reimbursement recovery, if any, shall be charged to the total amount recovered prior to any pro rata apportionment between the Plan and BCBSND. Neither the Insured, the Plan nor the Trust, if any, shall be entitled to waive any portion of any subrogation, restitution, or reimbursement claim for which the Insured, the Plan and/or the Trust, if any, has obtained or seeks reimbursement under this Contract without the express written approval of BCBSND.

VI. ENTIRE STOP-LOSS CONTRACT AND MODIFICATION

- A. This Contract and its exhibits constitute the entire Stop-Loss Contract between the parties hereto. No promises, terms, conditions or obligations other than those contained in this Contract are valid or binding. Any prior agreements, statements, promises, negotiations, inducements or representations, either oral or written, made by either party or agent of either party that are not contained in this Contract are of no effect. Changes in this Contract or to any exhibit (except the Plan, as discussed below) may be made only by a written amendment signed by duly authorized representatives of the parties. In the case of BCBSND, such an amendment is valid only if signed by the President and Chief Executive Officer. In the case of the Insured, such an amendment is valid only if signed by the Mayor. No other employee or agent of BCBSND or the Insured shall have the authority to amend this Contract or waive any of its provisions.
- B. This Contract is based on the terms of the Plan as included in the Exhibit "A". The Insured shall notify BCBSND of any amendment to the Plan within five days. To the extent such amendment would substantially increase the duties and/or potential liability of BCBSND under this Contract, the Insured shall secure BCBSND's written consent to such amendment prior to the execution of the amendment. BCBSND agrees not to unreasonably withhold such consent. BCBSND reserves the right to adjust premiums specified in accordance with Section VII. PAYMENT OF PREMIUMS and/or to terminate this Contract in accordance with Section X. TERMINATION.

- C. If any term or provision of this Contract is held by a court to be illegal or in conflict with federal or state law, the validity of the remaining terms and provisions herein shall not be affected.

VII. **PAYMENT OF PREMIUMS**

The amount of the premiums due from the Insured is set forth below. The figures below indicate premium costs based on the expected monthly enrollment as shown:

Stop-Loss coverages are based on Plan Benefits incurred during the Contract Period and paid during or after the Contract Period. Individual Stop-Loss Attachment Point is \$75,000 per Member and the Aggregate Stop-Loss Attachment Point is 120% of expected Plan Benefits incurred during the Contract Period.

1. Expected monthly enrollment levels:

	Individual Participation	Parent and Child Participation	Parent and Children Participation	Two Person Participation	Family Participation
CMM	156	31	34	145	328

2. Aggregate Stop-Loss Attachment Point per Subscriber (x 12 for Contract Period):

	Individual Participation	Parent and Child Participation	Parent and Children Participation	Two Person Participation	Family Participation
CMM	\$574.90	\$1,483.24	\$1,483.24	\$1,483.24	\$1,483.24

3. Aggregate Stop-Loss Attachment Point and maximum administrative fees (net of BlueCard Fees and Compensation) per Contract Period based on the figures shown in 1 and 2 above:

Aggregate Stop-Loss Attachment Point:	\$10,652,010
Maximum administrative fees: (\$49.90 per Subscriber per month)	\$415,567

4. Minimum Aggregate Deductible: \$9,586,809

5. Monthly premium for Stop-Loss coverage (aggregate and individual):

	Individual Participation	Parent and Child Participation	Parent and Children Participation	Two Person Participation	Family Participation
CMM	\$120.07	\$309.78	\$309.78	\$309.78	\$309.78

6. Summary of estimated maximum Contract Period costs at enrollment levels in 1 above:

Aggregate Stop-Loss Attachment Point:	\$10,652,010
Maximum administrative fees:	\$415,657
Stop-Loss insurance premium:	<u>\$2,224,711</u>
Total maximum costs:	<u>\$13,292,288</u>

In addition to the Total Maximum Cost, applicable BlueCard Fees and Compensation will apply.

All premiums are payable by the Insured at the home office of BCBSND on or before the date they are due. BCBSND will provide retrospective monthly billing statements to the Insured for premiums. Premiums are due immediately upon Insured's receipt of a monthly billing statement. If a premium is not paid on or before its due date, this Contract may be terminated. Within 365 days of the conclusion of the Contract Period, BCBSND will conduct a true-up accounting of the stop-loss insurance premium billed to the Insured during the Contract Period. If the true-up accounting results in additional stop-loss premium owed by the Insured, BCBSND will provide a billing statement to the Insured which shall be paid by the Insured immediately upon receipt. If the true-up accounting results in a reimbursement owed to the Insured, BCBSND will reimburse the Insured.

A grace period of 31 days will be granted for the payment of every premium after the first. This Contract will be in force during the grace period. If the premium is not paid in the grace period, this Contract may terminate at the end of the grace period. To the extent the Insured files a claim for reimbursement under this Contract for Plan Benefits incurred during the grace period, the Insured must pay BCBSND a pro rata premium for the period through the date Plan Benefits are incurred. When this Contract terminates, the Insured will be liable to BCBSND for all premiums past due.

BCBSND reserves the right, upon providing at least 31 days' notice to the Insured, to change premium amounts or attachment points: (1) in response to any change in the rate of insurance premium tax assessed by any state; (2) on the effective date of any amendment to the Plan; (3) on any Contract anniversary; and (4) if the Insured should choose to offer a dual choice option.

BCBSND may agree, at its sole discretion and without prejudice to its right under this Contract, to reinstate coverage at the date of termination on receipt and approval of written application for reinstatement and any and all other material and/or information as may be requested by BCBSND. No coverage shall be reinstated until BCBSND confirms such reinstatement in writing to the Insured and all premiums due with interest have been paid.

VIII. **GOVERNING LAW**

This Contract shall be construed and enforced according to the laws of North Dakota except to the extent preempted by federal law, including but not limited to ERISA.

IX. **LEGAL AND EQUITABLE ACTIONS**

No action at law or equity may be brought to recover under this Contract prior to the expiration of 60 days after written proof of loss has been received by BCBSND. No such action shall be brought more than three years after the deadline for furnishing written proof of loss to BCBSND as specified in Section IV. PAYMENT OF CLAIMS.

X. **TERMINATION**

This Contract will terminate upon the earliest of the following:

- A. If any law or regulation is enacted by the United States or by any state or if any existing law is interpreted to prohibit the continuance of this Contract, it shall terminate automatically on the effective date of such law or regulation or date of interpretation.
- B. If the Plan is terminated.
- C. If the Administrative Service Agreement dated January 1, 2020, is terminated.
- D. The last day of the Contract Period.
- E. At the end of the grace period if the premium is not paid within the grace period discussed at Section VII. PAYMENT OF PREMIUMS.

XI. GENERAL PROVISIONS

- A. This Contract is between BCBSND and the Insured, and does not create any rights or legal relationships between BCBSND and any Members.
- B. No assignment of this Contract or of the Insured's rights under this Contract shall be binding upon BCBSND, without the express written consent of the President and Chief Executive Officer of BCBSND. See Section VI.(A).
- C. The Insured acknowledges that it does not have any right in, nor will it use without the written approval of BCBSND, any trademark, copyrighted, proprietary or confidential information of BCBSND. Further, the Insured agrees that it will not use information deemed to be confidential by BCBSND for any purpose unrelated to this Contract.
- D. The Insured warrants that it is a corporation, partnership, trust or proprietorship existing under the laws of North Dakota and that the signator below has the authority to bind the Insured in this Contract. BCBSND warrants that the signator below has the authority to bind BCBSND in this Contract.
- E. The Insured hereby expressly acknowledges and understands that BCBSND is an independent corporation operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting BCBSND to use the Blue Cross and Blue Shield Service Marks in the state of North Dakota, and that BCBSND is not contracting as an agent of the Association. The Insured further acknowledges and agrees this Contract was not entered into based upon representations by any person or entity other than BCBSND and that no person, entity, or organization other than BCBSND shall be held accountable or liable to the Insured for any of BCBSND's obligations to the Insured created under this Contract. This paragraph shall not create any additional obligations whatsoever on the part of BCBSND other than those obligations created under other provisions of this Contract.

XII. NOTICE

BCBSND shall be entitled to rely upon the accuracy of any communication from authorized representatives of the Insured. BCBSND shall not be bound by any notice, direction, requisition, or request unless and until it shall have been addressed to the following person and sent by certified mail return receipt requested:

Daniel Conrad, President and CEO
BLUE CROSS BLUE SHIELD OF NORTH DAKOTA
4510 13th Avenue South
Fargo, North Dakota 58121

The Insured shall be entitled to rely upon the accuracy of any communication from authorized representatives of BCBSND. The Insured shall not be bound by any notice, direction, requisition, or request unless and until it shall have been addressed to the following person and sent by certified mail return receipt requested:

Robert W. McConnell, Director Human Resources
CITY OF BISMARCK
221 North 5th Street
Bismarck, North Dakota 58506-5503

XIII. COUNTERPARTS AND BINDING EFFECT

This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and said counterparts shall constitute one and the same instrument. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed, in their names by their undersigned officers, the same being duly authorized to do so.

CITY OF BISMARCK
GROUP HEALTH PLAN (PLAN ADMINISTRATOR)
221 North 5th Street
Bismarck, North Dakota 58506-5503

BLUE CROSS BLUE SHIELD OF NORTH DAKOTA*
4510 13th Avenue South
Fargo, North Dakota 58121

By: _____



Title: _____

Its President and CEO

Date: _____

December 30, 2019

CITY OF BISMARCK
(PLAN SPONSOR)
221 North 5th Street
Bismarck, North Dakota 58506-5503

By: _____

Title: _____

Date: _____

Stop-Loss Contract
01/01/2020 - 12/31/2020
250808

*An Independent Licensee of the Blue Cross and Blue Shield Association.

ADMINISTRATIVE SERVICE AGREEMENT

This Administrative Service Agreement ("Agreement") is entered into between City of Bismarck ("the Plan Sponsor"), City of Bismarck ("the Plan Administrator") and Blue Cross Blue Shield of North Dakota ("BCBSND"). Throughout this Agreement, BCBSND is referred to as the "Company." The terms of this Agreement are as follows:

WITNESSETH:

WHEREAS, the Plan Sponsor has established and maintains a self funded employee welfare benefit plan known as the City of Bismarck Group Plan ("the Group Health Plan")("the Plan"), which provides, among other things, various benefits to Members in the Plan, as set forth in the attached Exhibit "A"; and

WHEREAS, the Plan Administrator is the administrator of the Plan as defined by Section 3(16) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); and

WHEREAS, the Plan Sponsor, the Plan Administrator and the Company mutually agree to comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as modified by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"). Specifically, the "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164. The HIPAA Privacy Rule is the Standards for Privacy of Individually Identifiable Health Information at 45 CFR, Parts 160 and 164, Subparts A and E. The HIPAA Security Rule is the HIPAA Security Standards (45 CFR Parts 160 and 164, Subpart C). The HIPAA Breach Notification Rule is the Notification in the Case of Breach of Unsecured Protected Health Information, as set forth at 45 CFR Part 164, Subpart D; and

WHEREAS, benefits under the Plan are paid from the general assets of the Plan Sponsor or trust assets ("the Trust"), or a combination of such general assets and trust assets; and

WHEREAS, the Plan Administrator has requested the Company to provide certain services to the Plan as more fully described herein; and

WHEREAS, the Company has agreed to provide certain services to the Plan, as more fully described herein; and

WHEREAS, the Company is a Fiduciary of the Plan only to the extent it is providing the services described herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

I. EFFECTIVE DATE AND PLAN YEAR

The effective date of this Agreement is January 1, 2020. The Agreement will continue in effect through December 31, 2020, unless it is terminated by one of the parties as specified in Section XII. TERMINATION.

For the purposes of the costs of any and all benefits and services extended through this Benefit Plan, including the implementation of any benefit changes required under federal or state law, the Plan Administrator agrees that the Plan Year shall commence on January 1, unless it is terminated by one of the parties as specified in Section XII. TERMINATION.

II. DEFINITIONS

This section defines the terms used in this Agreement. These terms will be capitalized throughout this Agreement when referred to in the context defined.

- A. **ACCOUNTABLE CARE ORGANIZATION (ACO)** - a group of health care providers who agree to deliver coordinated care and meet performance benchmarks for quality and affordability in order to manage the Total Cost of Care for their member populations.
- B. **ADMINISTRATIVE EXPENSE ALLOWANCE** - a fixed per-claim dollar amount charged by the Host Blue to BCBSND for administrative services that the Host Blue provides in processing claims for the Members. The dollar amount is normally based on the type of claim (e.g., institutional, professional, international, etc.) and can also be based on the size of the group enrollment. When charged, BCBSND passes the AEA fee on to the Plan Administrator.
- C. **BENEFIT PAYMENTS** - payments of benefits under the Plan.
- D. **CARE COORDINATION** - organized, information-driven patient care activities intended to facilitate the appropriate responses to a Member's health care needs across the continuum of care.
- E. **CARE COORDINATOR FEE** - a fixed amount paid by a Blue Cross Blue Shield Plan to health care providers periodically for Care Coordination under a Value-Based Program.
- F. **CLAIM** - notification in a form acceptable to the Company that service has been provided or furnished to a Member.
- G. **DRG** - shall mean diagnostic related groups.
- H. **DATA AGGREGATION** - the combining of Protected Health Information the Company creates or receives for or from the Plan and for or from other health plans or health care providers for which the Company is acting as a business associate to permit data analyses that relate to the Health Care Operations of the Plan and those other health plans or providers.
- I. **ERISA** - the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, et seq.
- J. **FEES AND CHARGES** - the amounts the Plan Administrator must pay the Company for the administrative services described in Section VII. FEES AND CHARGES.
- K. **FIDUCIARY** - means the same as the term is defined at Section 3(21)(A) of ERISA.
- L. **GLOBAL PAYMENT/TOTAL COST OF CARE** - a payment methodology that is defined at the patient level and accounts for either all patient care or for a specific group of services delivered to the patient such as outpatient, physician, ancillary, hospital services and prescription drugs.
- M. **HEALTH CARE OPERATIONS** - any of the activities of a health plan to the extent the activities relate to functions that make it a health plan.
- N. **HEALTH CARE PROVIDER** - any eligible provider that has provided care, diagnosis, or treatment to or for a Member for which benefits are sought under the Plan.
- O. **INELIGIBLE PERSON** - any person, firm, or corporation that has received benefits or on whose behalf benefits have been paid but for whom benefits are not payable under the terms of the Plan.

- P. **MEMBER** - the Subscriber and any dependent of a Subscriber or any other person designated by a Subscriber or by the terms of the Plan who is or may become entitled to a benefit under the Plan. The term shall also include any proprietor, partner, or owner of the Plan Sponsor, if any, who is designated by the terms of the Plan who is or may become entitled to a benefit under the Plan. In no case shall the term Member include any person not otherwise entitled to coverage under the terms of the Plan.

For the purposes of determining the various benefits and restrictions or other limitations thereto made available to a Member under the terms of this Agreement, all benefits under any Plan option or tier (and any restrictions or other limitations thereto) made available to or received by a Member shall accumulate toward that Member's benefits and any restrictions and other limitations thereto.

- Q. **PART 2 RULE** - the Confidentiality of Substance Use Disorder Patient Records Rule (42 C.F.R. Part 2).

- R. **PATIENT-CENTERED MEDICAL HOME (PCMH)** - a model of care in which each patient has an ongoing relationship with a primary care physician who coordinates a team to take collective responsibility for patient care and, when appropriate, arranges for care with other qualified physicians.

- S. **PATIENT IDENTIFYING INFORMATION** - information that (a) would identify, directly or indirectly, an individual as having been diagnosed, treated, or referred for treatment for a substance use disorder, such as indicated through standard medical codes, descriptive language, or both and (b) is subject to the Part 2 Rule, limited to the Patient Identifying Information that the Company receives from or on behalf of the Plan Sponsor.

- T. **PAYMENT** - activities undertaken to obtain premiums, determine or fulfill coverage and benefits, or obtain or provide reimbursement for health care services.

- U. **PLAN ADMINISTRATOR - CITY OF BISMARCK.** City of Bismarck is the administrator of the Plan as defined at Section 3(16) of ERISA, with all of the duties and responsibilities applicable to plan administrators under ERISA, including but not necessarily limited to compliance with any and all administrative, reporting, and disclosure requirements. The Company is not the Plan Sponsor or the Plan Administrator of the Plan and is not responsible for any of the duties assigned to the Plan Sponsor or the Plan Administrator by ERISA, the terms of the Plan, or by this Agreement.

- V. **PROTECTED HEALTH INFORMATION (PHI)** - individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:

1. is created by or received from a Health Care Provider, health care employer, or health care clearinghouse;
2. relates to a Member's past, present or future physical or mental health or condition;
3. relates to the provision of health care to a Member;
4. relates to the past, present, or future payment for health care to or on behalf of a Member; or
5. identifies a Member or could reasonably be used to identify a Member.

Educational records and employment records are not considered PHI under federal law.

- W. **PROVIDER INCENTIVE** - an additional amount of compensation paid to a health care provider by a Blue Cross Blue Shield Plan, based on the health care provider's compliance with agreed-upon procedural and/or outcome measures for a particular group of covered persons.

- X. **SECURITY INCIDENT** - any attempted or successful unauthorized access, use, disclosure, modification, or destruction of a Member's electronic PHI or interference with the Company's system operations in the Company's information systems.

- Y. **SHARED SAVINGS** - a payment mechanism in which the health care provider and payer share cost savings achieved against a target cost budget based upon agreed upon terms and may include downside risk.
- Z. **STANDARD TRANSACTIONS** - health care financial or administrative transactions conducted electronically for which standard data elements, code sets and formats have been adopted in accordance with federal or state law.
- AA. **SUBSCRIBER** - any employee of the Plan Sponsor who is or may become eligible to receive a benefit under the Plan. The term includes all common law employees as well as any proprietors, partners, or other owners who work for the Plan Sponsor and are otherwise entitled to coverage under the Plan. Notwithstanding the above, in no case shall the term Subscriber include any person not otherwise entitled to coverage under the terms of the Plan.
- BB. **SUCCESSFUL SECURITY INCIDENTS** - Security Incidents that result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
- CC. **UNSUCCESSFUL SECURITY INCIDENTS** - Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
- DD. **VALUE-BASED PROGRAM (VBP)** - an outcomes-based payment arrangement and/or a coordinated care model facilitated with one or more local health care providers that is evaluated against cost and quality metrics/factors and is reflected in health care provider payment.

III. **SERVICES PROVIDED BY THE COMPANY**

During the term of this Agreement, the Company will provide the following general services:

- A. Consultative assistance on plan design with corresponding cost estimates; provided, however, the Company will not provide services or advice regarding compliance with any state or federal law obligations, including, but not limited to, obligations arising out of state or federal statutes, case law, regulations, advisory opinions, and the like. The Company will also not provide actuarial services and any cost estimates, suggested funding levels and the like provided by the Company are based on a variety of assumptions and variables including, but not limited to, expected enrollment, expected claims, claims weighting, claims trend and rating factors, each of which may or may not prove accurate. The Plan Administrator should consult with its qualified financial or actuarial professional on all aspects of funding the Plan.
- B. Establish a membership record for existing Members containing information as arranged for or provided by the Plan Administrator.
- C. Provide identification cards for each Subscriber.
- D. Provide the Plan Administrator with assistance in drafting Summary Plan Descriptions and Summaries of Benefits and Coverage.
- E. Receive membership applications from the Plan Administrator for enrollment of Members, unless the parties agree to use an alternative method of certifying Members for coverage under the Plan.
- F. Provide managed benefits services in accordance with appropriate licensure and certification requirements.
- G. Provide toll-free service lines for Members and Health Care Providers during the Company's business hours. A toll-free managed benefits line for Health Care Providers will also be available during the Company's business hours. During nonbusiness hours, answering machine services will be available for managed benefits calls.

- H. Provide the Plan Administrator with all forms required by the Company to provide administrative services.
- I. Administer other party liability programs including, but not limited to, workers' compensation, no-fault, subrogation/reimbursement and coordination of benefits. The Company retains full discretion regarding the administration and enforcement of these programs. Such discretion includes, but is not limited to, pursuing, settling or releasing claims to any available recoveries and determining amounts recovered. The Company has no obligation to notify the Plan Administrator regarding the disposition of actual or potential subrogation/reimbursement cases. If the Company determines not to pursue a potential subrogation/reimbursement recovery, the Plan Administrator may do so at its own expense.

The Company has no obligation to participate in consolidated or class action lawsuits on behalf of the Plan. To the extent the Company participates in such actions, any recovery will be apportioned among all insured and self-insured plans in a like manner. The proration may be based on the number of covered persons, the number of injured persons, claims volume, or any other basis as determined in its sole discretion by the Company.

No additional administration costs will be charged to the Plan Administrator for the administration of these programs. Any and all legal fees and costs incurred directly in a subrogation/reimbursement recovery shall be charged against any such recovery. Such subrogation/reimbursement recoveries shall not affect the administration of this Agreement.

- J. Make available to the Plan Administrator a weekly report of claim payments.
- K. Make available to the Plan Administrator a summary of claims paid on a cumulative basis during the term of this Agreement. The Company may also make available to the Plan Administrator an estimate of outstanding claims liability during the term of this Agreement. The estimate of outstanding claims liability is based on a variety of assumptions and variables which may or may not prove accurate. The Plan Administrator shall not rely on the estimate of claims liability as final or conclusive.
- L. Provide a formal procedure for detection of fraud and unlawful activity.
- M. Provide a health conversion policy to Members when application is made within 10 days of the termination of coverage under the Plan.
- N. Provide assistance to the Plan Administrator for enrollment, customer service and education.
- O. Provide formal policy and procedure guidelines to the Plan Administrator for the conduct of external audits or reviews of the Company commissioned by the Plan Administrator. The Company will cooperate with all external audit or review teams.

The Plan Administrator shall provide the Company with the scope and requirements of any audit or review prior to the commencement of the audit or review. If a sample of claims is required, the Company will provide the Plan Administrator with a statistically valid computerized sample of claims.

All audit or review findings shall be discussed with the Company upon discovery to allow further investigation or implementation of corrective action. Dollar audit findings will be corrected through negotiations with the Plan Administrator.

All Member records shall be kept confidential and considered proprietary. Such records shall be available for audit or review only after disclosure statements have been signed by the external audit or review team to assure the information remains confidential and is utilized for the stated purpose only. If any records are removed from the Company's office for purposes of the audit or review, approval must be granted. All records will be subject to the minimum necessary requirements.

P. Review of claims for Plan benefits. Requests for Plan benefits will be evaluated by the Company in accordance with the terms and conditions of the Plan, a copy of which is attached as Exhibit "A".

1. In evaluating claims under the Plan, the Company may correspond with Members if additional information is necessary for the Company to complete processing of a claim. The Company may also consult with Health Care Providers and/or obtain professional evaluation by the Company's Medical Management Department where such consultation or evaluation is deemed appropriate by the Company. If, in the judgment of the Company, an independent medical examination of the Member is advisable, the Company may arrange for examinations to be performed by qualified independent physicians who may be certified as specialists. The costs of any consultation, evaluation, or independent medical examination shall be paid by the Plan Administrator.
2. All requests for benefits shall be submitted to the Company on forms satisfactory to the Company. The Company has the authority and discretion to determine eligibility for Plan benefits as well as the discretion to construe and interpret the terms of the Plan and to make factual determinations. The Company's decisions regarding a Member's claim for Plan benefits must be upheld in a court of law unless they are arbitrary and capricious or an abuse of discretion. Where the Company decides that a claim for benefits should be granted, it shall notify the Member and the Plan Administrator of the decision. Where the Company decides that a request for Plan benefits should be denied, in whole or in part, the Company will notify the Member and the Plan Administrator of the decision.
3. A Member may appeal to the Company any full or partial denial of a claim for Plan benefits. The appeal must be made within 180 days after the Company's original decision. The Company has the authority and discretion to determine eligibility for Plan benefits as well as the discretion to construe and interpret the terms of the Plan and to make factual determinations. The Company's decisions on appeal must be upheld in a court of law unless they are arbitrary and capricious or an abuse of discretion. The Company shall notify the Member and the Plan Administrator of its final decision.
4. The parties acknowledge that they have also entered into a Stop-Loss Contract with this Agreement whereby the Plan Administrator may seek reimbursement for certain extraordinary benefit payments as described in the Stop-Loss Contract. If, at the time of the Company's final decision under Section III.(P)(2) or III.(P)(3), Plan Benefits (as defined in the Stop-Loss Contract) have met or exceeded the Individual and/or Aggregate Stop-Loss Attachment Points (as defined in the Stop-Loss Contract) or payment of the disputed benefits could cause Plan Benefits (as defined in the Stop-Loss Contract) to meet or exceed the Individual and/or Aggregate Stop-Loss Attachment Points (as defined in the Stop-Loss Contract), there shall be no further appeals and the decision by the Company shall be final and binding on all parties, including the Member, and the Plan Administrator.

Q. Where the Company or the Plan Administrator determines that a benefit is payable under the Plan, the Company will pay the Health Care Providers or other parties on behalf of the Plan and obtain reimbursement from the Plan Administrator pursuant to Section IV(E). The parties agree that benefits are funded solely from the general assets of the Plan Administrator, trust assets, or a combination thereof and that the Company has no obligation to pay benefits under the Plan. Furthermore, the parties agree that the Company's obligation to make payments to Health Care Providers or other parties on behalf of the Plan is conditioned upon full reimbursement by the Plan Administrator following such payments by the Company. In the event the Plan Administrator fails to reimburse the Company in accordance with Section IV(E) and unless the Company and the Plan Administrator mutually agree otherwise, the Company's obligation to make payments to Health Care Providers or other parties on behalf of the Plan shall be suspended until the Plan Administrator has fully reimbursed the Company. Any obligation to provide notice to Members, or other interested parties of the Plan Administrator's failure to reimburse the Company rests solely with the Plan Administrator. The Company has no obligation to provide such notice and shall not provide such notice.

- R. If the Company makes an overpayment or improper payment to any Subscriber, Health Care Provider, or an Ineligible Person, the Company shall advise the Plan Administrator of such payment and the Company shall use its reasonable best efforts to obtain reimbursement and/or restitution of the overpayment or improper payment. The Company shall report the result of such efforts to the Plan Administrator.
- S. When coverage under this Benefit Plan is terminated, BCBSND will, within a reasonable period of time, issue a notification of termination of coverage to the Subscriber. Upon notification by the Subscriber of the ineligibility of a dependent, a notification of termination of coverage will be issued to the affected Member within a reasonable period of time. Termination notices may also be obtained from BCBSND upon request within 24 months after coverage is terminated.
- T. The Company shall have no other duties or responsibilities with respect to the Plan except as expressly set forth in this Agreement. The Company is not an insurer of the Plan nor does it underwrite the risk or otherwise assume any risk for the payment of benefits under the Plan.

IV. DUTIES OF THE PLAN ADMINISTRATOR

During the term of this Agreement, the Plan Administrator shall be responsible for the following:

- A. The Plan Administrator shall provide to the Company periodic reports and information in order for the Company to effectively provide the services designated in this Agreement. These reports/information include:
 - 1. A copy of all applicable Plan documents, including, but not limited to current and updated copies of the Plan and any Summary Plan Descriptions and revisions or amendments thereto as well as any summaries of material modifications;
 - 2. Certification/verification of eligibility of employees and/or their dependents to become Members, which information shall be provided to the Company prior to the effective date of coverage;
 - 3. All other membership or similar information that is required by the Company to fulfill its obligations under this Agreement and/or that may be necessary for the Company to provide cost estimates and analysis to the Plan Administrator; and
 - 4. Completion of the employer section of the claim forms and timely submission of claim forms.
 - 5. The Plan Administrator agrees to furnish the Company with any information required by the Company for the purpose of enrollment. Any changes affecting a Member's eligibility must be provided to the Company immediately, but in any event the Plan Administrator will notify the Company of any changes in a Member's eligibility within 31 days of the change. The Plan Administrator acknowledges and agrees that in the event there are premium payments made to the Company by the Plan Administrator based upon a failure by the Plan Administrator to notify the Company of any changes in enrollment or eligibility within 31 days of the change, that the Company shall retain any and all premium payments as consideration for the administrative costs and burden incurred by said failure to notify the Company of the change.

All information shall be provided at such time as it is requested by the Company. The Company shall not be responsible for delay in the performance of the Agreement or for nonperformance of this Agreement which is caused by, or contributed to in whole or in part by, the failure of the Plan Administrator to immediately furnish required information or documentation.

- B. The Plan Administrator shall prepare and distribute Notice of Privacy Practices appropriate for the Plan so that the Plan may meet its notice obligations under federal law. The Plan Administrator authorizes the Company to disclose the minimum necessary PHI to the Plan Sponsor for plan administration functions specified in the Plan documents, as amended.

- C. The Plan Administrator agrees to abide by all underwriting requirements established by the Company as these underwriting requirements relate to, including but not limited to, rating factors, the minimum participation of eligible Members, minimum employer contributions, reporting employer contribution rates, and provider network restrictions, as permitted and restricted under federal and/or state laws.
- D. It shall be the sole responsibility of the Plan Administrator to distribute Summaries of Benefits and Coverage so that the Plan Administrator and the Plan may satisfy their obligations under federal law and to distribute Summary Plan Descriptions to Subscribers of the Plan and to advise Members of their rights under ERISA, including, but not limited to claims appeals procedures. In the event a claim is paid due to the Summary Plan Description not being distributed to the Subscriber, the Plan Administrator shall be liable for all claims, including those in excess of the individual and aggregate stop-loss maximum amounts.
- E. Upon receipt of notice from the Company, the Plan Administrator will, on behalf of the Plan, reimburse the Company for payments actually made to Health Care Providers or other parties on behalf of the Plan pursuant to Section III.(Q). This reimbursement shall be separate from any amounts payable for Fees and Charges under Section VII. FEES AND CHARGES.
- F. The Plan Administrator shall provide notice to Members if the Plan Administrator defaults in any obligation under this Agreement and/or the Plan, including, but not limited to the obligation to pay benefits under the Plan.
- G. The Plan Administrator shall pay all fees, costs, and expenses provided for herein. Such amounts shall be paid separately from Benefit Payments described in Section IV(E).

V. **BUSINESS ASSOCIATE PROVISIONS**

A. **RESPONSIBILITIES OF THE COMPANY**

1. **Privacy of Protected Health Information (PHI)**

- A. The Company will keep confidential all Claim records and all other PHI the Company creates or receives in the performance of its duties under this Agreement. Except as permitted or required by this Agreement for the Company to perform its duties under this Agreement, the Company will not use or disclose such Claim information or other PHI without the authorization of the Member who is the subject of such information or as required by law.
- B. The Company will neither use nor disclose Members' PHI (including any Members' PHI received from a business associate of the Plan) except (1) as permitted or required by this Agreement, (2) as permitted in writing by the Plan Administrator, (3) as authorized by Members, or (4) as required by law.
- C. The Company will be permitted to use or disclose Members' PHI only as follows:
 - 1. The Company will be permitted to use and disclose Members' PHI (a) for the management, operation and administration of the Plan that the Plan Administrator offers Members, and (b) for the services set forth in this Agreement, which include Payment Activities, Health Care Operations, and Data Aggregation as these terms are defined under federal law. The Company also may de-identify PHI it obtains or creates in the course of providing services to the Plan Administrator.
 - a. The Company will be permitted to use Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities.

- b. The Company will be permitted to disclose Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities only if (i) the disclosure is required by law, or (ii) before the disclosure, the Company obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written Agreement, that the entity will hold Members' PHI in confidence, use or further disclose Members' PHI only for the purposes for which the Company disclosed it to the entity or as required by law, and notify the Company of any instance the entity becomes aware of where the confidentiality of any Members' PHI was breached.
- 2. The Company's use, disclosure, or request of PHI shall utilize a limited data set if practicable. Otherwise, the Company will make reasonable efforts to use, disclose, or request only the minimum necessary amount of Members' PHI to accomplish its intended purpose. In addition, the Company agrees to implement and follow appropriate minimum necessary policies in the performance of its obligations under this Agreement.
- D. Other than disclosures permitted by Section V.(A)1.C, the Company will not disclose Members' PHI to the Plan Administrator or to the Plan's business associate except as directed by the Plan Administrator in writing.
- E. The Company will require each subcontractor and agent to which the Company is permitted by this Agreement or in writing by the Plan Administrator to disclose Members' PHI to provide reasonable assurance, evidenced by written Agreement, that such other entity will comply with the same privacy and security obligations with respect to Members' PHI as this Agreement applies to the Company.
- F. The Company will not disclose any Members' PHI to the Plan Sponsor, except as permitted by and in accordance with Section V.(A)1.C.
- G. The Company will not receive remuneration in exchange for PHI except where permitted by this Agreement and consistent with applicable law.
- H. The Company will not receive payment for any use or disclosure of PHI for marketing purposes except where permitted by this Agreement and consistent with applicable law.
- I. The Company will report to the Plan Administrator any use or disclosure of Members' PHI not permitted by this Agreement or not permitted in writing by the Plan Administrator, except for disclosures incidental to a permitted use or disclosure. The Company will make any such report to the Plan Administrator after the Company learns of such non-permitted use or disclosure. In addition, the Company will report, following discovery and without unreasonable delay, any "breach", as determined by the Company, of "unsecured PHI" as these terms are defined by the Breach Notification Rule.
- J. The Company will report to the Plan Administrator attempted or successful unauthorized access, use, disclosure, modification, or destruction of a Member's electronic PHI or interference with the Company's system operations in the Company's information systems ("Security Incident"), of which the Company becomes aware. With regard to attempted unauthorized access, use, etc., the Company and the Plan Administrator recognize and agree that the significant number of meaningless attempts to, without authorization, access, use, disclose, modify or destroy electronic PHI will make real-time reporting formidable. Therefore, the Company and the Plan Administrator agree to the following reporting procedures for Security Incidents that result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations ("Successful Security Incidents") and for Security Incidents that do not so result ("Unsuccessful Security Incidents").

For Unsuccessful Security Incidents, the Company and the Plan Administrator agree that this Agreement constitutes notice from the Company of such Unsuccessful Security Incidents. By way of example, the Company and the Plan Administrator consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of a Member's electronic PHI or interference with an information system:

1. Pings on the Company's firewall,
2. Port scans,
3. Attempts to log on to a system or enter a database with an invalid password or username,
4. Denial-of-service attacks that do not result in a server being taken off-line, and
5. Malware (e.g., worms, viruses).

For Successful Security Incidents, the Company shall give notice promptly to the Plan Administrator in the event a Member's electronic PHI was compromised.

K. Disposition of Protected Health Information

The parties agree that upon termination, cancellation, expiration or other conclusion of this Agreement, the Company will return or destroy all PHI received or created by the Company on the Plan Administrator's behalf as soon as feasible. Due to various regulatory and legal requirements, the Plan Administrator acknowledges that immediate return or destruction of all such information is not feasible. The Company agrees that upon conclusion of this Agreement for any reason, it will use or disclose the PHI it received or created on the Plan Administrator's behalf only as necessary to meet the Company's regulatory and legal requirements and for no other purposes unless permitted in writing by the Plan Administrator. The Company will destroy PHI received or created by the Company on the Plan Administrator's behalf that is in the Company's possession under such circumstances and upon such schedule as the Company deems consistent with its regulatory and other legal obligations.

These responsibilities agreed to by the Company and related to protecting the privacy and safeguarding the security of PHI, as well as any terms directly related thereto, shall survive the termination of this Agreement and, where applicable, shall govern the Company's receipt, use or disclosure of PHI pursuant to the terms of this Agreement.

2. Access, Amendment and Disclosure Accounting for Protected Health Information

- A. Upon the Plan Administrator's written request, the Company will make available for inspection and obtaining copies by the Plan Administrator, or at the Plan Administrator's direction by the Member (or the Members' representative), any PHI about the Member created or received for or from the Plan Administrator in the Company's custody or control so the Plan Administrator may meet its access obligations under federal law. The Company shall make such information available in electronic format where directed by the Plan Administrator.
- B. Upon receipt of a written request from the Plan Administrator, or at the Plan Administrator's direction by the Member (or the Members' representative), the Company will amend or permit the Plan Administrator access to amend any portion of the PHI created or received for or from the Plan Administrator in the Company's custody or control, so the Plan Administrator may meet its amendment obligations under federal law.

C. So the Plan Administrator may meet its disclosure accounting obligations under federal law, the Company will do the following:

1. The Company will record each disclosure of Members' PHI which is not excepted from disclosure accounting under Section V.(A)2.C.2, that the Company makes to the Plan Administrator or to a third party.

The information that the Company must record ("Disclosure Information") is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom the Company made the disclosure, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure.

For repetitive disclosures of Members' PHI that the Company makes for a single purpose to the same person or entity (including the Plan Administrator), the Company may record (a) the disclosure information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

2. The Company will not be required to record disclosure information or otherwise account for disclosures of Members' PHI that this Agreement or the Plan Administrator in writing permits or requires:
 - a. for Payment Activities or Health Care Operations,
 - b. to the Member who is the subject of the PHI or to that Members' personal representative,
 - c. to persons involved in that Members' health care or payment for health care or to assist in disaster relief efforts as provided under federal law,
 - d. for national security or intelligence purposes as provided under federal law,
 - e. to law enforcement officials or correctional institutions regarding inmates,
 - f. for incidental uses or disclosures,
 - g. as part of a limited data set in accordance with federal law,
 - h. that occurred prior to the HIPAA Privacy Compliance Date,
 - i. pursuant to a valid authorization.
3. Unless otherwise provided by applicable law, the Company will have available for the Plan Administrator the disclosure information required by Section V.(A)2.C.1. for the six (6) years immediately preceding the date of the Plan Administrator's request for the disclosure information.
4. Upon the Plan Administrator's written request, the Company will make available to the Plan Administrator, or at the Plan Administrator's direction to the Member (or the Member's representative), disclosure information regarding the Member so the Plan Administrator may meet its disclosure accounting obligations under federal law.

3. Information Safeguards

- A. The Company will maintain reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of Member PHI. The safeguards must reasonably protect Member PHI from any intentional or unintentional use or disclosure in violation of federal law and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
- B. The Company will implement administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI the Company creates, receives, maintains, or transmits on behalf of the Plan Administrator as required by federal law.

4. Inspection of Books and Records

The Company will make its internal practices, books, and records relating to its use and disclosure of PHI created or received for or from the Plan Administrator available to the Plan Administrator and to the U.S. Department of Health and Human Services to determine compliance with federal law or this Agreement.

5. Information Privacy and Safeguard Provisions Survive Termination of Agreement

These responsibilities agreed to by the Company and related to protecting the privacy of PHI, as well as any terms directly related thereto, shall survive the termination of this Agreement and where applicable, shall govern the Company receipt and use of PHI obtained pursuant to the terms of this Agreement.

6. Confidentiality of Substance Use Disorder Patient Records

- A. The Company will comply with the requirements of the Part 2 Rule with respect to all Patient Identifying Information it receives.
- B. The Company will implement appropriate safeguards to prevent unauthorized uses and disclosures of Patient Identifying Information; such safeguards will comply with 42 C.F.R. § 2.16.
- C. The Company will report, following discovery and without unreasonable delay, any unauthorized use, disclosure, or "breach", as determined by the Company, of Patient Identifying Information to the Plan Sponsor.
- D. The Company will refrain from redisclosing Patient Identifying Information to any person or entity other than the Plan Sponsor, unless such redisclosure is permitted by an applicable provision of the Part 2 Rule.
- E. The Company will use Patient Identifying Information for the purposes of performing payment and health care operations activities on behalf of the Plan as specified by the Company's agreement with the Plan Sponsor and limited to those payment and health care operations activities the Company is permitted to perform under 42 C.F.R. § 2.33(b). The Company will not use Patient Identifying Information for any other purpose, unless such use is permitted by an applicable provision of the Part 2 Rule.
- F. The Company will request from the Plan Sponsor only the minimum Patient Identifying Information necessary for the Company to perform its duties hereunder.

B. RESPONSIBILITIES OF THE PLAN SPONSOR

1. The Plan Sponsor retains full and final authority and responsibility for the Plan and its operation. The Company is empowered to act on behalf of Plan only as stated in this Agreement or as mutually agreed in writing by the Plan Sponsor and the Company.
2. The Plan Sponsor will have the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules, and regulations, including any licensing, filing, reporting, and disclosure requirements, that may apply to the Plan. The Company will have no responsibility for or liability with respect to the Plan's compliance or noncompliance with any applicable federal, state, or local law, rule, or regulation.

If the Group offers a high deductible health plan, the Plan Sponsor assumes sole responsibility for determining whether the Plan qualifies as a high deductible health plan under Section 223(c)(2) of the U.S. Internal Revenue Code. THE COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THE PLAN.

If the Group offers a high deductible health plan, the Company does not provide legal or tax advice, and expressly disclaims responsibility for determining, on behalf of any individual or group, the legal and tax implications of: (1) establishing a health savings account; (2) eligibility for a health savings account; (3) the contributions made to a health savings account; (4) the deductibility of contributions to a health savings account; and (5) withdrawals from a health savings account and related taxation.

3. The Plan Sponsor will make commercially reasonable efforts to notify the Company of any Patient Identifying Information the Plan Sponsor discloses to the Company. The Plan Sponsor may, but is not required to, disclose the Patient Identifying Information requested by the Company for the Company to perform its duties.
4. By executing this Agreement, the Plan Sponsor certifies to the Company that its Plan documents have been amended to incorporate the provisions required by and under federal law, and agrees to comply with the Plan Administrator's Plan documents.

The Company may rely on Plan Sponsor's certification and Plan Administrator's written authorization, and will have no obligation to verify (1) the Plan Administrator's plan documents have been amended to comply with the requirements of federal law or this Agreement or (2) the Plan Sponsor is complying with the Plan Administrator's plan document as amended.

VI. PLAN AMENDMENT AND MODIFICATION

- A. This Agreement and its exhibits constitute the entire Agreement between the parties hereto. No promises, terms, conditions or obligations other than those contained in this Agreement are valid or binding. Any prior agreements, statements, promises, negotiations, inducements or representations, either oral or written, made by either party or agent of either party that are not contained in this Agreement are of no effect. Changes to this Agreement or any exhibit (except the Plan, as discussed below) may be made only by a written amendment signed by duly authorized representatives of the parties. In the case of BCBSND, such an amendment is valid only if signed by the President and Chief Executive Officer of BCBSND. In the case of the Plan Administrator or Plan Sponsor, such an amendment is valid only if signed by the Mayor. No other employee or agent of the Company, the Plan Sponsor or the Plan Administrator shall have the authority to amend this Agreement or waive any of its provisions.
- B. The Mayor of the Plan Administrator is authorized to amend any and all provisions of the Plan at any time, in whole or in part, in accordance with the amendment procedure set forth in the Plan. With respect to amendment of the Plan, the Plan Administrator shall notify the Company of any such amendment within five business days. To the extent such amendment would increase the duties or liabilities of the Company, the amendment shall not become effective until the Plan Administrator secures the Company's written consent to such amendment. The Company agrees not to unreasonably withhold such consent. The Company reserves the right to adjust Fees and Charges as specified in Section VII. FEES AND CHARGES and/or to terminate this Agreement. The Plan Administrator will notify Members of any amendments or modifications of the Plan in accordance with ERISA, §104 and applicable regulations. The Company is not responsible for notifying Members of any amendments or modifications to the Plan.

VII. **FEES AND CHARGES**

A. **General Administrative Fee**

Fees and Charges are to be paid by the Plan Administrator in the amount equal to \$49.90 per Subscriber per month for administration costs as billed.

B. **Inter-Plan Arrangements Fees**

Standard BlueCard Fees:

Access Fees – 3.97% of discount with a \$2,000 cap.

Administrative Expenses Allowance (AEA) - \$11.00 for Institutional claims and \$5.00 for Professional claims.

Revisions to such fees are typically made annually as a result of the Inter-Plan Arrangements changes.

Nonparticipating Provider Claims Processing Fee:

Up to \$3.00 per claim for out-of-network claims (AEA).

Revisions to such fees are typically made annually as a result of the Inter-Plan Arrangements changes.

C. The Company will provide a billing statement to the Plan Administrator of all Fees and Charges incurred. All such Fees and Charges shall be paid by the Plan Administrator immediately upon receipt of said billing statements. Within 365 days of the conclusion of this Agreement, the Company will conduct a true-up accounting of the general administrative fee billed to the Plan Administrator during the term of the Agreement. If the true-up accounting results in additional administrative costs owed by the Plan Administrator, the Company will provide a billing statement to the Plan Administrator which shall be paid by the Plan Administrator immediately upon receipt. If the true-up accounting results in a reimbursement owed to the Plan Administrator, the Company will reimburse the Plan Administrator.

D. The Company reserves the right to adjust the service Fees and Charges upon giving the Plan Administrator 31 days written notice.

E. The Plan Administrator will be liable for any taxes, charges, fees, or similar assessments made against the Plan or against the Company with respect to the Plan, which may become due as a result of a determination by any insurance department or Department of Labor, or any other federal, state or municipal body, or instrument or administrative organization thereof and this shall apply retroactively to any prior period of which these taxes or fees are applicable, it being the intent of this Agreement that the Company shall not incur any special responsibility for such items by reason of entering into this Agreement.

- F. Programming charges for specific requirements or requests of the Plan Administrator that are unique to the Company are not part of the Fees and Charges specified in Section VII.(A). The costs of such items for Systems Analyst, CPU Time, and Administrative Support Staff Time will be charged separately at the prevailing actual hourly cost rates.

These charges shall be billed on a separate statement due and payable on the first of each month following the month incurred. Upon receipt of a request from the Plan Administrator for the generation of a report, a specific software application or other administrative service requiring a program change, the Company shall document the request for review by the Plan Administrator prior to implementation. The document shall include a description of the request, including an exhibit when appropriate, and an estimate of the cost of implementation. The Company reserves the right to adjust these costs upon giving the Plan Administrator 31 days written notice prior to the end of the term of this Agreement, unless otherwise agreed to by the parties. During the term of this Agreement, any substantial change in the self-funded employee welfare benefit plan or change in coverage that requires additional programs or personnel may result in an adjustment to the fees as mutually agreed.

- G. Regarding prescription medications or drugs purchased by Members under the terms of the Plan, the Plan Administrator agrees to pay to the Company the amount due to the pharmacy (or other prescription drug retailer) under the terms of the pharmacy provider participating agreement. The amount due to the pharmacy under the terms of the pharmacy provider participating agreement is that which is due at the time the prescription medication or drug is purchased by the Member. The amount due to the pharmacy under the pharmacy provider participating agreement is calculated without regard to any subsequent, retrospective manufacturer discount that may apply to the cost of the prescription medication or drug. The Plan Administrator acknowledges and agrees that, in some cases but not all, drug manufacturers may offer retrospective discounts to the Company on prescription medications and drugs purchased under the terms of the Plan. If a drug manufacturer makes a retrospective discount payment available, the Plan Administrator acknowledges and agrees that a portion of any such rebate may be retained by an entity that performs manufacturer discount program services on behalf of the Company under the terms of this Agreement. The Plan Administrator further acknowledges and agrees that, when made available by the drug manufacturer, another portion of the retrospective discount payment is retained by the Company. In its sole discretion, the Company may periodically refund to the Plan all or part of any rebate payments received. The calculation of any refund rests in the sole discretion of the Company.

VIII. **CALCULATION OF MEDICAL BENEFITS**

BCBSND has a number of payment arrangements with Health Care Providers. Examples of these arrangements include diagnostic related groupings, per diems, and other payment arrangements. In specific cases, the payment arrangement amount may be less than, more than or equal to the amount billed to BCBSND by the Health Care Provider. In all cases, the amount charged to the Plan Administrator will be the cash or check amount paid by BCBSND to the Health Care Provider. Members' Cost Sharing Amounts, calculated on a percentage basis, will be based on the lesser of the payment amount or the amount actually billed by the Health Care Provider.

IX. **INTER-PLAN ARRANGEMENTS**

BCBSND has a variety of relationships with other Blue Cross and/or Blue Shield Licensees referred to generally as "Inter-Plan Arrangements." These Inter-Plan Arrangements operate under rules and procedures issued by the Blue Cross Blue Shield Association ("Association"). Whenever a Member accesses health care services outside of the geographic area BCBSND serves, the claim for those services may be processed through one of these Inter-Plan Arrangements and presented to BCBSND for payment in accordance with the rules of the Inter-Plan Arrangements. The Inter-Plan Arrangements are described generally below.

Typically, when accessing care outside the geographic area BCBSND serves, a Member obtains care from health care providers that have a contractual agreement ("participating health care providers") with the local Blue Cross and/or Blue Shield Licensee in that other geographic area ("Host Blue"). In some instances, a Member may obtain care from health care providers in the Host Blue geographic area that do not have a contractual agreement ("nonparticipating health care providers") with a Host Blue. BCBSND remains responsible for fulfilling its contractual obligations to the Plan Administrator. BCBSND payment practices in both instances are described below.

This disclosure describes how claims are administered for Inter-Plan Arrangements and the fees that are charged in connection with Inter-Plan Arrangements. All claim types are eligible to be processed through Inter-Plan Arrangements, as described above, except for all dental care benefits and vision care benefits (except when paid as medical claims/benefits), and those prescription drug benefits that may be administered by a third party contracted by BCBSND to provide the specific service or services.

A. BlueCard® Program

The BlueCard Program is an Inter-Plan Arrangement. Under this Arrangement, when Members access Covered Services within the geographic area served by a Host Blue, the Host Blue will be responsible for contracting and handling all interactions with its participating health care providers. The financial terms of the BlueCard Program are described generally below.

1. Liability Calculation Method Per Claim

- a. **Member Liability Calculation.** Unless subject to a fixed dollar copayment, the calculation of Member liability on claims for Covered Services processed through the BlueCard Program will be based on the lower of the billed charges of the Host Blue's participating health care provider or the negotiated price made available to BCBSND by the Host Blue.
- b. **Group Liability Calculation.** The calculation of the Group liability on claims for Covered Services processed through the BlueCard Program will be based on the negotiated price made available to BCBSND by the Host Blue. Sometimes, this negotiated price may be greater than billed charges in accordance with how the Host Blue has negotiated with its participating health care providers for specific health care services. In cases where the negotiated price exceeds the billed charge, the Group may be liable for the excess amount even when the Member's Deductible Amount has not been satisfied. This excess amount reflects an amount that may be necessary to secure (a) the health care provider's participation in the network and/or (b) the overall discount negotiated by the Host Blue. In such a case, the entire contracted price is paid to the health care provider, even when the contracted price is greater than the billed charge.

2. Claim Pricing

Host Blues determine a negotiated price, which is reflected in the terms of each Host Blue's health care provider contracts. The negotiated price made available to BCBSND by the Host Blue may represent one of the following:

- a. an actual price. An actual price is a negotiated rate of payment without any other increases or decreases; or
- b. an estimated price. An estimated price is a negotiated rate of payment reduced or increased by a percentage to take into account certain payments negotiated with the provider and other claim- and non-claim-related transactions. Such transactions may include, but are not limited to, anti-fraud and abuse recoveries, provider refunds not applied on a claim-specific basis, retrospective settlements, and performance-related bonuses or incentives; or
- c. an average price. An average price is a percentage of billed covered charges representing the aggregate payments negotiated by the Host Blue with all of its health care providers or a similar classification of its providers and other claim- and non-claim-related transactions. Such transactions may include the same ones as noted above for an estimated price.

Host Blues determine whether or not they will use an actual, estimated or average price. The use of estimated or average pricing may result in a difference (positive or negative) between the price the Group pays on a specific claim and the actual amount the Host Blue pays to the health care provider. However, the BlueCard Program requires that the amount paid by the Member and the Group is a final price; no further price adjustment will result in increases or decreases to the pricing of past claims.

Any positive or negative difference in estimated or average pricing are accounted for through variance accounts maintained by the Host Blue and are incorporated into future claim prices. As a result, the amounts charged to the Group will be adjusted in a following year, as necessary, to account for over- or underestimation of the past years' prices. The Host Blue will not receive compensation from how the estimated price or average price methods, described above, are calculated. Because all amounts paid are final, neither positive variance account amounts (funds available to be paid in the following year), nor negative variance amounts (the funds needed to be received in the following year), are due to or from the Group. If the Group terminates, a refund or charge will not be received from the variance account.

Variance account balances are small amounts relative to the overall paid claims amounts and will be liquidated over time. The timeframe for their liquidation depends on variables, including, but not limited to, overall volume/number of claims processed and variance account balance. Variance account balances may earn interest. Host Blues may retain interest earned on funds held in variance accounts.

3. BlueCard Program Fees and Compensation

The Group understands and agrees to reimburse BCBSND for certain fees and compensation which BCBSND is obligated under the BlueCard Program to pay to the Host Blues, to the Association, and/or to BlueCard Program vendors, as described below.

BCBSND will charge the Group separately for only the following BlueCard Program-related fees:

- BlueCard Program access fee
- BlueCard Program Administrative Expense Allowance (AEA)

An access fee may be passed on to the Group as an additional claim liability. If one is charged, it will be a percentage of the discount/differential BCBSND receives from the Host Blue, based on the current rate in accordance with the Program's standard procedures for establishing the access fee rate. The access fee will not exceed \$2,000 for any claim. If BCBSND receives an access fee credit, BCBSND will give the Group a claim expense credit or a separate credit.

A BlueCard Program access fee may be charged only if the Host Blue's arrangement with its participating health care provider prohibits billing Members for amounts in excess of the negotiated payment. However, a health care provider may bill for noncovered health care services and for Member's cost sharing (for example, deductible, copayments and/or coinsurance) related to a particular claim.

Alternative financial arrangements may be used to charge both the BlueCard Program access fee and the BlueCard Program AEA. These are charged either on a per contract per month (PCPM) or a per claim basis as indicated in Section VII. Fees and Charges. The alternative financial arrangement replaced both the access fee and the AEA for only those contracts or claims identified in Section VII. Fees and Charges.

All other BlueCard Program-related fees are included in the BCBSND general administrative fee. See Section VII. Fees and Charges.

B. Special Cases: Value-Based Programs

Members may access Covered Services from health care providers that participate in a Host Blue's Value-Based Program. These Value-Based Programs may include, but are not limited to, Accountable Care Organizations, Global Payment/Total Cost or Care arrangements, Patient Centered Medical Homes and Shared Savings arrangements.

Under Value-Based Programs, a Host Blue may pay health care providers for reaching agreed-upon cost/quality goals in a variety of ways such as Provider Incentives, share of target savings, Care Coordinator Fees and other amounts allowed by rules of the Association.

The Host Blue may pass these health care provider Value-Based payments to BCBSND, which will then be passed directly on to the Group as either an amount included in the price of the claim or an amount charged separately in addition to the claim.

The charge to Groups for Value-Based Programs incentives/Shared Savings settlements that are part of the claim are passed to the Group via an enhanced health care provider fee schedule. Per Member Per Month (PMPM) billings for Value-Based Programs incentive/Shared Savings settlements to the Group are outside of the claim system. BCBSND will pass these Host Blue charges directly through to the Group as a separately identified amount on the Group billings.

The amounts used to calculate either the supplemental factors for estimated pricing or PMPM billings are fixed amounts that are estimated to be necessary to finance the cost of a particular Value-Based Program. Because amounts are estimates, there may be positive or negative differences based on actual experience, and such differences will be accounted for in a variance account maintained by the Host Blue (in the same manner as described in the BlueCard claim pricing section above) until the end of the applicable Value-Based Program payment and/or reconciliation measurement period. The amounts needed to fund a Value-Based Program may be changed before the end of the measurement period if it is determined that amounts being collected are projected to exceed the amount necessary to fund the program or if they are projected to be insufficient to fund the program.

At the end of the Value-Based Program payment and/or reconciliation measurement period for these arrangements, Host Blues will take one of the following actions:

- Use any surplus in funds in the variance account to fund Value-Based Program payments or reconciliation amounts in the next measurement period.
- Address any deficit in funds in the variance account through an adjustment to the PMPM billing amount or the reconciliation billing amount for the next measurement period.

The Host Blue will not receive compensation resulting from Value-Based payments. If the Group terminates, the Group will not receive a refund or charge from the variance account. This is because any resulting surpluses or deficits would be eventually exhausted through prospective adjustment to the settlement billings in the case of Value-Based Programs. The measurement period for determining these surpluses or deficits may differ from the terms of this Agreement.

Variance account balances are small amounts relative to the overall paid claims amounts and will be liquidated over time. The timeframe for their liquidation depends on variables, including, but not limited to, overall volume/number of claims processed and variance account balance. Variance account balances may earn interest. Host Blues may retain interest earned on funds held in variance accounts.

Members will not bear any portion of the cost of Value-Based Programs except when a Host Blue uses either average pricing or actual pricing to pay health care providers under Value-Based Programs.

Host Blues may also bill BCBSND for Care Coordinator Fees for provider services which we will pass on to the Group as follows:

- PMPM billings; or
- Individual claim billings through applicable Care Coordination codes from the most current editions of either Current Procedural Terminology (CPT) published by the American Medical Association (AMA) or Healthcare Common Procedure Coding System (HCPCS) published by the U.S. Centers for Medicare and Medicaid Services (CMS).

BCBSND and the Group will not impose Member Cost Sharing for Care Coordinator Fees.

C. Return of Overpayments

Under the Inter-Plan Arrangements, recoveries from a Host Blue or from health care providers of a Host Blue can arise in several ways, including, but not limited to, anti-fraud and abuse recoveries, provider/hospital audits, credit balance audits, utilization review refunds and unsolicited refunds. In some cases, the Host Blue will engage third parties to assist in discovery or collection of recovery amounts, which generally require correction on a claim-by-claim or prospective basis. The fees of such a third party may be charged to the Plan Administrator as a percentage of the recovery.

D. Federal/State Taxes/Surcharges/Fees

In some instances federal or state laws or regulations may impose a surcharge, tax or other fee that applies to self-funded accounts. If applicable, BCBSND will disclose any such surcharge, tax or other fee to the Group and it will be the Group's liability.

E. Nonparticipating Health Care Providers Outside the BCBSND Service Area

Member Liability Calculation – When Covered Services are provided outside of BCBSND's service area by health care providers who have not entered into a "participation agreement" with a Host Blue (nonparticipating health care providers), the amount the Member pays for such services will generally be based on either the Host Blue's nonparticipating health care provider local payment or the pricing arrangements required by applicable state law. In these situations, the Member may be liable for the difference between the amount that the nonparticipating health care provider bills and the payment BCBSND will make for the Covered Services as set forth in this paragraph. Payments for out-of-network emergency services will be governed by applicable federal and state law.

In certain situations, BCBSND may pay claims based on the payment BCBSND would make if the Covered Services had been obtained within the BCBSND service area, such as in situations where a Member did not have reasonable access to a participating health care provider, as determined by BCBSND in its sole and absolute discretion or by applicable state law. In other situations, BCBSND may pay such a claim based on the payment BCBSND would make if BCBSND were paying a nonparticipating health care provider inside of BCBSND's service area, (as described in the Member's Certificate of Insurance), where the Host Blue's corresponding payment would be more than BCBSND's payment to a nonparticipating health care provider within the BCBSND service area. BCBSND may also in its sole and absolute discretion, negotiate a payment with such a health care provider on an exception basis. In any of these situations, the Member may be responsible for the difference between the amount that the nonparticipating health care provider bills and payment BCBSND will make for the Covered Services as set forth in this paragraph.

Fees and Compensation - The Group understands and agrees to reimburse BCBSND for certain fees and compensation which BCBSND is obligated under applicable Inter-Plan Arrangements to pay to the Host Blues, the Association and/or to Inter-Plan Arrangement vendors.

BCBSND may pay an AEA fee to the Host Blue for processing nonparticipating health care providers' claims and the Group further agrees to reimburse BCBSND for this AEA fee, if one is charged, as set forth in Section VII. Fees and Charges.

F. Blue Cross Blue Shield Global Core

If Members are outside the United States, the Commonwealth of Puerto Rico and the U.S. Virgin Islands ("BlueCard service area"), they may be able to take advantage of Blue Cross Blue Shield Global Core when accessing Covered Services. Blue Cross Blue Shield Global Core is not served by a Host Blue.

1. Inpatient Services

In most cases, if a Member contacts the Blue Cross Blue Shield Global Core Service Center for assistance, hospitals will not require the Member to pay for covered inpatient services, except for Cost Sharing Amounts. In such cases, the hospital will submit the Member's claims to the Blue Cross Blue Shield Global Core Service Center to initiate claims processing. However, if the Member paid in full at the time of service, the Member must submit a claim to obtain reimbursement for Covered Services.

2. Outpatient Services

Physicians, urgent care centers and other outpatient health care providers located outside the BlueCard service area will typically require a Member to pay in full at the time of service. The Member must submit a claim to obtain reimbursement for Covered Services.

3. Submitting a Blue Cross Blue Shield Global Core Claim

When a Member pays for Covered Services outside the BlueCard service area, the Member must submit a claim to obtain reimbursement. For institutional and professional claims, the Member should complete a Blue Cross Blue Shield Global Core International claim form and send the claim form with the health care provider's itemized bill(s) to the Blue Cross Blue Shield Global Core Service Center address on the form to initiate claims processing. The claim form is available from BCBSND, the Blue Cross Blue Shield Global Core Service Center or online at www.bcbsglobalcore.com.

You understand and agree to reimburse BCBSND for certain fees and compensation which we are obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blues, to the Association and/or to vendors of Inter-Plan Arrangement-related services. The specific fees and compensation that are charged to you under Blue Cross Blue Shield Global Core are set forth in Section VII.(B). Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as provided for in Section IX.(G).

G. Modifications or Changes to Inter-Plan Arrangement Fees or Compensation

Fees and compensation under applicable Inter-Plan Arrangements may be revised in accordance with the specific program's standard procedures for revising such fees and compensation, which do not provide for prior approval by any Group. Such revisions typically are made annually as a result of Inter-Plan Arrangements changes and/or vendor negotiations. These revisions may occur at any time during the course of a given calendar year, and they do not necessarily coincide with the Group's Plan Year under this Agreement.

X. GOVERNING LAW

This Agreement shall be construed and enforced in accordance with federal law under ERISA, except to the extent that state law is not preempted, in which case this Agreement shall be construed and enforced in accordance with the laws of North Dakota.

XI. DISPUTES AND INDEMNIFICATION

- A. The Plan Sponsor and the Plan Administrator agree to indemnify the Company and hold it harmless:
1. From any and all claims, suits, interest, and expenses, including attorneys' fees and court costs, the Company may become liable for or shall pay upon or in consequence of any liability for premium taxes or other taxes by whatever name called similar to or in lieu of premium taxes, or other taxes, including penalties and interest, arising out of the performance by the Company of its services under this Agreement except as provided in Section XI.(B) hereof; and
 2. As permitted by North Dakota law, against any and all losses, damages, and/or expenses, including but not limited to attorneys' fees and court costs, resulting from or arising out of claims, demands, suits or actions brought against the Company related to the Plan and/or arising out of or related to the performance of services by any party under this Agreement to recover benefit payments described by the Plan or as a result of any decision by the Plan Administrator to limit or exclude benefits under the Benefit Plan to the extent that such limitation or exclusion of benefits is ever alleged or determined to violate any state or federal law, except for actions of the Company or its employees or agents that are outside the scope of this Agreement or a mutually agreed upon statement of work related to this Agreement.
- B. The Company agrees to hold the Plan Sponsor and the Plan Administrator harmless against any and all loss, damage, and/or expenses under this Agreement resulting from dishonest, fraudulent, or criminal acts of the Company's employees, provided the claim for benefits is not otherwise payable under the Plan.
- C. Legal or extraordinary benefit matters shall be referred by the Company to the Plan Administrator. Where the Company is not a party to such matters, the decision to defend a legal action or a suit in equity on a claim under the terms of the Plan for benefits or otherwise, except as provided in Section XI.(B) above, shall be the responsibility of the Plan Sponsor and/or the Plan Administrator. Notwithstanding the above, if litigation is filed naming the Company as a defendant, the Company will have the right to manage the litigation and determine whether to pay, compromise, litigate, or appeal the litigation and submit all defense costs incurred to the Plan Sponsor and/or the Plan Administrator for reimbursement in accordance with Section XI.(A) of this Agreement. If the Company agrees to pay or compromise such litigation, the Plan Sponsor and/or the Plan Administrator may not seek contribution or indemnity for any additional loss, damage, and/or expenses incurred in connection with such litigation, notwithstanding Section XI.(B) above.
- D. The Company shall not be liable for any loss resulting from the performance of its duties, if such duties were performed at the direction of the Plan Sponsor and/or the Plan Administrator and contrary to the advice of the Company, or if the Company relied on information from the Plan Sponsor and/or the Plan Administrator that was inaccurate. The Plan Sponsor and the Plan Administrator acknowledge and agree there are federal and/or state laws affecting the administration of this Agreement by the Company and to comply with any and all obligations arising out of federal or state statutes, case law, regulations, advisory opinions, and other applicable legal requirements. The Company shall not be liable for any loss resulting from noncompliance with any such legal requirements where compliance is the responsibility of the Plan Sponsor or Plan Administrator, regardless of whether or not the Plan Administrator or Plan Sponsor relied on services or advice provided by the Company.

XII. TERMINATION

- A. If any law or regulation is enacted by the United States or by any state or if any existing law is interpreted to prohibit the continuance of this Agreement, it shall terminate automatically on the effective date of such law or regulation or date of interpretation.

- B. Any party may terminate this Agreement by giving written notice to the other parties 31 days prior to the specified termination date of this Agreement. Written notice shall be sent certified mail return receipt requested.
- C. In the event of termination of this Agreement, the Company shall complete the evaluation of all requests for benefits under the Plan which are received prior to the termination of this Agreement.
- D. Both the Plan Administrator and Company will have the right to terminate this Agreement if either party determines that the other has engaged in a pattern of activity or practice that constitutes a material breach or violation of its obligations regarding PHI under this Agreement and, on notice of such material breach or violation from the complaining party, fails to take reasonable steps to cure the breach or end the violation.

If the party fails to cure the material breach or end the violation after the complaining party's notice, the complaining party may terminate this Agreement by providing the other party written notice of termination setting forth the uncured material breach or violation serving as the basis for the termination and specifying the effective date of the termination.

XIII. **GENERAL PROVISIONS**

- A. This Agreement is between the Company, the Plan Sponsor and the Plan Administrator, and does not create any rights or legal relationships between the Company and any Members.
- B. If one or more provisions of this Agreement are determined to be illegal or otherwise unenforceable, such determination shall not affect the legality or enforceability of the remaining provisions of this Agreement.
- C. The Plan Sponsor and the Plan Administrator acknowledge that they do not have any right in, nor will it use without the written approval of the Company, any trademark, copyrighted, proprietary or confidential information of the Company. Further, the Plan Sponsor and the Plan Administrator agree that they will not use information deemed to be confidential by the Company for any purpose unrelated to this Agreement.
- D. The Plan Sponsor warrants that it is a corporation, partnership, or proprietorship existing under the laws of North Dakota and that the signator below has the authority to bind the Plan Sponsor in this Agreement. The Company warrants that the signator(s) below has the authority to bind the Company in this Agreement. The Plan Sponsor warrants that the signator below has the authority to bind Plan Sponsor in this Agreement. The Plan Administrator warrants that the signator below has the authority to bind the Plan Administrator in this Agreement.
- E. The Plan Sponsor and the Plan Administrator hereby expressly acknowledge and understand that BCBSND is an independent corporation operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting BCBSND to use the Blue Cross and Blue Shield Service Marks in the state of North Dakota, and that BCBSND is not contracting as an agent of the Association. The Plan Sponsor and the Plan Administrator further acknowledge and agree this Agreement was not entered into based upon representations by any person or entity other than BCBSND and that no person, entity, or organization other than BCBSND shall be held accountable or liable to the Plan Sponsor and the Plan Administrator for any of BCBSND's obligations to the Plan Sponsor and the Plan Administrator created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of BCBSND other than those obligations created under other provisions of this Agreement.

- F. The Company is and shall remain an independent contractor with respect to the services being performed under this Agreement and shall not for any purpose be deemed an employee of the Plan Sponsor or Plan Administrator. Further, the Company, the Plan Sponsor and the Plan Administrator shall not be deemed partners, involved in a joint venture, or governed by any legal relationship other than that of independent contractor. The Company does not assume any responsibility for the general policy direction of the self-funded employee welfare benefit plan, the adequacy of the funding, or any act or omission or breach of duty by the Plan Sponsor or the Plan Administrator.
- G. All disputes between the parties regarding matters set forth in this Agreement that cannot be settled between the parties, may be referred to arbitration at the request of the Company, the Plan Sponsor or the Plan Administrator. The arbitration shall be conducted in accordance with commercial arbitration rules of the American Arbitration Association or in some other manner agreed to by the parties. However, where the Plan Sponsor or the Plan Administrator contend that the Company has breached this Agreement, notice of said alleged breach shall be delivered to the Company by certified mail return receipt requested; if the Company cures the alleged breach within 31 days after it receives said written notice, the Plan Sponsor or the Plan Administrator shall be barred from bringing suit or submitting the matter to arbitration. Any arbitration of any dispute covered by this paragraph shall be nonbinding and no party waives their right to pursue the matter in court by participating in such arbitration.
- H. If the Plan Administrator has a digital or online version of the Summary Plan Description or any other Plan documents, the Plan Administrator agrees that it will not alter, modify or change the language of the Summary Plan Description, and further agrees the Summary Plan Description, attached as Exhibit "A", will be the controlling document in the event of any conflict or liability that might arise as the result of any alterations, modifications or changes made by the Plan Administrator. In the event a claim is paid based on the Plan Administrator's digital or online Summary Plan Description, the Plan Administrator is liable for all such claims. The Plan Administrator further agrees that no waiver of this provision is valid unless in writing and approved by the Company.
- I. Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 and the HITECH Act and any implementing regulations applicable to this Agreement, this Agreement will automatically amend such that the obligations imposed on the Plan Sponsor, the Plan Administrator and the Company remain in compliance with such regulations, unless the Company elects to terminate this Agreement by providing the Plan Sponsor and the Plan Administrator notice of termination in accordance with this Agreement at least thirty-one (31) days before the effective date of such final regulation or amendment to final regulations.

XIV. NOTICE

The Company shall be entitled to rely upon the accuracy of any communication from authorized representatives of the Plan Administrator. The Company shall not be bound by any notice, direction, requisition, or request unless and until it shall have been addressed to the following person and sent certified mail return receipt requested to:

Daniel Conrad, President and CEO
BLUE CROSS BLUE SHIELD OF NORTH DAKOTA
4510 13th Avenue South
Fargo, North Dakota 58121

The Plan Administrator shall be entitled to rely upon the accuracy of any communication from authorized representatives of the Company. The Plan Administrator shall not be bound by any notice, direction, requisition, or request unless and until it shall have been addressed to the following person and sent certified mail return receipt requested to the Plan Administrator at:

Robert W. McConnell, Director Human Resources
CITY OF BISMARCK
221 North 5th Street
Bismarck, North Dakota 58506-5503

XV. SUMMARY HEALTH INFORMATION

Upon the Plan Sponsor's written request for the purpose either (a) to obtain premium bids for providing health insurance coverage for the Plan, or (b) to modify, amend or terminate the Plan, the Company will provide Summary Health Information regarding the Members in the Plan to the Plan Sponsor.

XVI. COUNTERPARTS AND BINDING EFFECT

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and said counterparts shall constitute one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in their names by their undersigned officers, the same being duly authorized to do so.

CITY OF BISMARCK
GROUP HEALTH PLAN (PLAN ADMINISTRATOR)
221 North 5th Street
Bismarck, North Dakota 58506-5503

BLUE CROSS BLUE SHIELD OF NORTH DAKOTA*
4510 13th Avenue South
Fargo, North Dakota 58121

By: _____



Title: _____

Its President and CEO

Date: _____

December 30, 2019

CITY OF BISMARCK
(PLAN SPONSOR)
221 North 5th Street
Bismarck, North Dakota 58506-5503

By: _____

Title: _____

Date: _____

Administrative Service Agreement
01/01/2020 - 12/31/2020
250808

*An Independent Licensee of the Blue Cross and Blue Shield Association.

Exhibit "A"



Police Department

DATE: December 30, 2019

FROM: Dave Draovitch, Chief of Police *dd*

ITEM: Permission to Participate in Solicitation of Donations for Regional K9 Training.

REQUEST

The Bismarck Police Department requests Authorization for the K9 Supervisor, Sgt. Lyle Sinclair, to participate in the solicitation of donations to help fund high-level K9 training opportunities locally.

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

I am requesting the Board's permission for BPD K9 Supervisor, Sgt. Lyle Sinclair, to assist in soliciting donations to support our regional National Police Canine Association (NPCA), a 501c3 non-profit organization (he is an active member), in bringing high-level K9 training to the Bismarck area. This would not only serve BPD K9 teams, but also the K9 teams statewide. The NPCA North Central Regional Director will be sending the attached letter out for donations and I would recommend Sgt. Sinclair be allowed to attach his letter (attached) to show local (statewide) companies that BPD supports NPCA in their endeavor to raise monies within ND to bring high-level K9 training to ND to benefit ND K9 teams. The Commission approved this request in January 2019 as well. There will be a public demonstration on August 1, 2020. Demonstrations in previous years have been very well supported by the public.

RECOMMENDED CITY COMMISSION ACTION

Grant permission to solicit donations.

STAFF CONTACT INFORMATION

Dave Draovitch | Chief of Police, 223-1212 or ddraovitch@bismarcknd.gov

Dear Sir or Ma'am,

I am Sgt Lyle Sinclair of the Bismarck Police Department. My duties include being the Bismarck Police Department K9 Supervisor. As the K9 Supervisor I am responsible to make sure that the K9 teams are being trained to the best of their abilities, (dog and handler).

To do this we (handlers in North Dakota) started to host a seminar in Bismarck each year. We bring in out of state instructors to teach new ideas and tactics to make us the best we can be. To help offset the cost of this training we ask your help with a tax deductible donation to the Nation Police Canine Association. Either a cash donation or a product to be raffled off at the Iron Dog Competition would be greatly appreciated.

Three of the handlers who attended last year were also contestants on A&E's America's Top Dog Show.

https://www.facebook.com/watch/?v=521236355095744&external_log_id=d413f97c82134cfb5fc39a423113f8c5&q=americas%20top%20dog

This year our Iron Dog Challenge will be August 1. For more information check us out at

<https://www.facebook.com/Midwestern-K9-Training-and-Trials-254664518391982/>

I would like to thank you for time and consideration on this topic. Choosing to donate or not will not affect our professional relationship. Please feel free to contact me if you have any questions or concerns.

If you want to donate online the link is http://www.npcastore.com/North-Dakota-Seminar-Donation_c33.htm

Respectfully

Lyle Sinclair

lsinclair@bismarcknd.gov

(701) 391-1650

Bismarck

Police Department

DATE: January 3, 2020
FROM: Dave Draovitch, Chief of Police
ITEM: 2020 Narcotics Vehicle Purchase

REQUEST

The Bismarck Police Department requests authorization to trade in a current narcotics vehicle on the purchase of a replacement narcotics vehicle. The funds for this purchase will come from the PD Asset Forfeiture Budget.

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The BPD Narcotics Unit is in need of rotating out a 2014 Ford Expedition. They were able to locate a suitable vehicle at Eide Ford. It is a 2019 Ford F-150. They intend to trade in the existing 2014 Ford Expedition (narcotics) for the new vehicle. Sergeant Mike Bolme looked at other equivalent vehicles in the area and feels 2019 Ford F-150 at Eide Ford is priced right. Eide Ford is also giving us \$16,550 trade in value for the 2014 Ford Expedition. In addition, they are including a bed liner, chest box, and window tint with the deal. Sergeant Bolme thoroughly searched for the best vehicle he could find taking mileage, age, and price into account. This vehicle also fits the needs of the narcotics investigators. He budgeted up to \$24,999 for this vehicle. The 2019 Ford F-150 is valued at \$54,275 and Eide Ford is selling it to us for \$41,989 plus \$1,489 for the accessories and \$159 for a document fee. The total cost for the new vehicle, with fees and after trade in, is \$23,682.70. That is \$1,316.30 below what was budgeted for this replacement vehicle.

RECOMMENDED CITY COMMISSION ACTION

Grant permission to trade/purchase listed vehicles as described above

STAFF CONTACT INFORMATION

Dave Draovitch | Chief of Police, 223-1212 or ddraovitch@bismarcknd.gov

EIDE FORD LINCOLN
 800 E. BISMARCK EXPRESSWAY
 BISMARCK, ND 58504

RETAIL PURCHASE AGREEMENT

CUST# 127004

Deal Number: 189843

Purchaser's Name(s): CITY OF BISMARCK

Date: 12/13/2019

Address: 221 N 5TH ST BISMARCK, ND 58501

County BURLEIGH

Telephone (1): 701-220-5462

Telephone (2):

DOB:

E-mail:

D.L./State I.D.#:

Issuing State:

Exp. Date:

The above information has been requested so that we may verify your identity. By signing below, you represent that you are at least 18 years of age and have authority to enter into this Agreement. The Odometer Reading for the Vehicle you are purchasing is accurate unless indicated otherwise. Please refer to the Federal Mileage Statement for full disclosure.

YEAR 2019	MAKE FORD	MODEL F150	COLOR AGATE BLACK	STOCK NO. 903145
VIN/SERIAL NO. 1FTEW1EP6KFD33660		ODOMETER READING <input type="checkbox"/> Not Accurate	SALESPERSON DAVID P CURTIS	
THE VEHICLE IS: <input checked="" type="checkbox"/> NEW		PRIOR USE DISCLOSURE: <input type="checkbox"/> DEMONSTRATOR		
<input type="checkbox"/> USED		<input type="checkbox"/> FACTORY OFFICIAL		
<input type="checkbox"/>		<input type="checkbox"/> RENTAL		
<input type="checkbox"/>		<input type="checkbox"/> OTHER		
WARRANTY STATEMENT			CASH PRICE OF VEHICLE	48456.20
<p>We are selling this Vehicle to you AS-IS and we expressly disclaim all warranties, express and implied, including any implied warranties of merchantability and fitness for a particular purpose, unless the box beside "Used Vehicle Limited Warranty Applies" is marked below or we enter into a service contract with you at the time of, or within 90 days of, the date of this transaction. Any warranties by a manufacturer or supplier other than our Dealership are theirs, not ours, and only such manufacturer or supplier shall be liable for performance under such warranties. We neither assume nor authorize any other person to assume for us any liability in connection with the sale of the Vehicle and the related goods and services.</p> <p>CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY) The information you see on the window form for this Vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. Gula para compradores de vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.</p> <p><input type="checkbox"/> We are providing a Used Vehicle Limited Warranty in connection with this transaction. Any implied warranties apply for the duration of the Limited Warranty.</p>			Rebate	8500.00
			Subtotal	39956.20
			Less Trade Allowance	16550.00
			Taxable Amount	23406.20
			Tax	N/A
				N/A
TRADE-IN VEHICLE INFORMATION				
Year:	Make:	Model:	Color:	
2014	FORD	EXPEDITION		
VIN/Serial No.:	Odometer Reading:			
1FMJU2A5XEEF30660	<input type="checkbox"/> Not Accurate		72246	
Trade-In Allowance:	N/A	N/A	Balance Owed & Lienholder:	
16550.00	N/A	N/A		
*The Deposit/Down Payment received from you is not refundable, except as set forth in this Retail Purchase Agreement. In the case of a Deposit, we will refrain from selling the Vehicle for _____ days.				
X	X	N/A		
<input type="checkbox"/> EVENT DATA RECORDER: The vehicle you are purchasing may be equipped with a manufacturer installed recording device. Please see the owner's manual from the manufacturer for specifications.				
OTHER MATERIAL UNDERSTANDINGS AND INTEGRATED DOCUMENTS				
<input type="checkbox"/> IF BOX IS MARKED, PLEASE SEE THE DELIVERY CONFIRMATION				
<input type="checkbox"/> IF BOX IS MARKED, PLEASE SEE THE CONDITIONAL (SPOT) DELIVERY AGREEMENT				
			LESS DEPOSIT/DOWN PAYMENT*	N/A
			LESS REBATE	N/A
				N/A
			LESS CASH DUE AT DELIVERY	N/A
			AMOUNT TO BE FINANCED (See Paragraphs 11 and 14)	23682.70

This Agreement and any documents which are a part of this transaction or incorporated herein comprise the entire agreement affecting this Retail Purchase Agreement and no other agreement or understanding of any nature concerning the same has been made or entered into, or will be recognized. I have read all of the terms and conditions of this Agreement and agree to them as if they were printed above my signature. I further acknowledge receipt of a copy of this Agreement. This Agreement shall not become binding until signed and accepted by an Authorized Dealership Representative.

Purchaser _____

Accepted by Authorized Dealership Representative _____

N/A

Purchaser

DealerCAP

CATALOG #8963467
 5346211*EFLM-FI

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PUBLIC WORKS – SERVICE OPERATIONS

DATE: January 2, 2020

FROM: Jeff Heintz, Director of Service Operations

A handwritten signature in blue ink, appearing to read "JH", is written over the name "Jeff Heintz" in the "FROM:" line.

ITEM: Permission to Purchase Motorola Portable and Mobile Radios Under the State of North Dakota Bid Contract

REQUEST

Request permission to purchase Motorola portable and mobile radios at the State of North Dakota bid contract for the 2020 budget year.

Please place this item on the January 14, 2020 City Commission meeting.

BACKGROUND INFORMATION

Request to purchase Motorola portable and mobile radios under the State of North Dakota bid contract for the 2020 budget year.

I will be present at the City Commission meeting to answer any questions.

RECOMMENDED CITY COMMISSION ACTION

Permission to purchase Motorola portable and mobile radios under the State of North Dakota bid contract for the 2020 budget year.

STAFF CONTACT INFORMATION

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



PUBLIC WORKS – SERVICE OPERATIONS

DATE: January 2, 2020

FROM: Jeff Heintz, Director of Service Operations *JBA*

ITEM: Permission to Purchase Oil for City Vehicles and Equipment Under the State of North Dakota Bid Contract

REQUEST

Request permission to purchase oil for City vehicles and equipment under the State of North Dakota bid contract for the 2020 budget year.

Please place this item on the January 14, 2020 City Commission meeting.

BACKGROUND INFORMATION

Request to purchase oil for City vehicles and equipment under the State of North Dakota bid term contract during the 2020 budget year.

I will be present at the City Commission meeting to answer any questions.

RECOMMENDED CITY COMMISSION ACTION

Permission to purchase oil for City vehicles and equipment under the State of North Dakota bid contract for the 2020 budget year.

STAFF CONTACT INFORMATION

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



PUBLIC WORKS – SERVICE OPERATIONS

DATE: January 2, 2020

FROM: Jeff Heintz, Director of Service Operations

A handwritten signature in blue ink, appearing to read "JH", is written over the "FROM:" line.

ITEM: Permission to Purchase Tires for City Vehicles and Equipment Under the State of North Dakota Bid Contract

REQUEST

Request permission to purchase tires for City vehicles and equipment under the State of North Dakota bid contract for the 2020 budget year.

Please place this item on the January 14, 2020 City Commission meeting.

BACKGROUND INFORMATION

Request to purchase tires for City vehicles and equipment under the State of North Dakota bid term contract during the 2020 budget year.

I will be present at the City Commission meeting to answer any questions.

RECOMMENDED CITY COMMISSION ACTION

Permission to purchase tires for City vehicles and equipment under the State of North Dakota bid contract for the 2020 budget year.

STAFF CONTACT INFORMATION

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



PUBLIC WORKS – SERVICE OPERATIONS

DATE: January 2, 2020

FROM: Jeff Heintz, Director of Service Operations

A handwritten signature in blue ink, appearing to read "JH", is placed to the right of the "FROM:" line.

ITEM: Permission to purchase vehicles at the State of North Dakota bid prices and the North Dakota Education Service contract

REQUEST

Request permission to purchase vehicles at the State of North Dakota bid price and the North Dakota Education Service Contract for the 2020 budget year.

Please place this item on the January 14, 2020 City Commission meeting.

BACKGROUND INFORMATION

Request to purchase five vehicles at the State of North Dakota bid price for the Police Department and one vehicle at the North Dakota Education Service Contract, Cooperative Purchasing Connection bid price for the Police Department. A spreadsheet listing the respective purchases is included for your review. Funds for these purchases will be procured from the 2020 budgets approved by the commission.

I will be present at the City Commission meeting to answer any questions.

RECOMMENDED CITY COMMISSION ACTION

Permission to purchase five vehicles at the State of North Dakota bid price and one vehicle at the North Dakota Education Service Contract, Cooperative Purchasing Connection for the 2020 budget year.

STAFF CONTACT INFORMATION

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

Department Police	Quantity	Model	Price	Vendor	State Bid Number	ND Edu Service Contract	Description	EXT Color	INT Color	Added Cost	Total	PO	Request	Date Approved	Date Ordered
	3	2020 Ford Police Interceptor Utility	\$32,894.00	Nelson Auto	SSP 7-7			Shadow Black (G1)	Std Charcoal Black Front Cloth Rear Vinyl		\$98,682.00		Utility Interceptor		
Options Added	3	Option 76R	\$265.74							Option 76R	\$797.22				
Options Added	3	Option 85R	\$43.26							Option 85R	\$129.78				
Options Added	3	Option 60A	\$49.44							Option 60A	\$148.32				
											\$99,757.32	1864-2020			
	3	(87R) must be prograded													
	3	(18D) will be included													
	2	2020 Ford Police Interceptor Utility Hybrid	\$36,014.00	Nelson Auto	SSP 7-7			Shadow Black (G1)	Std Charcoal Black Front Cloth Rear Vinyl		\$72,744.88		Utility Interceptor		
Options Added	2	Option 76R	\$265.74							Option 76R	\$797.22				
Options Added	2	Option 85R	\$43.26							Option 85R	\$129.78				
Options Added	2	Option 60A	\$49.44							Option 60A	\$148.32				
											\$73,820.20	1864-2020			
	2	(87R) must be prograded													
	2	(18D) will be included													
	1	2020 Chevrolet Traverse AWD 4 Door SUV	\$28,549.27			CPC Contract # 18.3 VHL		Silver Ice Metallic (GAN)	STD Jet Black Cloth (H1T)		\$28,549.27				
		Add remote start	\$519.57							Add remote start	\$519.57				
											\$29,068.84				



Public Works Service Operations Department

DATE: January 2, 2020

FROM: Jeff Heintz, Service Operations Director 

ITEM: Permission to Sole Source the Purchase of Beet Heat for Winter Roadway Snow Fighting

REQUEST

Request permission to sole source the purchase of agricultural-based deicer liquid (Beet Heat) for snow-fighting activities.

Please place this item on the 1/14/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Request to sole source the purchase of deicer agricultural-based liquid (Beet Heat) for snow-fighting activities for the City of Bismarck. This trademarked product is only available from one vendor out of St Paul, MN. This is a trademarked anti-icing product that we tested during the 2018 – 2019 winter season. The difference between Beet Heat and Beet 55 (which was previously purchased under State bid), is the Beet Heat is not as slippery on the roadway and it allows us to burn ice in air temperatures down to minus 20 degrees F, whereas Beet 55 was only active in temperatures above 17 degrees F. This allowed us to remove ice from roadways in a wider temperature regime, and kept the roadway wet until the melted snow and ice could drain off to the gutter line, leaving a safer driving surface for emergency vehicles and the public. The price for Beet Heat is \$1.99/gallon. I will be present at the City Commission meeting to respond to questions.

RECOMMENDED CITY COMMISSION ACTION

Permission to sole source the purchase of deicer agricultural-based liquid (Beet Heat) for snow-fighting activities for the 2020 budget year.

STAFF CONTACT INFORMATION

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



PUBLIC WORKS – SERVICE OPERATIONS

DATE: January 6, 2020
FROM: Jeff Heintz, Director of Service Operations 
ITEM: Award bid for Bulbs and Ballasts Recyclable Items

REQUEST

Award of bid for bulbs and ballasts recyclable items.

Please place this item on the January 14, 2020 City Commission meeting.

BACKGROUND INFORMATION

The Public Works Service Operations Department received bids at 1:30 p.m. on Friday, January 3, 2020 for bulbs and ballasts recyclable items. Two bids were received. The proposal from Dynamic Lifecycle Innovations was a non-conforming bid, failing to attach either a certified check or bid bond. It is the recommendation to award the bid to North Dakota E-Waste, LLC as per the attached bid tab.

I will be present at the meeting to respond to questions the Board may have regarding this matter.

RECOMMENDED CITY COMMISSION ACTION

Award the bid for bulbs and ballasts recyclable items to North Dakota E-Waste, LLC. in the amount of \$15,925.

STAFF CONTACT INFORMATION

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

BULBS & BALLASTS RECYCLABLE ITEMS
BID TABULATION
JANUARY 3, 2020
BIDS RECEIVED AT 12:00 P.M.
BIDS OPENED AT 1:30 P.M.

VENDORS		Dynamic Lifecycle Innovations				North Dakota E-Waste, LLC.		
Meets Specifications		No. The bid was non-conforming because no certified check nor bid bond was attached to the proposal.				Yes		
	Unit	Est Quantity	Company Pays City	City Pays Company	Extended Cost	Company Pays City	City Pays Company	Extended Cost
Fluorescent Lamps 4' & Under	Each	14,000				\$ 0.60		\$ 8,400.00
Fluorescent Lamps 5' & Over	Each	2,000				\$ 1.00		\$ 2,000.00
U-Shaped and Circular Bulbs	Each	225				\$ 1.00		\$ 225.00
High Intensity Discharge Lamps	Each	1,500				\$ 2.00		\$ 3,000.00
Compacts with Ballasts	Each	1,300				\$ 1.00		\$ 1,300.00
PCB Ballast	Pound	2,000				\$ 0.50		\$ 1,000.00
TOTAL					\$ -			\$ 15,925.00



Community Development Department

DATE: January 7, 2020
FROM: Ben Ehreth, AICP, Community Development Director
ITEM: Lot 2, Block 5, Imperial Valley Subdivision – Appeal

REQUEST

Jason and Nita Sherwin are appealing the December 5, 2019 decision of the Board of Adjustment's non-approval of a variance from Section 14-03-06(1)(b)(4) of the City Code of Ordinances (Incidental Uses / Accessory Uses and Buildings) to increase the maximum allowable square footage of accessory buildings on the property from 1,200 square feet to 1,600 square feet and increase the side wall height of an accessory building from 12 feet to 15 feet.

The property is located south of Bismarck, east of 12th Street SE and south of East Burleigh Avenue along the east side of West Princeton Drive.

Please place this item on the January 14, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The Board of Adjustment held a public hearing on the variance request on December 5, 2019.

No members of the public spoke at the public hearing.

At the conclusion of the public hearing, and based on the findings contained in the staff report a motion was made and seconded to approve the request. The vote was 3 to 2 in favor of the request. North Dakota Century Code 40-47-07 requires that four affirmative votes are needed to grant a variance, the request was not approved.

The minutes for the December 5, 2019 Board of Adjustment Meeting are attached.

RECOMMENDED CITY COMMISSION ACTION

Consider the request for an appeal of the January 14, 2020 decision of the Board of Adjustment.

STAFF CONTACT INFORMATION

Ben Ehreth, AICP | Community Development Director, 355-1842 or behreth@bismarcknd.gov

Jenny Wollmuth, AICP, CFM | Planner, 355-1845 or jwollmuth@bismarcknd.gov



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

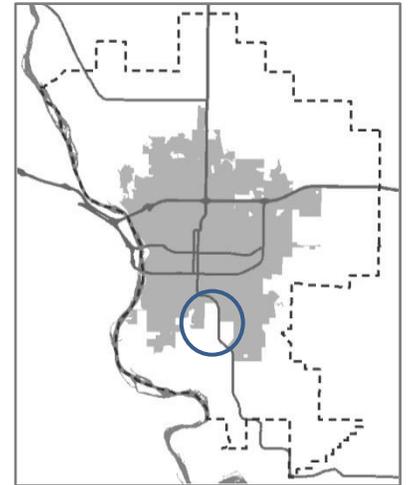
December 5, 2019

Application for: Variance

TRAKiT Project ID: VAR2019-023

Project Summary

Title:	Lot 2, Block 5, Imperial Valley Subdivision (3651 West Princeton Avenue)
Status:	Board of Adjustment
Owner(s):	Jason and Nita Sherwin
Project Contact:	Nita Sherwin
Location:	South of Bismarck, east of 12 th Street SE and south of East Burleigh Avenue along the east side of West Princeton Drive
Request:	Variations from Section 14-03-06(1)(b)(4) of the City Code of Ordinances (Incidental Uses / Accessory Uses and Buildings)



Staff Analysis

Jason and Nita Sherwin are requesting variances to increase the area of accessory buildings from 1,200 square feet to 1,600 square feet and to increase the side wall height of an accessory building from 12 feet to 15 feet.

The property is located outside corporate limits within the City's Extraterritorial Area (ETA) and is zoned R10 – Residential. The R10 – Residential zoning district limits the total area of accessory buildings to 1,200 square feet.

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

Section 14-03-06(1)(b)(4) of the City Code of Ordinances Incidental Uses / Accessory Uses and Buildings states, "All allowable accessory buildings for a one or two-family residence in an urban residential

zoning district (R5, R10, RM, RMH and RT) shall be limited to a maximum area of twelve hundred (1,200)

square feet and a maximum building wall height of twelve (12) feet and maximum building height of twenty-five (25) feet." According to the information submitted with the application, the proposed accessory building would be 1,600 square feet with 15-foot side walls.

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 R10 – Residential zoning district.
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.

(continued)

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. Aerial Map
3. Site Plan
4. Written Statement of Hardship

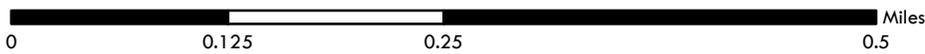
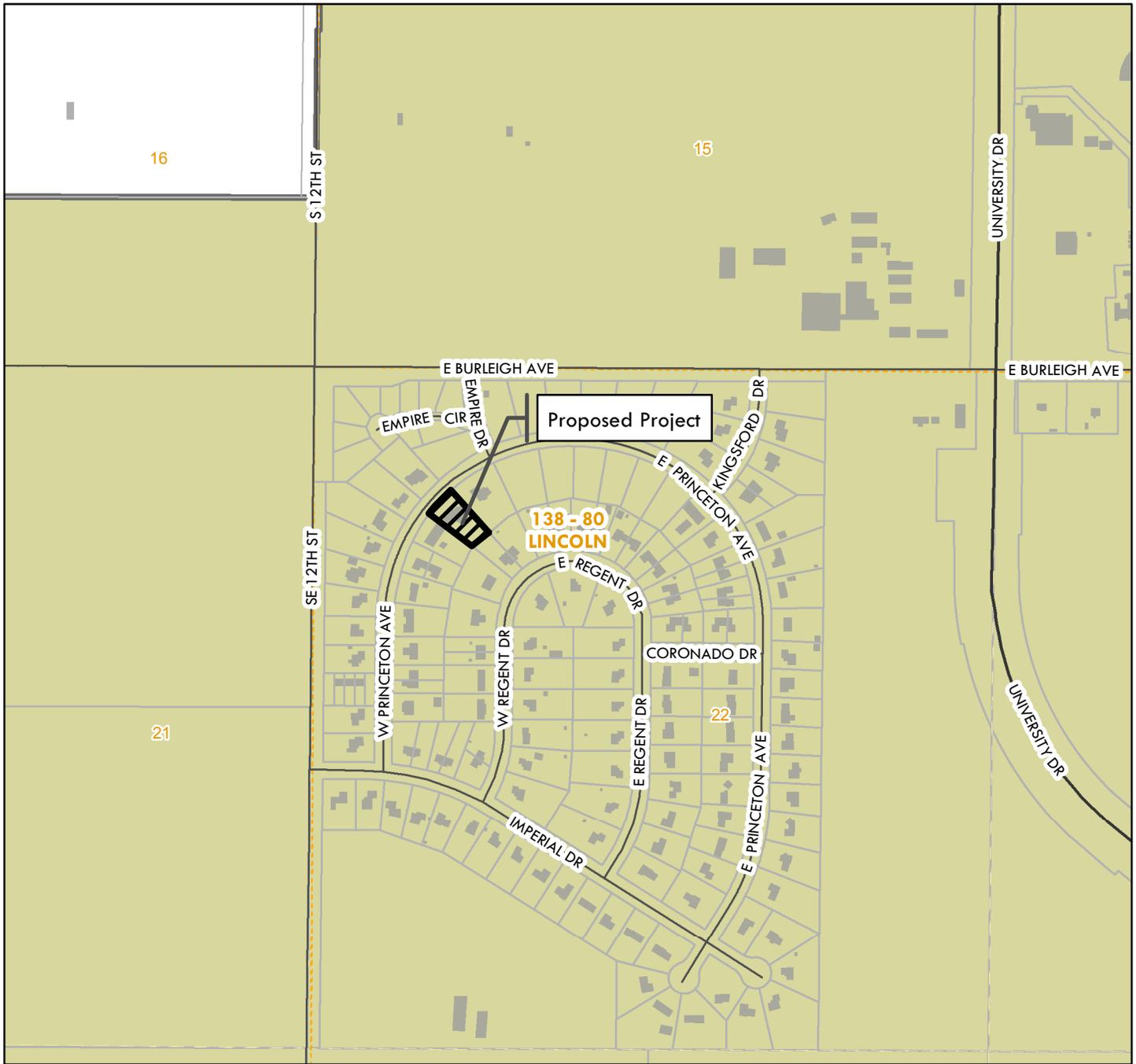
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Planner
701-355-1845 | jwollmuth@bismarcknd.gov



Location Map

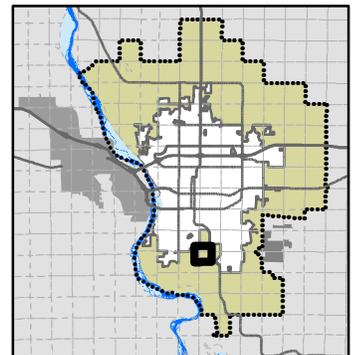
Lot 2, Block 5, Imperial Valley Subdivision

VAR2019-023
BCCA2019-004



- City Limits
- Bismarck ETA Jurisdiction
- County Outside ETA

Section, township, and range indicated in orange



City of Bismarck
Community Development Department
Planning Division
October 22, 2019 (HLB)

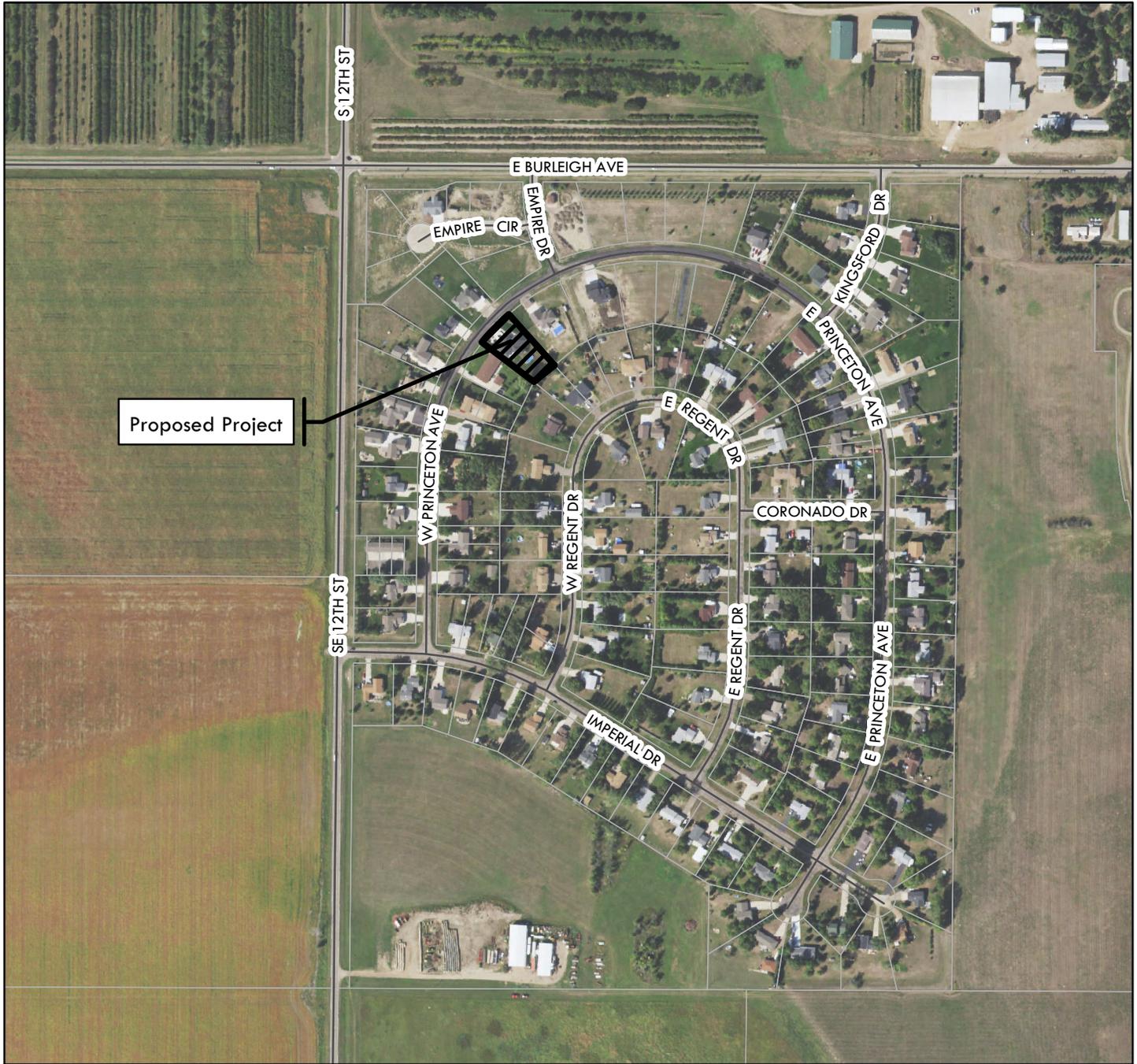
This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



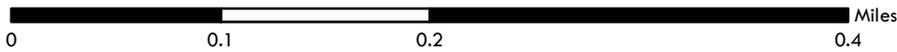
Aerial Map

VAR2019-023

Lot 2, Block 5 Imperial Valley Subdivision
(3651 West Princeton Avenue)



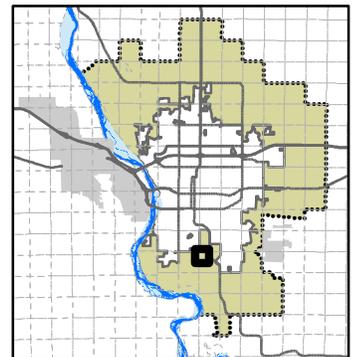
Proposed Project



City Limits Bismarck ETA Jurisdiction

Aerial Imagery from 2018

City of Bismarck
Community Development Department
Planning Division
November 22, 2019



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.



City of Bismarck
 Community Development Department
 Planning Division
 Phone: 701-355-1840 * FAX: 701-222-6450 * TDD: 711
 PO Box 5503 * Bismarck, ND 58506-5503
planning@bismarcknd.gov

**WRITTEN STATEMENT
 OF HARDSHIP
 (VARIANCE REQUEST)**

Last Revised: 01/2017

SEP 27 2019

NOTE: WRITTEN STATEMENTS OF HARDSHIP MUST ACCOMPANY EVERY VARIANCE REQUEST APPLICATION

PROPERTY INFORMATION	
Property Address or Legal Description: <small>(Lot, Block, Addition/Subdivision)</small>	Lot 2, Block 5, Imperial Valley Subdivision 3651 West Princeton Ave. Bismarck ND 58504
Location of Property:	<input type="checkbox"/> City of Bismarck <input type="checkbox"/> ETA <input checked="" type="checkbox"/> Burleigh County
Type of Variance Requested:	area variance for detached garage of 1600sq. ft total area and 15ft walls
Applicable Zoning Ordinance: <small>(Chapter/Section)</small>	R10
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.)	
<p>Please see our letter of intent for explanation and details. In summary our lot has unique features that strict application of the area requirements would limit the use of our property. Our lot is long and narrow with a front yard set back requirement of 40 feet. This causes us to be creative with planning a detached garage that provides us with enough room to store our property for safety and out of the elements while still allowing us room in the backyard for enjoyment. An "L" shaped garage allows us efficient use of our space. Other unique features of our lot is that we are close to the entrance which increases our instances of permits and we are the first new home on this side of the street located with rental property adjacent behind us and a group home adjacent to the south. An "L" shape garage would provide privacy and increase our home value.</p>	
Describe how these limitations would deprive you of reasonable use of the land or building involved, and result in unnecessary hardship.	
<p>The strict application of the area limits would result in us having an extra 20 feet of driveway (wasted space). We would not be able to store property safely and we would not be able to drive straight into the garage and would have difficulty maneuvering vehicles into the back garage. We would not have privacy from our backyard/pool area. Details are further described in our letter of intent.</p>	
Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.	
<p>We are requesting only a slight area and height variance to adequately store our property and have use of our narrow backyard. The addition of a 20x20 garage entrance allows us to utilize the otherwise unused portion of our yard. This will allow us to use the center of our yard while having privacy. Thank you for your consideration and again please refer to the details in our attached letter of intent.</p>	

Letter of Intent

In support of request for area variance

Lot 2, Block 5, Imperial Valley Subdivision
3651 West Princeton Ave., Bismarck, ND 58504
Owner Applicant Jason and Nita Sherwin

SEP 27 2019

This letter of intent is in support of our request for a variance to the total area of our detached garage. The current restrictions unreasonably deny us the ability to create a 1600 square foot L shaped detached garage with 15 foot side walls along the far back SE corner of our lot which is an area that is unused due to the long and narrow shape of our lot. This letter will further support our undue hardship caused by this zoning law, that this request is necessary for reasonable use of our property, that the construction will not alter the essential character of the neighbor rather enhancing it, and that the proposed construction represents the least intrusive solution possible.

Compliance with the zoning laws would cause undue hardship on our family. Section 14-03-06(1)(b)(4) of the City Code of Ordinances states the current size allowed is 1200 sq. feet with 12 foot walls. However, in an effort to utilize the space of our narrow and long lot we are requesting a slight increase in the total area allowance. Currently we have a 17.7% structural coverage on our lot which includes our house and attached garage measuring just under 4000 square feet. Our request would raise this to only 24.8% of structural coverage on our 22,575 sq. ft. lot.

When building our home in 2014 we were required to have a 40 foot front yard setback. This caused our long and narrow yard to have much green space in the front yard, and has caused us to be more creative and efficient with the design of the back yard. Side yard is not an option due to the narrow lot. We chose a lot outside the city limits in a development that already has large shops with the plan of building a 1600 sq. ft. garage. The covenants given to us with the purchase of the lot allowed for a 1600 square foot shop with the only requirement being the approval of the development corporation. Strict compliance at this time is not consistent with the other properties in the neighborhood.

Safety of our family's property is of great concern. We are at risk if the variance is not approved. Due to the location of our lot near an entrance to the development it is important that we store our property such as vehicles, recreational vehicles, lawn mowers, camper, boat and other property in a back, locked garage, out of sight and away from the street. Since building our home 5 years ago we have had items taken from our driveway, people rummaging through our mailbox, stealing out of our garbage cans, our mailbox destroyed, alcohol miniatures and beer cans strewn in our ditch, people driving in our ditch and yard, as well as our chain link fence cut. There are no street lights. We have done what we could to improve this situation such as installed security cameras, installed a wood fence and notified the sheriff when appropriate. We need a 1600 square foot L shaped garage with 15 foot side walls to provide protection for our property. We also experience the Northwest wind with the ND elements causing corrosion and undue wear and tear to our property which is currently parked outside.

Another hardship for us is on the impact to our home's value due to our location. There is a 2 family rental property directly behind us with frequent change in tenants and a group

home to the south with frequent change in shifts as well as staff outside on breaks which causes us hardship with not much privacy in our back yard. The L shaped garage in the far back south east corner would provide us some much needed privacy when in our back yard. There are mature bushes and trees in the same corner which disguises the garage to neighbors behind us. This plan blends in well. The L shape garage will also help aesthetically to improve the use of our back yard as well as improve our property value.

The proposed construction is necessary for reasonable use of our property.

Due to the shape of our lot and the prior setback rules we need to place the garage in the back SE corner. This area is not otherwise used. This plan is efficient with space inside and outside the garage and allows us to use the center of the back yard for our pool and firepit. The addition of a 20x20 garage entrance onto the 1200 square foot rectangle creates the L shape and allows us to park straight in from the backyard driveway. It is just wide enough to allow us to maneuver the vehicles inside if necessary. The 20x20 garage entrance area would need to be cemented even if this variance is not approved as we would require a 20 foot longer driveway.

The proposed construction would not alter the essential character of the neighborhood but rather enhance it. We risk our market value falling due to the location of our lot. We are the first lot of a line of new homes on this side of the street. The garage will add value and privacy to the back yard. Also, other homes in the neighborhood have built or are building large shops which is consistent with our request. Thirdly, this will help the neighborhood visually as our large amount of property and vehicles would be stored out of sight. Lastly, the design of our lot is back to back with the rental property behind us. Placing the L shaped garage in the corner in front of mature trees and bushes would not obstruct views for neighbors but rather provide us more privacy.

The proposed construction represents the least intrusive solution possible.

The design of the garage, L shaped, is an efficient use of space allowing us to ask for a minimal addition to the current regulation of a 20x20 entrance to the garage (totaling 1600 square feet) as well as the minimum height needed to drive our camper inside (15 feet sidewalls) and out of the elements and crime.

We appreciate your time and consideration of the request and we ask that you please relax the zoning regulations regarding maximum area of our detached garage. As explained the main reasons for the variance request are related to the shape and location of the lot. Any personal reasons listed are to further support the financial and enjoyable gain for our family from your approval for this variance.

Sincerely,

 9/23/19

Jason and Nita Sherwin

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES EXCERPT
December 5, 2019**

The Bismarck Board of Adjustment met on December 5, 2019, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chair Marback presided.

Members present were Jennifer Clark, Ken Hoff, Curtis Janssen, Michael Marback and Rick Wohl.

Member Chris Seifert was absent.

Staff members present were Ben Ehreth – Community Development Director, Kim Lee – Planning Manager, Brady Blaskowski – Building Official, Janelle Combs – City Attorney, Jenny Wollmuth – Planner and Hilary Balzum – Community Development Administrative Assistant.

VARIANCE FROM SECTION 14-03-06(1)(B)(4) OF THE CITY CODE OF ORDINANCES (INCIDENTAL USES/ACCESSORY USES AND BUILDINGS) - LOT 2, BLOCK 5, IMPERIAL VALLEY SUBDIVISION (3651 WEST PRINCETON AVENUE)

Chair Marback stated the applicants, Jason and Nita Sherwin, are requesting variances to increase the area of accessory buildings from 1,200 square feet to 1,600 square feet and to increase the side wall height of an accessory building from 12 feet to 15 feet.

Ms. Wollmuth said the property is located outside corporate limits within the City's Extraterritorial Area (ETA) and is zoned R10 – Residential. She added that the R10 – Residential zoning district limits the total area of accessory buildings to 1,200 square feet.

Ms. Wollmuth gave an overview of the requests, 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 R10-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.

Mr. Wohl said this is in the same area as a previous variance granted for a similar request and asked when the requirements of the zoning ordinance changed.

Ms. Wollmuth said it was limited in 2015 for R5-Residential and R10-Residential zoning districts from 40% lot coverage to 1200 square feet with a 12-foot side wall.

(Secretary's Note: The ordinance was changed in 2015 to limit to 1,200 square feet but prior to the change the ordinance was 40% lot coverage or 1,400 square feet whichever was most restrictive.)

Chair Marback opened the public hearing.

Mr. Sherwin said this is the third home they have owned with an extended garage and bought it with the intention of building more. He said there was not a paved road at the time their house was built and they have had to add some security measures to their property due to the increased traffic. He said some of the snow and ice prevention materials the county has used have deteriorated the edge of his driveway as well.

Ms. Sherwin said they do not have any street lights and would also like more storage for privacy reasons. She said they were not informed that there are rental properties or a group home nearby when they purchased their lot and the mature trees on their property will help to obscure the proposed accessory building from view.

Mr. Janssen said when he searched for their address he was given a business name at the same location.

Mr. Sherwin explained that he does have a lawn care business as a seasonal side job and some of the equipment used for that is also for his own personal use.

Ms. Sherwin added that they have some recreational vehicles and are considering purchasing a camper which they would want to keep inside, in addition to a hydro seeder for their lawn care business that needs to be moved.

Mr. Hoff asked who maintains the streets and installs lights in Imperial Valley Subdivision. Mr. Sherwin said Burleigh County handles all of those things and their road was only recently paved because they are in a newer part of the subdivision and said that cost was assessed to benefitting property owners.

Ms. Wollmuth added that because the subdivision is in the ETA road maintenance and snow removal, like any other county property, would be maintained and developed by Burleigh County.

Mr. Wohl asked how close to the side property line the driveway for the accessory building would be. Mr. Sherwin said it would be approximately 13-15 feet away from the neighboring property line.

Ms. Clark asked if the heightened side wall is absolutely necessary. Mr. Sherwin said they would like to be allowed the higher side wall in the event they purchase a camper, but it is not a critical need.

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

Ms. Clark asked what the side wall height approved was on the previous variance request similar to this one.

Ms. Wollmuth said that request was for a 15-foot side wall and 2400 square feet. She said the Board of Adjustment approved a 15-foot side wall and 1,400 square feet which was appealed to the Board of City Commissioners which then approved a and 1,600 square foot accessory building.

Mr. Janssen said he is concerned about the overall size and feels they are setting the trend that 15-16-foot sidewalls are acceptable.

Ms. Clark said she agrees, that it would be very tall, but she also has a hard time distinguishing any differences between this property and the neighboring property that received the previous variances.

Mr. Janssen said there is a lot more separation as it relates to the property that received the previous variances of the same kind.

Chair Marback said he is not opposed to the higher side wall or the size given the trees on the property and feels it will be better hidden than most.

MOTION: A motion was made by Ms. Clark to approve the variances from Section 14-03-06(1)(b)(4) of the City Code of Ordinances (Incidental Uses/Accessory Uses and Buildings) to increase the area of accessory buildings from 1,200 square feet to 1,600 square feet and to increase the side wall height of an accessory building from 12 feet to 15 feet on Lot 2, Block 5, Imperial Valley Subdivision (3651), based on it being consistent with neighboring accessory building uses. The motion was seconded by Mr. Wohl and with Board Members Clark, Marback and Wohl voting in favor of the motion and Board Members Hoff and Janssen opposing the motion, the variance was not approved by the Board of Adjustment, as four affirmative votes are required to grant any variance under North Dakota Century Code 40-47-07, therefore the variance is denied.



Community Development Department

DATE: December 10, 2019

FROM: Ben Ehreth, AICP, Community Development Director

ITEM: Lot A-1 of Lot A of Lot 1, Block 1, North Hills 6th Addition – Zoning Change

REQUEST

Drazen Samardzic and the Hills Vale Condominium Association are requesting approval of a zoning change from the RM10 – Residential zoning district to the Conditional RT – Residential zoning district for Lot A-1 of Lot A of part of Lot 1, Block 1, North Hills 6th Addition. This action would allow this property to be combined with the adjacent parcel upon the transfer of ownership.

The property is located in north-central Bismarck, north of East Century Avenue between Manitoba Lane and North 4th Street.

Please place this item on the December 17, 2019 City Commission meeting agenda and the January 14, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The Planning & Zoning Commission held a public hearing on this request on November 20, 2019.

No residents spoke at the public hearing.

At the conclusion of the public hearing, and based on the findings contained in the staff report, the Planning & Zoning Commission recommended approval, on a 9-0 vote, of the zoning change from the RM10 – Residential zoning district to the Conditional RT – Residential zoning district for Lot A-1 of Lot A of part of Lot 1, Block 1, North Hills 6th Addition, with the following condition:

1. Legal access is provided to Part of Lot C of Part of Lots 7 and 8, Block 1, North Hills 6th Addition.

RECOMMENDED CITY COMMISSION ACTION

December 17th meeting of the Board of City Commissioners – consider the zoning change as outlined in Ordinance 6404 and call for a public hearing on this item for the January 14th meeting of the Board of City Commissioners.

January 14th meeting of the Board of City Commissioners – hold a public hearing on the zoning change as outlined in Ordinance 6404 and take final action on the request.

STAFF CONTACT INFORMATION

Ben Ehreth, AICP | Community Development Director, 355-1842 or behreth@bismarcknd.gov

Kim L. Lee, AICP | Planning Manager, 355-1846 or klee@bismarcknd.gov

Daniel Nairn, AICP | Planner, 355-1854 or dnairn@bismarcknd.gov

ORDINANCE NO. 6404

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

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE 1986 CODE OF ORDINANCES, OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

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

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the RM10-Residential zoning districts and included in the Conditional RT-Residential zoning district:

Lot A-1 of Lot A of Lot 1, Block 1, North Hills 6th Addition.

This Conditional RT zoning district is subject to the following additional standards:

1. Drive-through facilities, mortuary and funeral homes, and/or hospitals or medical clinics in which patients are kept overnight are prohibited.
2. Any building greater than twenty-five (25) feet in height must be positioned no greater or less than fifteen (15) feet from the North 4th Street right-of-way, with allowance for reasonable variation due to architectural features.
3. Any outdoor lighting of parking lots and/or internal driveways shall utilize downcast lighting to mitigate against visibility from surrounding residential properties.
4. Primary access to any non-residential uses shall be made from North 4th Street. Any access from Manitoba Lane for non-residential uses must be secondary in nature, with no commercial signage fronting said street allowed.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.



STAFF REPORT

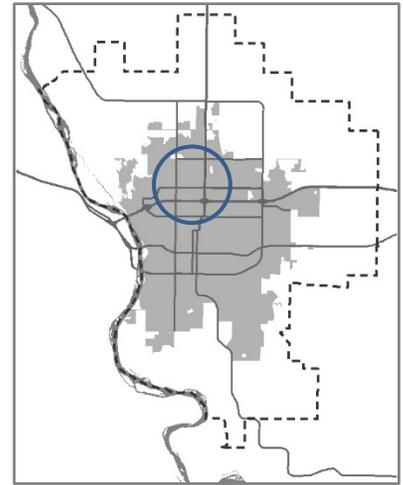
City of Bismarck
 Community Development Department
 Planning Division

Application for: Zoning Change

TRAKiT Project ID: ZC2019-008

Project Summary

Title:	Lot A-1 of Lot A of Lot 1, Block 1, North Hills 6th Addition
Status:	Planning & Zoning Commission – Public Hearing
Owner(s):	Drazen Samardzic Hills Vale Condominium Association
Project Contact:	Drazen Samardzic Della Umphry, Hills Vale Condominium Association
Location:	In north-central Bismarck, north of East Century Avenue between Manitoba Lane and North 4 th Street
Project Size:	0.35 acres, more or less
Request:	Rezone parcel to allow combination with adjoining parcel for future development



Site Information

Existing Conditions		Proposed Conditions	
Number of Lots:	1 parcel	Number of Lots:	1 parcel
Land Use:	Parking and landscaping area for multifamily condominiums	Land Use:	Future development
Designated GMP Future Land Use:	Already zoned. Not in Future Land Use Plan	Designated GMP Future Land Use:	Already zoned. Not in Future Land Use Plan
Zoning:	RM10 – Residential	Zoning:	Conditional RT – Residential
Uses Allowed:	RM10 – Multi-family residential	Uses Allowed:	Conditional RT – Offices and multi-family residential
Max Density Allowed:	RM10 – 10 units / acre	Max Density Allowed:	RT – 30 units / acre

Property History

Zoned:	08/78	Platted:	08/78	Annexed:	08/78
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(continued)

Staff Analysis

Drazen Samardzic and the Hills Vale Condominium Association are requesting approval of a zoning change from the RM10 – Residential zoning district to the Conditional RT – Residential zoning district for Lot A-1 of Lot A of part of Lot 1, Block 1, North Hills 6th Addition.

The Planning and Zoning Commission considered this request at their meeting of October 23, 2019 and called for a public hearing on this requested zoning change.

The parcel is currently owned by the Hills Vale Condominium Association, but upon approval of a zoning change it would be transferred to Drazen Samardzic to be combined with the lot to the north of same ownership, with potential for future development.

Adjacent uses include a unified residential development to the north, vacant land to the east, a multifamily condominium to the south owned by the Hills Vale Condominium Association, and townhouses across Manitoba Lane to the west.

A zoning change for three parcels – one to the north and two to the east, all owned by Mr. Samardzic – to the Conditional RT – Residential zoning district was approved by the City Commission on September 26, 2018. The same zoning district would be applied in this case to allow a consistent tract in of land in one zoning district for future development.

The conditions on the RT – Residential zoning district are as follows:

1. *Drive-through facilities, mortuary and funeral homes, and/or hospitals or medical clinics in which patients are kept overnight are prohibited.*
2. *Any building greater than twenty-five (25) feet in height must be positioned no greater or less than fifteen (15) feet from the North 4th Street right-of-way, with allowance for reasonable variation due to architectural features.*
3. *Any outdoor lighting of parking lots and/or internal driveways shall utilize downcast lighting to mitigate against visibility from surrounding residential properties.*
4. *Primary access to any non-residential uses shall be made from North 4th Street. Any access from Manitoba Lane for non-residential uses must be secondary in nature, with no commercial signage fronting said street allowed.*

Each of these conditions would be applied above and beyond the general requirements of the RT – Residential zoning district.

The existing parcel to the east of this requested zoning change currently lacks legal access. Staff recommends assuring legal access is granted to this parcel, either through combination of lots or recordation of a separate access easement, as a condition of any approval.

Required Findings of Fact (relating to land use)

1. The proposed zoning change is in a developed area of the community and is outside of the Future Land Use Plan in the 2014 Growth Management Plan, as amended;
2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and/or other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed;
4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner;

(continued)

Community Development Department Staff Report

6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
7. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends approval of the zoning change from the RM10 – Residential zoning district to the Conditional RT –

Residential zoning district for Lot A-1 of Lot A of part of Lot 1, Block 1, North Hills 6th Addition, with the following condition:

1. Legal access is provided to Part of Lot C of Part of Lots 7 and 8, Block 1, North Hills 6th Addition.

Attachments

1. Location Map
2. Aerial Map
3. Zoning and Plan Reference Map
4. Auditors Plat annotated by applicant/staff

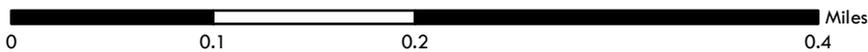
Staff report prepared by: Daniel Nairn, AICP, Planner
701-355-1854 | dnairn@bismarcknd.gov



Location Map

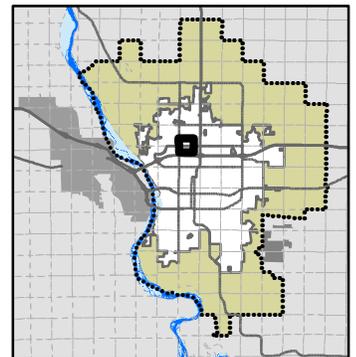
ZC2019-008

Lot A-1 of Lot A of Lot 1, Block 1, North Hills Sixth Addition



- City Limits
- Bismarck ETA Jurisdiction
- County Outside ETA

Section, township, and range indicated in orange



City of Bismarck
Community Development Department
Planning Division
September 24, 2019 (HLB)

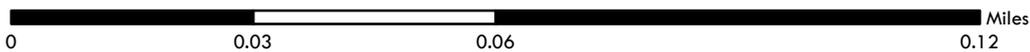
This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



Aerial Map

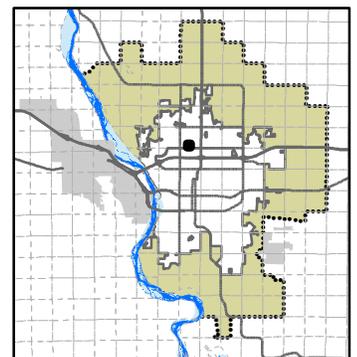
Part of Lot 1, Block 1, North Hills Sixth Addition

ZC2019-008



City Limits Bismarck ETA Jurisdiction

Aerial Imagery from 2018



City of Bismarck
Community Development Department
Planning Division
October 17, 2019

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.



Zoning and Plan Reference Map

Lot A-1 of Lot A of Lot 1, Block 1, North Hills 6th Addition

- Project Area - No Change Proposed
- Zoning or Plan Change Proposed

Zoning Districts

- A** Agriculture
- RR** Rural Residential
- R5** Residential
- RMH** Manufactured Home Residential
- R10** Residential
- RM** Residential Multifamily (Offices)
- RT** Residential (Offices)
- HM** Health and Medical
- CA** Commercial
- CG** Commercial
- MA** Industrial
- MB** Industrial
- PUD** Planned Unit Development
- DC** Downtown Core
- DF** Downtown Fringe

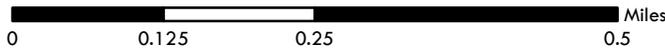
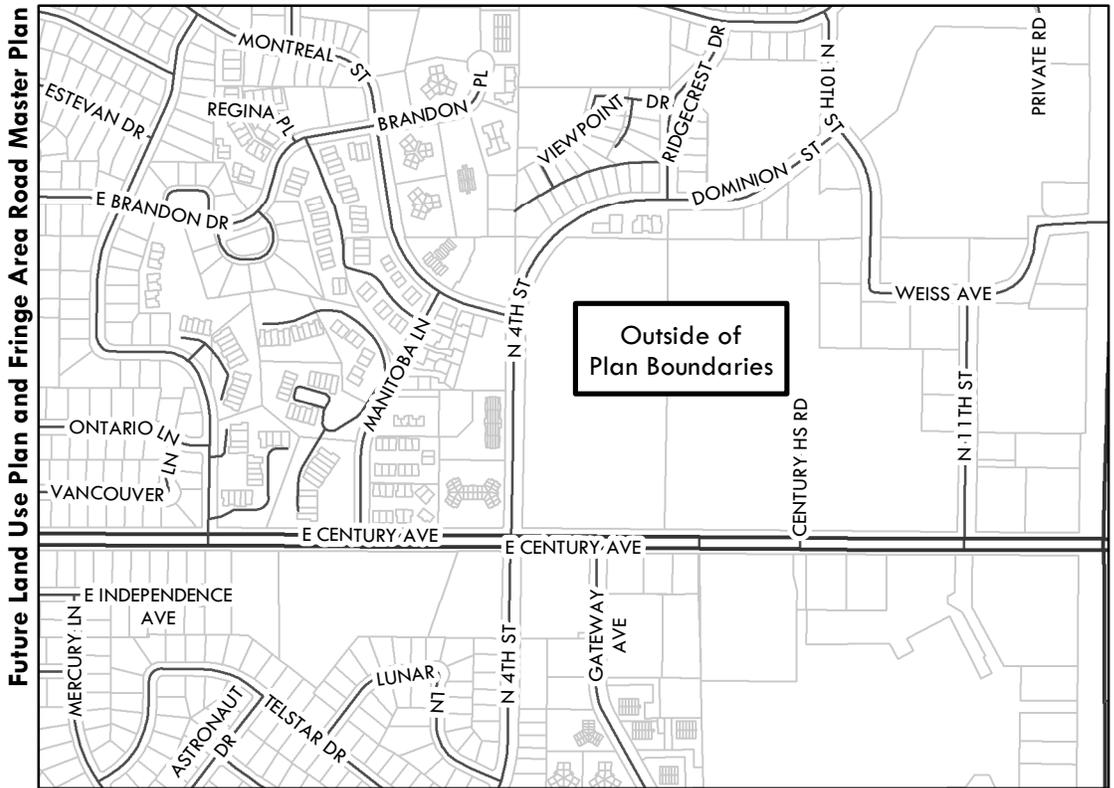
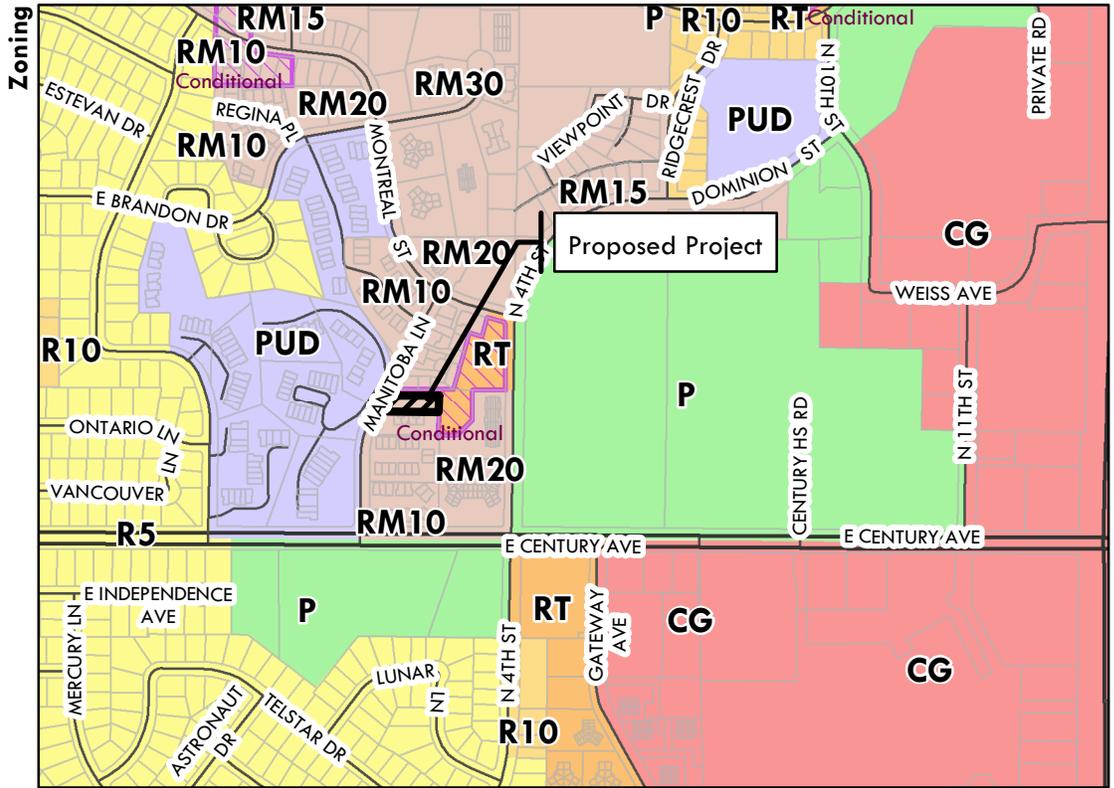
Diagonal lines indicate special condition

Future Land Use Plan

- CONSRV** Conservation
- BP** Business Park
- C** Commercial
- C/MU** Commercial/Mixed Use
- CIVIC** Civic
- HDR** High Density Residential
- I** Industrial
- LDR** Low Density Residential
- MDR** Medium Density Residential
- MDR-/MU** Medium Density Residential/Mixed Use
- O/MU** Office/Mixed Use
- RR-C** Clustered Rural Residential
- RR** Standard Rural Residential
- UR** Urban Reserve

Fringe Area Road Master Plan

- Planned Arterial
- Planned Collector



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.



City of Bismarck
Community Development Dept.
Planning Division
September 25, 2019



City Attorney

DATE: December 10, 2019
FROM: Janelle Combs, City Attorney
ITEM: Ordinance 6405 regarding Competitive Bidding

REQUEST

Consider introduction and call for a public hearing on Ordinance 6405 to amend Ordinance 7-01-03 regarding Competitive Bidding Required.

Please place this item on the 12/17/2019 City Commission meeting agenda.

BACKGROUND INFORMATION

The bidding thresholds for informal quotes and public bidding have changed at the federal and state level. This change provides for the same levels to be consistent with the other government entities. In addition, this expands the ability to use public bid lists in addition to the State of North Dakota public bid list, as well as specialized bid lists that may have competitive pricing for specialty departments, especially with the airport, fire and utility departments, so long as City Commission approval is provided..

RECOMMENDED CITY COMMISSION ACTION

First reading and introduction of Ordinance 6405 and call for a public hearing.

STAFF CONTACT INFORMATION

Janelle Combs | City Attorney, 355-1340 or jcombs@bismarcknd.gov

CITY OF BISMARCK
Ordinance No. 6405

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

AN ORDINANCE TO AMEND SECTION 7-01-03 OF THE BISMARCK CODE OF ORDINANCES RELATING TO COMPETITIVE BIDDING REQUIRED.

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

Section 1. Amendment. Section 7-01-03 of the City of Bismarck Code of Ordinances relating to Competitive Bidding Required is hereby amended and re-enacted to read as follows:

7-01-03. Competitive Bidding Required.

* * * * *

2. All supplies and contractual services, except as otherwise provided herein, when the estimated cost exceeds ~~\$25,000.00~~ \$50,000.00, must be purchased at public sale from the lowest and best bid meeting or exceeding specifications pursuant to Section 44-08-01.1, N.D.C.C. and subject to Section 44-08-01, N.D.C.C.

* * * * *

4. Purchases of supplies and contractual services, when the estimated cost is ~~\$5,000.00~~ \$10,000.00 or less, may be made in the open market without competitive bidding, unless otherwise required by law. Purchases of supplies and contractual services, when the estimated cost is more than ~~\$5,000.00~~ \$10,000.00 but less than ~~\$25,000.00~~ \$50,000.00, may be made in the open market without competitive bids, provided that documentation is submitted showing that prices or informal quotes were solicited from a minimum of three suppliers or, if fewer than three suppliers are available, then from all available suppliers, unless otherwise required

by law.

* * * * *

6. Any supplies, materials, equipment, or contractual services may be purchased through another State's cooperative purchasing venture or professional association cooperative purchasing venture, of which the City, or its Department, or an employee, is a member of the association, upon approval by the City Commission.

Reference: NDCC Sec. 44-08-01; 44-08-01.1; 40-11-04.

(Ord. 4403 & 4404, 10-22-91; Ord. 4422, 03-24-92; Ord. 4592, 03-29-94; Ord. 6062, 06-10-14; Ord. 6093, 12-23-14)

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.



FINANCE DEPARTMENT

DATE: December 9, 2019
FROM: Dmitriy Chernyak, Director of Finance *DC 12/10/19*
ITEM: Special Assessment Policy Revisions

REQUEST

On December 17, 2019 call for a public hearing regarding the revisions to the Special Assessment Policy on January 14, 2020.

Please place this item on the December 17, 2019 City Commission meeting agenda.

BACKGROUND INFORMATION

Each year the Special Assessment Policy is reviewed to recommend revisions or changes to improve and clarify the process. With the ongoing review of the Infrastructure and Special Assessment Task Forces, the revisions have been limited to changes considered essential to improve the process. Engineering, Finance, Public Works, and Administration have reviewed the policy and developed the recommended revisions to the attached Special Assessment Policy.

Several of the changes are grammatical in nature, but the other changes have been summarized below:

- Added Carufel's watershed to the storm water special assessment list
- Combined the Local & Collector Street sections
- For streets, further clarified the definition and application of a corner lot to a multi-street property.
- For continuous districts, removed language for the regional trunks and main lines as these are eliminated as a result of the water capital charges applied in 2019. However, added a general statement that reads, "apply special assessments policy in effect at the time of annexation."
- Further defined "private drives" to be named roadways.
- Added a section regarding 'Errors or Omissions'

RECOMMENDED CITY COMMISSION ACTION

Call for a public hearing for approval of the revisions to the Special Assessment Policy on January 14, 2020.

STAFF CONTACT INFORMATION

Dmitriy Chernyak | Finance Director, 355-1600 or dchernyak@bismarcknd.gov

BASIS OF SPECIAL ASSESSMENTS

Special Assessment is the method the City [of Bismarck \(the City\)](#) uses to pay for public improvements that affect benefiting properties. Improvements in the public right-of-way and dedicated public easements funded by a developer are considered public improvements if they meet the City's design standards. The costs of the improvement are allocated to the parcels/lots that benefit from these improvements.

All properties will be assessed for a local street and proportionate share of an arterial street unless the developer pays the cost of the local street and/or arterial streets under a three-way agreement with the City.

Notification letters are sent to [non-petitioning](#) property owners included in a special assessment district. The letters identify the proposed improvement project and provide an estimated cost range of the property assessment. Letters for non-petitioned projects are sent before the project is approved by the City Commission. Letters for petitioned projects are sent to non-petitioned properties after the bids for the project are received.

The following policy is the basis for special assessments when the public improvement is petitioned by a developer or initiated by the City. This policy has been developed in accordance with North Dakota Century Code, Title 40, that relates to municipal government.

1. Special Assessment Districts

● Storm Water

- Cost allocation based on parcel/lot square footage.
- District boundaries are determined by watershed areas.
- Coulees, detention ponds, and other nondevelopable lots are not assessed for storm water.
- For regional storm water [districts](#), [the Public Works Utility Operations Department](#) assumes [the](#) cost for unannexed property via assessment to [a](#) City-owned parcel. This cost is held in abeyance and assessed in a continuous district to previously unannexed land when the land is subsequently annexed. This only applies to remaining masterplanned projects in North Washington Street, [Carufel's](#) and Tyler Coulee watersheds (see Continuous Districts below).
 - Factor applied to unannexed property shall coincide with the Comprehensive Land Use Plan.

● Street Lights

- Cost allocation is based on a per parcel/lot for residential and square foot for commercial.
- Boundaries are drawn to include properties that benefit from the improvement.
- City [may](#) considers installing street lights when 50% of lots are either permitted or contain building structures or [sooner](#) if transportation safety issues exist.
- Corner lots only pay a 1/2 street light assessment for each side of the lot.

● Streets

1. Local & Collector Streets

New Pavement/Reconstruction/Resurfacing - patch, level, mill & overlay, seal coat, concrete pavement repair

- Cost allocation is based on a per parcel/lot for residential and square foot for commercial.
- Boundaries are drawn to include properties that benefit from the improvement.
- Multi-street properties are those with more than one street adjacent to the property. Multi-street properties are assessed based on the street(s) being improved.
 - For residential multi-street properties with two adjacent streets, 1/2 of the assessment is allocated to each street.
 - For residential multi-street properties with three adjacent streets, 1/3 of the assessment is allocated to each street.
 - For commercial multi-street properties, the portion of the adjacent street footage within the district relative to the parcel's total adjacent street footage is allocated.
- ~~Corner lots are assessed based on one side and at a rate of 1/2 if only one street adjacent to the lot that is being improved.~~
- In non-commercial parcels/lots with reconstruction/resurfacing, the eCity assumes cost to construct a street wider than 37 feet and pavement depth greater than local roadway design. Commercial parcels/lots are assessed full width and depth costs.
- City subsidizes ~~of 25% is provided~~ for resurfacing projects.
- City subsidizes ~~of 70% is provided~~ for reconstruction projects.
- ~~Balance of remaining cost is assessed unless other City resources are identified and approved. Balance of cost is assessed.~~

2. Collector Streets

New Pavement/Reconstruction/Resurfacing - patch, level, mill & overlay, seal coat, concrete pavement repair

- ~~Cost allocation is based on a per parcel/lot for residential and square foot for commercial.~~
- ~~Boundaries are drawn to include properties that benefit from the improvement.~~
~~Corner lots are assessed based on one side and at a rate of 1/2 if only one street adjacent to the lot is being improved.~~
- ~~In non-commercial parcels/lots, city assumes cost to construct a street wider than 37 feet and pavement depth greater than local roadway design. Commercial parcels/lots are assessed full width and depth costs.~~
- ~~City subsidy of 25% is provided for resurfacing projects.~~
- ~~City subsidy of 70% is provided for reconstruction projects.~~
- ~~Balance of cost is assessed.~~

3.2. Arterial Streets

a. New Pavement/Reconstruction

- Cost allocation is based on a per parcel/lot for residential and square foot for commercial.
- District B boundaries are drawn to include properties that benefit from the improvement (direct benefit) and properties ~~those~~ in the area half-way to the next north-south and east-west assessed arterial street (secondary benefit).
- Direct benefit would be an assessment equivalent to new pavement assessment on a local street plus a share of secondary benefit as all parcels/lots pay for a local street plus a portion of the arterial streets.
- Secondary benefit would be a proportionate amount of the direct benefit.

- Multi-street properties are those with more than one street adjacent to the property. Multi-street properties ~~Corner lots~~ are assessed based on the street(s) being improved, on one side and at a rate of 1/2 if only one street adjacent to the lot is being improved
 - For residential multi-street properties with two adjacent streets*, 1/2 of the assessment is allocated to each street.
 - For residential multi-street properties with three adjacent streets*, 1/3 of the assessment is allocated to each street.
 - For commercial multi-street properties, the portion of the adjacent street* footage within the district relative to the parcel's total adjacent street* footage is allocated.
- *ND Dept. of Transportation Regional Highways are excluded from multi-street allocations (Effective for all assessment districts confirmed by the City Commission after December 31, 2020).
- In non-commercial parcels/lots, the City assumes cost to construct a street wider than 37 feet and pavement depth greater than local roadway design. Commercial parcels/lots are assessed full width and depth costs.
- City subsidizes of 70% is provided for reconstruction projects.
- Balance of remaining cost is assessed unless other City resources are identified and approved, less assessments funded by other City resources, is assessed.

b. *Resurfacing - patch, level, mill & overlay, seal coat, concrete pavement repair*

- Cost allocation is based on a per parcel/lot for residential and square foot for commercial.
- Boundaries are drawn to include properties that benefit from the improvement.
- Special Assessments are to be is proportionate with costs assessment for typical local street resurfacing assessment. Generally, arterial streets require resurfacing more frequently than local streets. Lots on arterial streets will have their special assessment adjusted to be proportionate to a local street special assessment.
- Multi-street properties are those with more than one street adjacent to the property. Multi-street properties are assessed based on the street(s) being improved.
 - For residential multi-street properties with two adjacent streets*, 1/2 of the assessment is allocated to each street.
 - For residential multi-street properties with three adjacent streets*, 1/3 of the assessment is allocated to each street.
 - For commercial multi-street properties, the portion of the adjacent street* footage within the district relative to the parcel's total adjacent street* footage is allocated.
 - *ND Dept. of Transportation Regional Highways are excluded from multi-street allocations (Effective for all assessment districts confirmed by the City Commission after December 31, 2020).
- Corner lots are assessed based on one side and at a rate of 1/2 if only one street adjacent to the lot is being improved.
- In non-commercial parcels/lots, the City assumes the cost to construct a street wider than 37 feet and thicker than local roadway design. Commercial parcels/lots are assessed full width and depth costs.
- City subsidizes of 25% is provided for resurfacing projects.
- Balance of remaining cost is assessed unless other City resources are identified and approved.
- Balance of cost, less assessments funded by other City resources, is assessed.

4.3. Alleys (public alleys with ~~existing~~ asphalt or concrete pavement)

- -The full cost to pave, resurface, or reconstruct public alleys will be assessed proportionately, without

subsidy, based on a per parcel/lot for residential property and square foot for commercial property, to properties that either abuts the alley or have access to their property via the public alley.

- **Concrete Curb & Gutter/Sidewalk/Driveways (New and Repairs)**

- New Pavement/Reconstruction/Resurfacing
 - Sidewalk and Driveways are assessed to individual parcels/lots.
 - Curb &and Gutter and ADA Ramps are included as project costs.
- Owner-Elected Improvement
 - Total costs are assessed directly to individual parcels/lots.

- **Federal/State/Local Aid Projects**

- Parcels/lots included in Federal/State/Local Aid projects are ~~to be~~ assessed equivalent to the method used what they would have paid for a local roadway. (Refer to See Arterial Streets section above.).

2. **Continuous Districts**

A. **Regional Trunk Infrastructure Fee (only applied to property annexed prior to Feb 1, 2019, if applicable)**

Formula for Assessment

- Apply special assessments policy in effect at the time of annexation.
- ~~Intended to recover the costs that the City's Public Works Water and Sewer Utilities have assumed for over-sized mains and other general infrastructure, such as treatment plants, pump stations, reservoirs, and trunk water and sewer mains already in place that will serve the property upon annexation.~~
- ~~Cost allocation is based on parcel/lot square footage. Rate per square foot is determined annually. Minimum charge set at 10,000 SF. Costs will be to be assessed upon annexation of parcels.~~

B. **Main Lines Built by City Prior to Annexation (Not over-sized mains) (only applied to property annexed prior to Feb 1, 2019, if applicable)**

- Apply special assessments policy in effect at the time of annexation.
- ~~Costs held in abeyance to be assessed upon annexation of parcels.~~
- Water
 - ~~Assessed only if a parcel has the ability to tap directly into the water line and has not already paid for a watermain.~~
- Sewer
 - ~~Criteria to assess is based on a parcel having ability to directly tap into the sewer line and has not already paid for a sewer line.~~
- Cost allocation based on parcel/lot Front Footage.
 - ~~Assessment is triggered by annexation, prospectively from 2007 annexations on.~~
 - ~~If a specific utility or assessment district was created to install water or sewer main, that cost is used as the basis of the assessment.~~
 - ~~If an over-sized main was installed, an average per foot cost of the prior year's three-way agreements or assessment districts is calculated by the City's Engineering Department to apply to the current now-annexed property.~~

M.C. **Storm Water - Regional projects that included unannexed property**

- Costs held in abeyance are to be assessed upon annexation of those parcels.
- Cost allocation is based on parcel/lot square footage of the previous initial project(s).

N.D. Rural Road Usage Policy

- a. The improvement cost ~~of an improvement~~ for streets or street lights for property not annexed that benefit from the improvement will be held in abeyance until those properties are annexed to the City. ~~The assessment is~~ in accordance with the City Commission Rural Road Usage Policy.

3. Factors

A. The following factors are applied to ~~in~~ all special assessment districts, except Continuous

Districts:

- Factors applied are:
 - Commercial - 2.0; Residential - 1.0
 - Agricultural - Factor applied shall coincide with Comprehensive Land Use Plan.
 - Public Park Property - if the #property contains a revenue producing facility (i.e. pool), then Commercial - 2.0; otherwise, same application as Residential - 1.0.
 - Schools & Churches - Commercial - 2.0.
- Stormwater Lots - 0.5
 - Stormwater lots are subject only to paving and street lighting assessments on a per parcel/lot residential basis.

4. Parcels with Access via Private Drives ~~or Access Easements~~

- Private drives are named roadways, ~~whether named or not~~, that lead from a public street to more than one property and are owned and maintained by private individuals or organizations rather than the City.
- ~~An access easement allows owners of property that do not have direct access to a public street to pass through the adjoining land to access their property.~~
- Commercial properties that gain access to their property from a public street via a private drive ~~or an access easement~~ are assessed for pavement and street lighting improvements to the public street based on 75% of their lot square footage or adjusted square footage, if applicable.
- Residential properties that gain access to their property from a public street via a private drive ~~or an access easement~~ are assessed for pavement and street lighting improvements to non-arterial public streets based on 50% of their parcel/lot or adjusted parcel/lot, if applicable.
- Actual costs of concrete repairs to driveway aprons or sidewalk on the private drive ~~shared access~~ will be assessed proportionately to all parcels utilizing the private drive ~~sharing the access~~.

5. Adjustments

- Adjustments may be made if the literal application of the policies result in an inequitable assessment and to achieve a more equitable assessment.

6. Errors or Omissions

- Corrections may be made to existing special assessments if errors or omissions of the applicable policy are determined at the time the error is identified.



ADMINISTRATION

DATE: January 7, 2020
FROM: Keith J. Hunke, City Administrator
ITEM: Request for Proposals for Architectural & Engineering Services

REQUEST

Consider request to issue Request for Proposals for Architectural and Engineering Services for the space needs for Public Health, Police and Public Works facilities.

Please place this item on the January 14, 2020 City Commission meeting.

BACKGROUND INFORMATION

The recent determination of the final closing date for the sale of the Public Health property to the University of Mary makes it necessary to consider taking the next steps in the process to relocate the Bismarck Burleigh Public Health department which will require architectural and engineering services. Space needs information for the Public Health, Police and Public Works facilities were prepared in 2015 and 2016. This information should also be considered at this time so that existing city properties can be evaluated for new construction and/or remodeling opportunities.

The architectural and engineering services scope of work for each facility project would include site analysis, schematic design, civil, architectural, structural, mechanical, electrical and landscaping design development, project construction cost estimates, contract documents, bidding and construction administration services for the space needs for Public Health, Police and Public Works Facilities.

RECOMMENDED CITY COMMISSION ACTION

Consider request to issue Request for Proposals for Architectural and Engineering Services for the space needs for Public Health, Police and Public Works facilities.

STAFF CONTACT INFORMATION

Keith J. Hunke, khunke@bismarcknd.gov, 701-355-1300

REQUEST FOR PROPOSALS FOR ARCHITECTURAL/ENGINEERING SERVICES

The City of Bismarck Public Works Department requests written qualifications from professional Architectural and Engineering firms for services for the following:

Provide Site Analysis, Schematic Design, Design Development, Contract Documents, Bidding and Construction Administration Services for the space needs for Public Health, Police and Public Works Facilities.

The service expectations for the projects include site analysis and schematic, civil, architectural, structural, mechanical, electrical and landscaping design. Cost estimates for each facility project must be provided as an integral part of the design effort. Recent space needs information for the Public Health, Police and Public Works facilities is available from the City of Bismarck Facilities Manager.

Written proposals shall address the firm's experience and ability to perform the defined services in a timely manner. The primary items for consideration will be, but not limited to, the firm's:

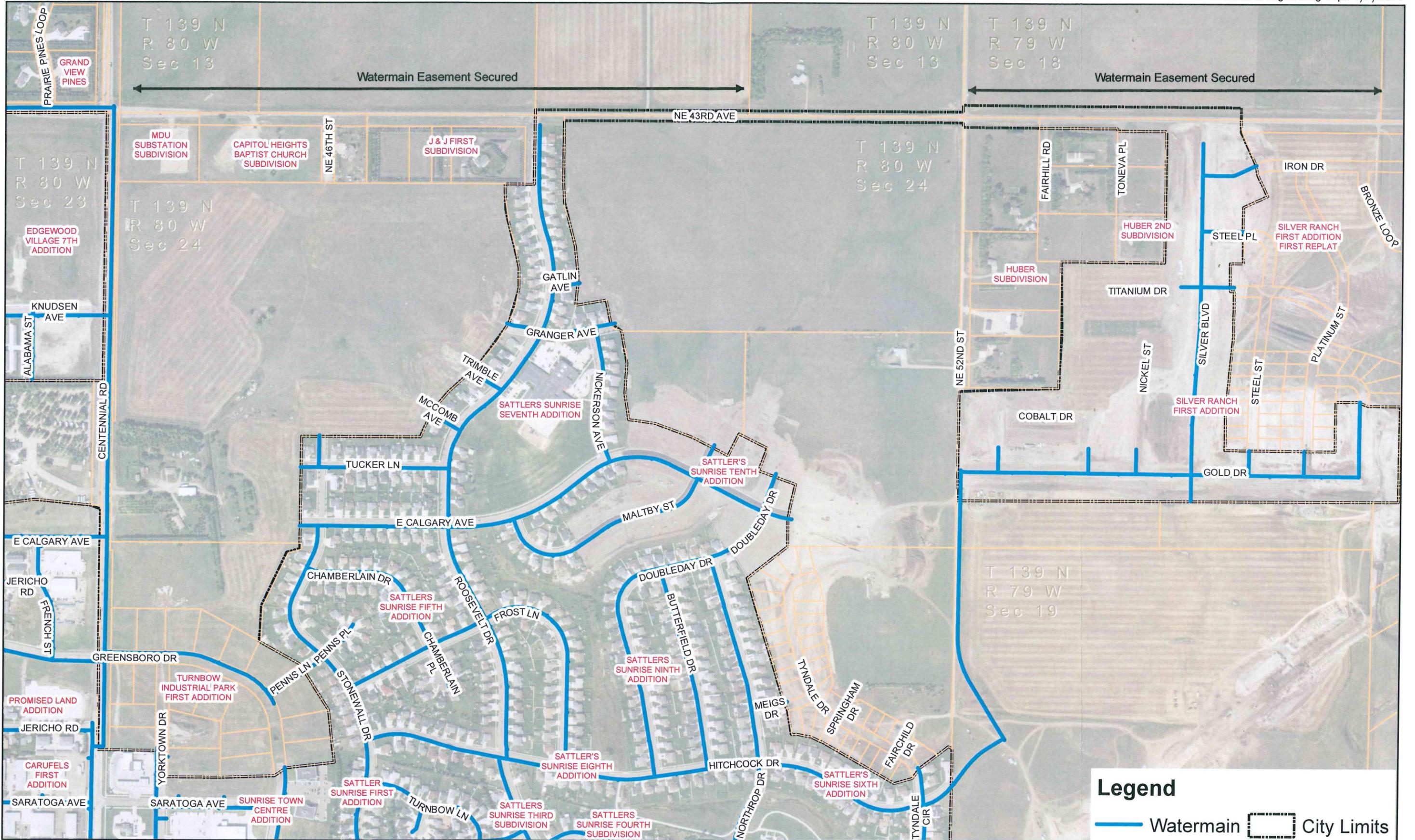
1. Technical capabilities of Firm and of proposed project team
2. Experience and performance of Firm and of proposed project team
3. Understanding of project and proposed work approach
4. Knowledge of regulations and local conditions
5. Project personnel assignments and qualifications
6. Ability to respond in a timely manner

The Architect/Engineer will be selected based upon Statements of Qualification and oral interviews. A selection committee will recommend a single firm to the Board of City Commissioners. A detailed scope of work will be developed and price will be negotiated with the selected firm. Failure to reach an agreement acceptable to the City of Bismarck will result in negotiation with the second most qualified firm. A professional services agreement will be executed with a single firm.

All inquiries shall be directed to Bruce Schirado, Facilities Manager, City of Bismarck (701) 355-1743. **Qualifications Statements from consultants will be accepted until 4:00 pm on Friday, February 14, 2020.**

Submit eight (8) copies of proposal to:

Bruce Schirado
Facilities Manager
601 South 26th Street (Delivery address; for USPS and other parcel deliveries use zip code 58504)
PO Box 5503 (Post Office address)
Bismarck, ND 58506-5503
Telephone (701) 355-1743 or 1700



Legend

— Watermain - - - - City Limits

This map is for reference purpose only and is not intended as a survey or accurate representation of all map features.





Engineering Department

DATE: December 10, 2019

FROM: Gabe Schell, City Engineer

ITEM: US 83/ND 1804 Watershed Stormwater Master Plan Update

REQUEST

Receive and accept the proposed US 83/ND 1804 Watershed Stormwater Master Plan Update

Consider variance in proposed development control line.

Please place this item on the 12/17/2019 City Commission meeting agenda.

BACKGROUND INFORMATION

The US 83/ND 1804 watershed is located in north Bismarck generally north of 57th Avenue NE and west of Hay Creek and encompasses approximately 2.9 square miles. The City developed a stormwater master plan for this watershed in March 2013 with an update in May 2014. The current land uses are primarily agricultural and rural residential. The stormwater master plan utilized the future zoning and master planned roadways anticipated within the watershed to develop mitigation strategies to offset the stormwater impact that the increased impervious surfaces (roofs, roadways, parking lots, etc) create. This plan utilized regional detention ponds purchased by the City and assessed to the entire watershed as the primary stormwater management peak runoff mitigation tool. Approximately 10% of the watershed is currently annexed into the City of Bismarck.

The proposed 2019 update to the stormwater master plan was developed with the following goals: update the master plan to utilize an allowable Unit Rate discharge as the method for stormwater peak flow mitigation similar to the Silver Ranch watershed; integrate previous planning documents, identify a development control line to maintain drainage conveyance through the watershed, and determine minimum roadway crossing elevations and culvert crossing concepts for future road crossings.

During the development of the 2019 update, an adjacent landowner requested a variance from the proposed master plan setback requirements for the ability to fill the existing conveyance area up to 20' from the edge of the delineated wetland and filling a 3:1 slope. The impact from this request would be a more restrictive unit rate discharge allowance for the areas within Section 9 of the watershed.

I will present an overview of the stormwater master plan update for your consideration for acceptance. The full report is available upon request.

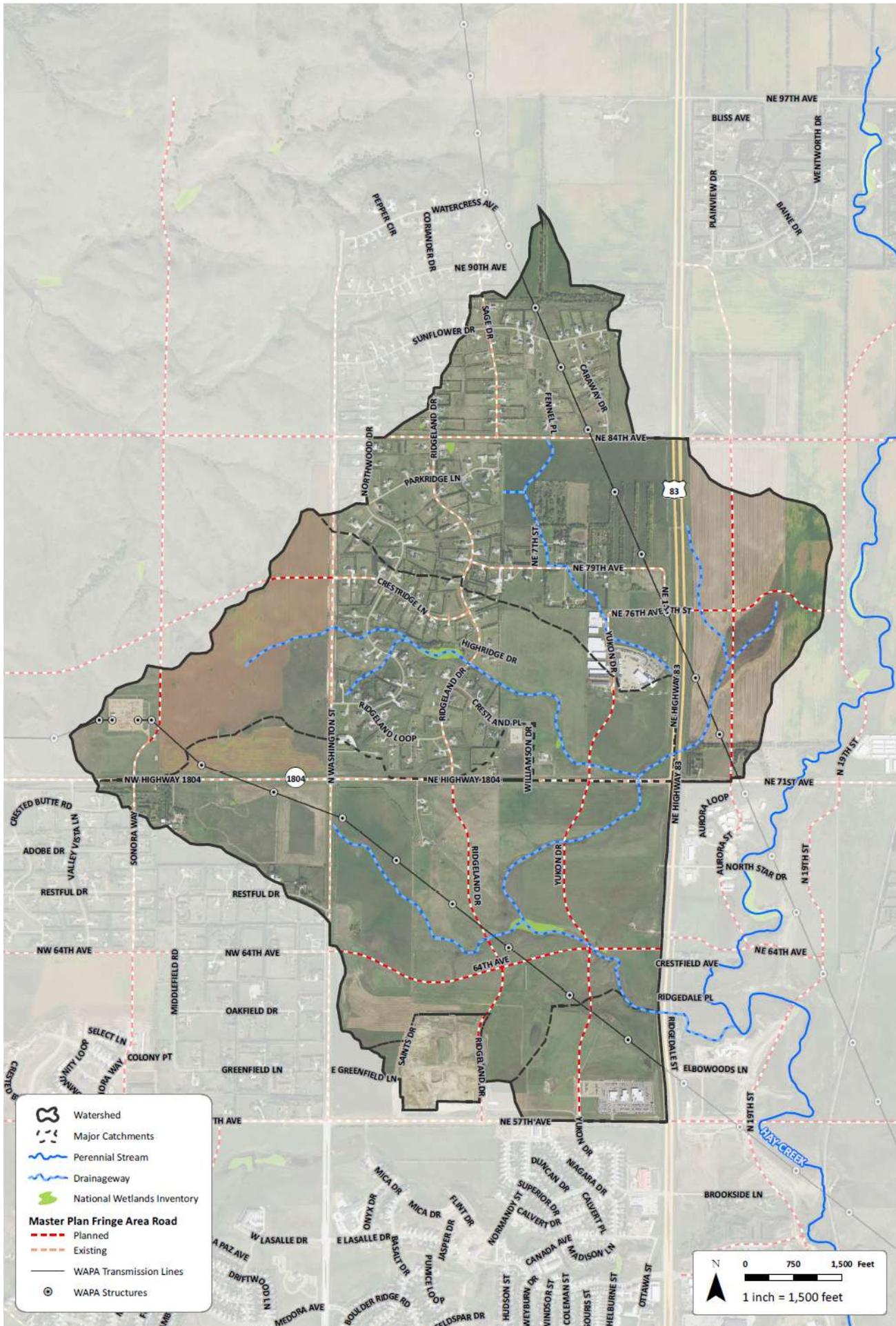
RECOMMENDED CITY COMMISSION ACTION

Accept 2019 US 83/ND 1804 Watershed Stormwater Master Plan Update

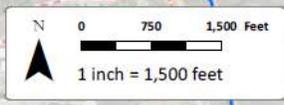
Provide direction on requested development control line variance.

STAFF CONTACT INFORMATION

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



-  Watershed
-  Major Catchments
-  Perennial Stream
-  Drainageway
-  National Wetlands Inventory
- Master Plan Fringe Area Road**
-  Planned
-  Existing
-  WAPA Transmission Lines
-  WAPA Structures





ENGINEERING DEPARTMENT

DATE: January 7, 2020
FROM: Gabe Schell, PE | City Engineer
ITEM: SI-531 Lane Configurations Recommendations

REQUEST

Consider recommendations for lane configurations on East Divide Avenue and South Washington Street within the proposed SI-531 work area.

Please place this item on the 1/14/20 City Commission meeting agenda.

BACKGROUND INFORMATION

Divide Avenue from 19th Street to Volk Drive and South Washington Street from Bismarck Expressway to the south Bismarck drainage ditch are included in Street Improvement District 531, units 6 and 8 respectively. A decision is requested as part of SI-531 regarding the lane configurations to be implemented on these corridors. Typically, the lane configurations are restored to a similar manner as the existing lane configuration. The annual street rehabilitation projects provide an opportunity to implement improvements to the roadway network configuration at minimal project costs. This process has been used on previous projects to implement cross walks, turn lanes, parking areas, etc.

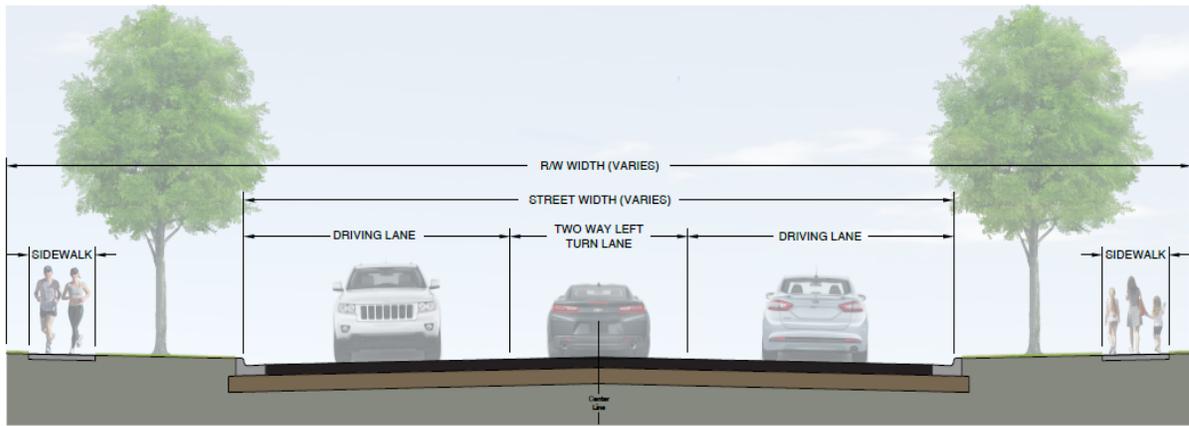
SI-531 provides an opportunity to reconfigure the traffic lanes on South Washington Street which is currently a 4-lane roadway with no parking. Currently traffic making a left turn off of Washington Street will stop in the inside through lane waiting for an adequate gap in opposing traffic to complete the turn. Meanwhile vehicles following will be trapped behind the stopped left turning vehicle or maneuver around the stopped vehicle into the adjacent lane. When this situation occurs, the roadway essentially becomes a de facto three lane roadway.

Divide Avenue is programmed for mill and overlay between 19th Street and Northview Lane and reconstruction from Northview Lane to Volk Drive. The existing lane configuration of Divide Avenue from 19th Street to Northview Lane is a 48-foot roadway two-lane roadway with a bike lane for eastbound and westbound bicycle traffic. Parking is permitted along the south side of Divide

Avenue near 20th Street and along the north side of Divide Avenue from 300' east of 19th Street to Northview Lane. Divide Avenue is a 48-foot roadway from 26th Street to Volk Drive and is a 3-lane roadway section with parking permitted only on the south side adjacent to Sleepy Hollow Park. Outside of and adjacent to the project area, Divide Avenue is a 3 lane section with parking prohibited west of 19th Street to State Street and east of Volk Drive to Bismarck Expressway.

Washington Street Recommendation

South Washington Street from Bismarck Expressway to the south Bismarck drainage ditch is recommended to be reconfigured to a “Two Way Left Turn Lane (TWLTL) which will consist of one 12’-lane in each direction for north/south through traffic along with a center left turn lane for left turning traffic. The reconfiguration of lanes will not reduce the roadway capacity. The center left turn lane creates a refuge for turning traffic and potentially reduces rear end crashes. The remaining 6-feet on each side of the roadway would be signed as a “share the road” bicycle facility. These bike facilities would provide a link between the existing trail paralleling Bismarck Expressway and the trail on South Washington Street beginning at Wachter Avenue. Since there is no existing parking on Washington Street, there would be no impacts to parking.

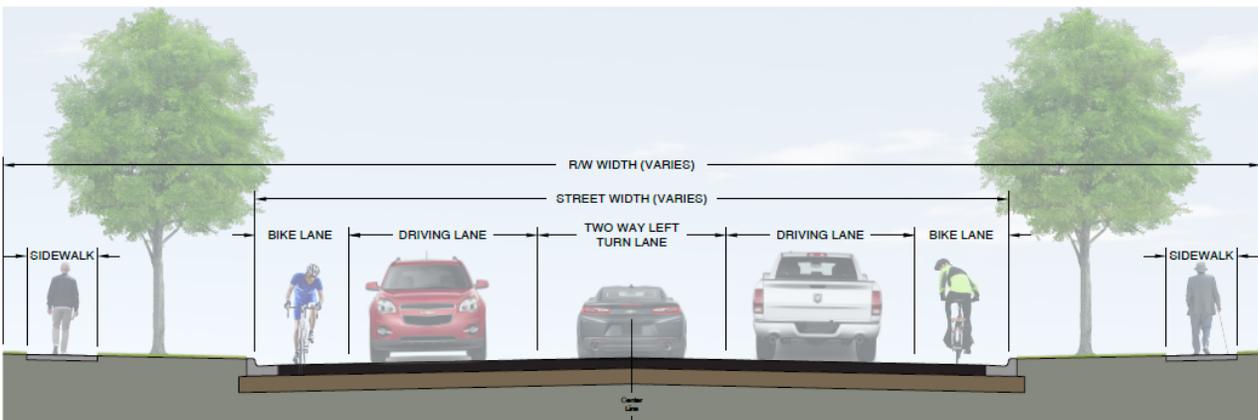


The following figure graphically displays the the project area and its proximity to existing multi use facilities. Please note that there are no changes to any parking restrictions along South Washington Street between Bismarck Expressway and Wachter Drainage Ditch.

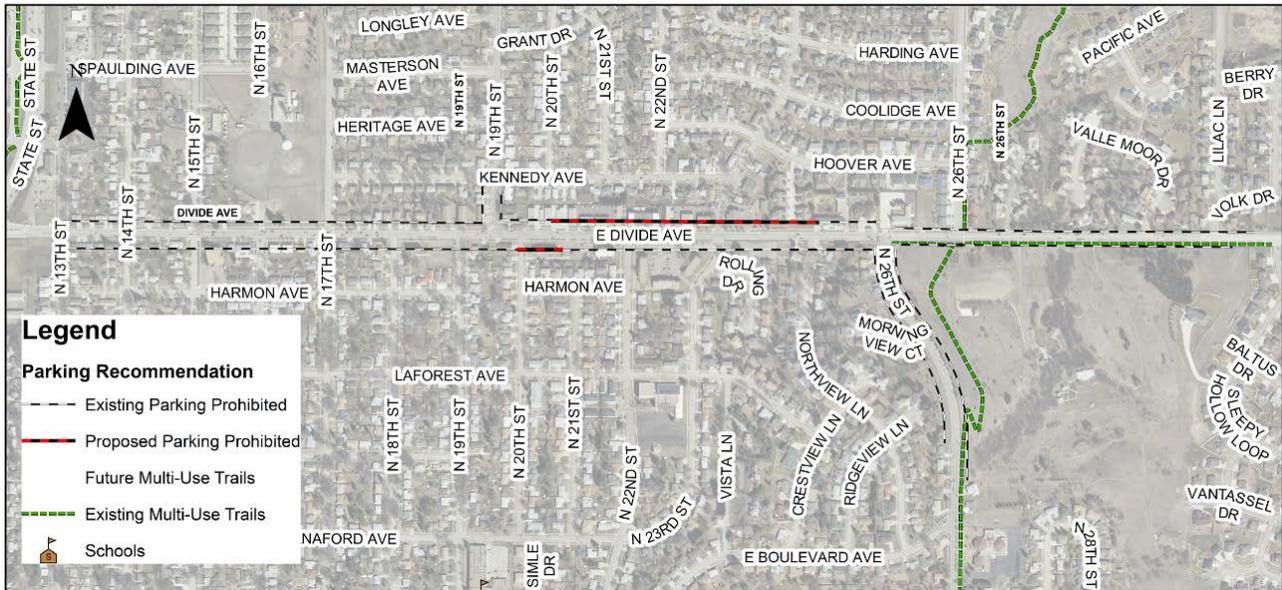


Divide Avenue Recommendations

Divide Avenue from 19th Street to Volk Drive is recommended to be a TWLTL and maintain the existing bike lanes in their current locations. The implementation of a center left turn lane would improve capacity and safety of the roadway by removing left turning traffic from the through traffic lane. To implement a TWLTL roadway configuration with bike lanes, existing parking on Divide Avenue will need to be removed along the north side from Northview Lane to 300' east of 19th Street and on the south side between 20th Street and 200' east of 20th Street.



The following figure graphically displays the existing and proposed parking restrictions between on Divide Avenue between 19th Street and Volk Drive.



RECOMMENDED CITY COMMISSION ACTION

Receive recommendations and concur with project recommendations

STAFF CONTACT INFORMATION

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