



May 3, 2019

Board of City Commissioners  
Bismarck, ND

Dear Commissioners:

The Board of City Commissioners is scheduled to meet in special session on Friday, May 10, 2019 at 12 Noon in the Tom Baker Meeting Room, City/County Office Building, 221 North Fifth Street, Bismarck, North Dakota. This meeting is a combined meeting of the City of Bismarck, City of Mandan, and Burleigh County Commissions.

Agenda items can be found online at [www.bismarcknd.gov/agendacenter](http://www.bismarcknd.gov/agendacenter).

MEETING OF THE BOARD OF CITY COMMISSION

1. Consider the request for approval from CenCom of the lease agreement with DCN, LLC.

Documents:

[May 10, 2019 FINAL DCN Cencom Lease.pdf](#)

Adjourn

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[www.bismarcknd.gov](http://www.bismarcknd.gov) ★ TDD 711 ★ An Equal Opportunity-Affirmative Action Employer*



LEASE AGREEMENT  
BETWEEN  
CITY OF BISMARCK, BURLEIGH COUNTY, CITY OF MANDAN  
AND  
DCN, LLC

Final April 23, 2019

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## LEASE AGREEMENT

THIS AGREEMENT is made and entered into by and between DCN, LLC, a North Dakota limited liability company (“Lessor” or “DCN”), and the city of Bismarck (“Bismarck”), North Dakota, a political subdivision of the state of North Dakota, the city of Mandan, North Dakota, a political subdivision of the state of North Dakota (“Mandan”), and Burleigh County, a political subdivision of the state of North Dakota (“Burleigh”) (Bismarck, Mandan, and Burleigh are collectively referred to as “Lessee”).

### WITNESSETH THAT:

WHEREAS, DCN is the owner of certain real estate and facilities deemed desirable by Lessee for the establishment of a new, consolidated public safety communications and emergency response center; and

WHEREAS, the parties hereto desire to enter into a long term Lease Agreement, hereinafter, the “Agreement”, granting the Lessee the use of certain premises at the DCN facilities in Bismarck;

NOW THEREFORE, THE PARTIES ENTER INTO THE FOLLOWING AGREEMENT:

1. **TERM**

- A. The term of this Agreement shall be for twenty (20) years commencing on the date when DCN receives a temporary certificate of occupancy from the city of Bismarck for the newly constructed facility to a period of twenty years.

- B. After the initial term of twenty years, Lessee shall be entitled to renew the lease term for five years at a rent that reflects the fair market value of comparable commercial space within the city of Bismarck. However, the parties agree they shall negotiate in good faith to provide Lessee a percentage reduction of the fair market value of commercial lease space at the end of the first term to reflect Lessee's payment of rent on the initial 20 year term.

2. **LEASED PREMISES**

- A. The Leased Premises consists of:

- 1) a newly constructed addition to the DCN building in Bismarck (the "Addition") in the approximate square footage of 19,100 square feet. The design professional shall execute Addendum 1 to memorialize the as built square footage and acceptance of design for the construction of the Addition contemporaneously with the execution of this Agreement.
- 2) All improvements, fixtures and furnishing constructed and incorporated into the Addition.
- 3) The existing parking lot at DCN's Bismarck office.
- 4) a periodic, limited use of DCN's training room for up to 20 days per calendar year as approved by DCN. A periodic, limited use of DCN's existing multipurpose room for 5 days in any calendar year, all as approved by DCN.

3. **USE OF LEASED PREMISES**

- A. The Lessee shall use the Leased Premises solely for the purpose of office space for operation of the communications and emergency management center and functionally related-related activities.
- B. No change in the use of the Leased Premised by the Lessee shall be made or permitted without the prior written consent of DCN.

4. **RENT**

- A. Rent for the Leased Premises for the first year shall be thirty one dollars and twenty-five cents (\$31.25)per gross square foot of the Addition per calendar year. The gross square foot area shall be calculated by the design professional at the conclusion of the construction and shall be entered on Addendum 1. Lessee shall pay one-twelfth of the rent on the first of each month to DCN. Lessee shall pay separately metered utilities, any remodeling after new construction, garbage removal, property taxes, property insurance, and janitorial services separately. Lessor and Lessee may agree to consolidate garbage removal and janitorial services and share such costs on an equitable basis.

The estimated cost of construction of the Addition is six million three hundred and nineteen thousand four hundred and fifty three dollars (\$ 6,319, 453.00). The estimated cost of construction is three hundred thirty dollars and eighty-six cents (\$330.86) per square foot (\$6,319,453

estimated cost of construction/19,100 estimated square feet). If the actual cost of construction, as determined by architect, varies by more than three percent (3%) per square foot, the rent shall be adjusted to reflect the difference between the variance and 3%. As an example, if the actual cost to construct the addition is 5% lower than the estimate, Lessee shall be entitled to a 2% reduction in the rent on a per square foot basis.

Lessee shall also be entitled, at its option, to reduce the rent by making an upfront capital contribution or equipment contribution (collectively "Capital Contributions") to defray the cost of the Addition. Lessee may make a capital or equipment contributions in increments of not less than two hundred fifty thousand dollars (\$250,000) and not more than three million five hundred thousand dollars (\$ 3,500,000.00) before December 31, 2021. Lessor and Lessee acknowledge that Lessee is making a grant application for the purpose of acquiring a generator and other essential equipment (the "Generator Grant") to be incorporated into Lessee's operations. Whether Lessee will be awarded the Generator Grant and the value of the Generator Grant are unknown to the parties at the time this lease is executed. Lessor and Lessee also acknowledge that Lessee is eligible for state funding through HB 1066 of 2019 legislative legislative session ("Prairie Dog Funding"). Lessee may use a portion of its Prairie Dog Funding grant as part of the Capital Contribution.

The Capital Contribution must be in increments of two hundred fifty thousand dollars (\$250,000.00) and each increment of \$250,000 shall

reduce Lessee's rent by three percent (3%) of the rent per square foot. The maximum percentage reduction of the rent is 42% based on the maximum Capital Contribution of three million five hundred thousand dollars (\$3,500,000.00) The equipment contribution, if any, shall be valued at the cost that DCN would incur to acquire the equipment, excluding sales tax and shipping.

- B. Commencing on the sixth anniversary of the commencement date of the initial term , and annually thereafter for the remaining term, the annual rent shall be subject to adjustment pursuant to Article 5 hereof.
- C. The annual rent payable, taxes, and insurance shall be paid in equal monthly installments on or before the first day of each month, in advance. Payment shall be by check or electronic funds transfer to DCN.
- D. The Lessee hereby agrees to pay all rent, fees, taxes and charges as specified in the Agreement from time to time when due.
- F. For any occupancy of the Leased Premises by the Lessee beyond the full term of this Agreement, the rent due to DCN shall be adjusted by DCN, at its sole discretion.

5. **ADJUSTMENT OF RENT**

- A. Commencing on the sixth anniversary of the lease term commencement date and for the remainder of the term of this Agreement, the annual rent payable hereunder shall be adjusted each year by multiplying the annual rent payable in the next preceding year of the term of this Agreement by a fraction, the numerator of which shall be the C.P.I. (as hereinafter defined) published for the month of the year in which such adjustment is made and the denominator of which shall be the C.P.I. published for the month of the calendar year in which the last preceding such adjustment was made. In no event shall the annual rent payable under this Article 5 be less than the amount payable for the last adjusted period.
- B. The term "C.P.I." as used herein shall mean the Consumer Price Index for all Urban Consumers, all items, Selected Large Cities, National Index, published by the Bureau of Labor Statistics of the United States Department of Labor, 1982-84 base = 100. In the event the base year is changed, the C.P.I. shall be converted to the equivalent of the base year 1982-84 = 100.

6 **FAILURE TO PAY RENT**

- A. Failure to pay all rent, fees and charges when due or to comply with any other of the Lessee's financial obligations to DCN under this Agreement, hereinafter, "monetary default", shall entitle the DCN to re-enter and take possession of the Leased Premises upon giving the Lessee ten (10) days advance written notice of its intention to do so, if said monetary default has not been remedied within said (10) day period. However, the DCN may extend the time period to correct the default if it determines, in its sole

discretion, that due diligence is shown by the Lessee in curing the default.

All amounts not paid by the Lessee when due shall bear interest at the maximum rate allowed by law.

- B. DCN's agents or employees shall not be liable for any civil or criminal claim or cause of action because of entering the Leased Premises and improvements at reasonable times and in a reasonable manner to carry out the provisions of this Article.

## 7. **LESSEE'S RIGHTS AND OBLIGATIONS**

The parties hereto covenant and agree as follows:

- A. This Lease Agreement is subject to all applicable laws and ordinances and such reasonable rules and regulations as may be adopted by the city of Bismarck acting in its capacity as the city of Bismarck (and not as Lessee). DCN shall make every effort to preserve Lessee's use of the Leased Premises.
- B. Lessee agrees to require its employees to wear suitable attire and, if the DCN shall so request, to wear or carry badges or other suitable means of identification, which shall be subject to the prior and continuing approval by DCN.
- C. Lessee shall observe and comply with any and all applicable Federal, State and local laws, statutes, ordinances and regulations and shall abide by and be subject to all rules and regulations which are now, or may from time to time, be promulgated concerning operation and use of the Premises.

- D. Lessee shall be responsible for all its expenses in connection with its operation at the DCN Premises and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, property taxes, permit fees, license fees, building insurance, and assessments lawfully levied or assessed upon the Lessee, and to secure all such permits and licenses. Lessee shall reimburse DCN for its share of building insurance and property taxes based on the incremental increase in insurance and property taxes on the Addition. If the actual, incremental increase can be determined from the invoice of DCN's insurer and from the real property assessor, such amount shall be Lessee's share. If the actual, incremental increase cannot be determined, Lessee shall pay a pro rata portion of building insurance and property taxes based on the relationship between the square footage of the Addition to the square footage of the entire DCN building.
- E. Lessee agrees for itself, its agents and employees that it will not perform any acts or carry on any practices which could result in the necessity to repair or replace DCN property, at Lessee's expense, normal wear and tear excluded, or be a nuisance or menace to other users of the DCN Property. Concerning the construction of the Addition, DCN grants to Lessee the opportunity to have direct communications with DCN's design professionals to provide opportunity for the Lessee to express preferences for the design and construction of the Addition.
- F. DCN covenants that upon Lessee paying the rent and performing the covenants and conditions herein contained, Lessee shall peacefully and quietly have, hold and enjoy the Leased Premises.

8 **DCN'S RIGHTS AND OBLIGATIONS**

- A. Except as herein provided, the DCN agrees that it will, with reasonable diligence and in a manner consistent with that of a reasonably prudent landlord, maintain and keep in good repair all common use and public appurtenances, facilities and equipment provided by DCN as the same relates to Lessee's business.
- B. DCN reserves the right to deny access to the Addition or to DCN's facilities to any person, firm or corporation that fails or refuses to obey and comply with such Rules and Regulations.

9 **UTILITIES AND MAINTENANCE**

- A. Lessee will be provided an opportunity to inspect the Addition to determine that it complies with the applicable building code and, once compliance is achieved accepts the Addition and all Leased Premises "as is" without further obligation of DCN to modify or improve.
- B. The Lessee shall, at its expense, contract with the furnishers of all utilities for the furnishing of such services to the Leased Premises and shall pay for all water, gas, electricity, sanitary sewer service, other utilities, telephone, and cable television furnished to the Addition. DCN will provide security cameras and night vision cameras for the entire Premises, including the Addition.

- C. DCN shall not be responsible for bringing any utilities to the Leased Premises that are not present at the commencement of this Agreement.
- D. DCN agrees during the term of this Agreement that it shall keep all and every part of the Structural Portion of the Leased Premises in such state of repair as at the commencement of the term hereof, except for reasonable wear and tear or damage by fire or other casualty (unless caused by the acts of Lessee, its agents, servants or employees). For the purposes of this Agreement the Structural Portion is defined as the roof, foundation, exterior walls and HVAC systems of the Premises, including the Addition.
- E. Lessee agrees during the term of this Agreement that It shall keep all and every part of the Interior Portion of the Leased Premises in such state of repair as at the commencement of the term hereof or as the Leased Premises may be improved during the term hereof, except for reasonable wear and tear or damage by fire or other casualty (unless caused by the acts of Lessee, its agents, servants or employees). For the purpose of this Agreement the Interior Portion of the Leased Premises shall include interior walls, ceilings, doors, Interior plumbing and electrical systems and routine maintenance of the HVAC system. Lessee further agrees to keep the Leased Premises in a clean, orderly condition and not to injure, overload or deface, or to suffer to be Injured, overloaded or defaced the Leased Premises or any part thereof. Lessee agrees that all repairs shall be accomplished in a workmanlike manner. In the event Lessee fails to commence to maintain, clean, repair, replace, rebuild or repaint within a period of thirty (30) days after written

notice from DCN to do any maintenance or repair work required to be done under the provisions of this Agreement, or to diligently continue to completion any repairs, replacement, rebuilding, painting or repainting as required under this Agreement; then, DCN may, at its option and in addition to any other remedies which may be available to it, enter the space involved, without such entering causing or constituting a cancellation of this Agreement or an interference with the use of the space, and repair, replace, rebuild or paint all or any part of the space, and do all things reasonably necessary to accomplish the work required, and the cost and expense thereof shall be payable to DCN by Lessee on demand, as additional rent.

- F. DCN shall be responsible for regular and periodic maintenance of the parking lot including snow removal. Said maintenance and snow removal will be prioritized in accordance with existing DCN Policies or as they may be amended from time to time. Maintenance to be performed on parking lot will be determined by DCN and completed at DCN's sole discretion. DCN will construct a secure fence in part of the exterior of the Premises that permits Lessee secure access to the Premises and the Addition. If DCN concludes a significant repair of the parking lot is necessary after ten years, Lessee agrees to pay a pro rata cost of such repair. Lessee's pro rata cost is the relationship between the Addition square footage to the entire square footage of the building.
- G. DCN shall be responsible for regular and periodic lawn care to include mowing grass, trimming trees and shrubs, maintenance of underground

sprinklers and sprinkler system, lawn fertilization and weed control. Scheduling and completion of regular and periodic lawn care maintenance items will be accomplished by the DCN at DCN's discretion.

10. **CONSTRUCTION AND REPAIR OF LESSEE'S IMPROVEMENTS**

- A. No improvements, structures, alterations, or additions shall be made in, to, or upon the Leased Premises without the prior written consent of DCN, and all such improvements, structures, alterations, additions and work shall be in accordance with any conditions relating thereto then stated in writing by DCN. This shall include the New Improvements undertaken at the commencement of this Agreement.
- B. At the time of requesting approval by DCN, the Lessee shall submit preliminary plans for such improvements, which shall conform to the general architectural scheme and overall plans adopted by DCN for the Addition. Lessee shall prepare and obtain the DCN's approval of working drawings and specifications which shall be a true and accurate reflection of the preliminary plans so approved. All construction shall conform to the approved working drawings and specifications. No substantial change, addition or alteration shall be made in said working plans or specifications or in the construction called therefor without the DCN's prior written approval. When construction work is commenced, it shall be completed with reasonable dispatch. Upon completion of said improvements, the Lessee shall furnish DCN, at no charge, two (2) complete sets of "as built" drawings of the improvements as constructed. The "as built" drawings shall be on CAD or mylar as DCN may

direct.

- C. All Improvements constructed by the Lessee pursuant to this Section shall conform in all respects to all applicable building codes, ordinances, statutes, rules and regulations of all governmental agencies having Jurisdiction. During the term of this Agreement, title to the Addition, and any subsequent improvements, structures, alterations or additions erected or installed in or on the Leased Premises by the Lessee pursuant to this Article shall remain in the Lessee. Upon the expiration, earlier termination or renewal of this Agreement, or the making of a renewal of successor agreement, said structures, improvements, alterations or additions, except Lessee's trade fixtures, shall become the property of DCN.
- D. Trade fixtures may be installed with the prior written consent of the City.

11. **INSURANCE. DAMAGE OR DESTRUCTION**

- A. DCN shall procure and maintain, throughout the term of this Agreement, insurance protection for fire and extended coverage on the Leased Premises for one hundred percent (100%) of the actual replacement cost. Lessee shall reimburse DCN for Lessee's share of insurance as specified in this lease.
- B. DCN shall settle all losses directly with the insurance carrier. The proceeds of all insurance shall be paid to DCN and shall, at the DCN's option, be for the repair and reconstruction of the improvements to the

Leased Premises or the demolition thereof.

- C. In the event the Leased Premises are damaged or destroyed to the extent that they are unusable by Lessee for the purposes for which they were used prior to such damage, or same is destroyed, DCN shall have the election of repairing or reconstructing the improvements substantially as they were immediately prior to such casualty or in a new or modified design consistent with Lessee's use thereof under the provisions of Article 9 hereof or as provided in Section D hereof.
- D. In the event DCN in its sole and absolute discretion determines it to be impractical to repair and reconstruct the Leased Premises, DCN may terminate this Agreement and retain the insurance proceeds. In the event that DCN elects to repair the Leased Premises, this Agreement shall continue. During any period of time that a significant portion of the Leased Premises is untenable due to casualty repair, Lessee shall be entitled to a pro- rata reduction in rent based upon the untenable square footage.
- E. Lessee shall, at its expense, replace and repair any and all of Lessee's fixtures, equipment and other personal property necessary to properly and adequately continue its business on the Leased Premises, but in no event shall Lessee be obligated to provide equipment and fixtures in excess of those existing prior to such damage or destruction.
- F.

In the event of damage or destruction of DCN property caused by the

Lessee, its agents, employees, vehicles or other equipment, Lessee agrees to repair, reconstruct, or replace the affected property to the condition which existed prior to such damage or destruction. Lessee further agrees to cause such repair, reconstruction or replacement of affected property with due diligence and the repair must return the Leased Premises to its original or better condition.

12. **DCN'S RIGHT TO ENTER LEASED PREMISES**

DCN reserves the right to inspect the Leased Premises and improvements at any reasonable time, with prior notification, throughout the term of this Agreement. When, for any reason, an entry is deemed necessary, and Lessee is not present to permit such entry, DCN, its agents and employees, shall be permitted to enter the Leased Premises and improvements. DCN's agents or employees shall not be liable for any civil or criminal claim or cause of action for damage because of entering the Leased Premises or improvements at reasonable times and in a reasonable manner for purposes consistent with its responsibilities as owner of the Leased Premises.

13. **INDEMNITY AND WAIVER OF DAMAGES**

The Lessee hereby agrees to occupy and use the Leased Premises in compliance with said rules and regulations so adopted and hereby waives any claims, rights, damages or costs of any kind against DCN incurred by Lessee in complying with said rules and regulations. Lessee shall indemnify and hold DCN harmless against any claims, causes of actions, lawsuits, or judgments arising from Lessee or

Lessee's occupants use of the Addition and Premises.

14. **ENVIRONMENTAL CONSIDERATIONS**

15. **INSURANCE**

Lessee shall, at its expense, maintain insurance in full force and effect during the term of this Agreement. The Insurance policy shall include, but not by way of limitation, personal injury, property damage, and automobile coverage pursuant to attached Schedule A. Such Coverage is subject to periodic Adjustments upward by Lessee based on the Lessee's own assessment of the risks Associated with its operations at the Addition.

16. **SIGNS**

Lessee shall have the right, at its own expense, to install and maintain signs for the purpose of identification. Prior to installation of such signage, the Lessee shall submit plans and obtain the approval of DCN. Said approval shall not be unreasonably withheld. In the event the signs are removed and not replaced, Lessee shall repair that area to its normal appearance.

17. **GOVERNMENT RESERVATIONS AND RESTRICTIONS**

[Intentionally blank].

All political subdivisions collectively referred to as Lessee in this Agreement are jointly and severally liable for the obligations of Lessee in this Agreement.

18. **DCN'S RIGHT OF TERMINATION**

In addition to any conditions as specified herein and all other remedies available to DCN, this Agreement shall be subject to termination by DCN should any one or

more of the following occur:

- A. If Lessee shall voluntarily abandon or discontinue the conduct and operation of its business on the Leased Premises for a continuous period of ninety (90) days, except when such abandonment is caused by fire, earthquake, war, strike or other calamity beyond the Lessee's control.
- B. If Lessee shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Agreement, provided that upon the happening of any contingency recited in this Section, Lessee shall be given written notice to correct or cure such default, failure to perform or breach. If, within thirty (30) days from the date of receipt of such notice, the default, breach or complaint shall not have been corrected in a manner satisfactory to DCN, then and in such event, DCN shall have the right at once to declare this Agreement terminated. DCN does, however, reserve the right to extend the time period to correct the default if, in its opinion, due diligence is shown by Lessee in curing the default.
- C. If under any of the foregoing provisions of this Article, DCN shall have the right to re-enter and take possession of the Leased Premises, DCN may enter and eject Lessee and those claiming through or under it, and remove their property and effects (using reasonable force, if necessary) without any liability therefore; without prejudice to any remedies of DCN in the event of default by the Lessee; and without liability for any interruption of the conduct of the affairs of Lessee or those claiming through or under it.

19. **LESSEE'S RIGHT OF TERMINATION**

A. In addition to all other remedies available to the Lessee, this Agreement shall be subject to termination by Lessee should any one or more of the following occur:

- 1) The breach by DCN of any covenants, terms or conditions of this Agreement to be kept, performed and observed by DCN and the failure to remedy such breach for a period of sixty (60) days after written notice from Lessee of the existence of such a breach;
- 2) The inability of Lessee to conduct its business at the Premises in substantially the same manner and to the same extent as theretofore conducted, for a period of at least ninety (90) days, because of (1) any law, or (2) any rule, order, judgment, decree, regulation or other action or nonaction of any governmental authority, board, agency or officer having jurisdiction thereof;
- 3) The taking of the whole or any part of the Leased Premises by the exercise of any right of condemnation or eminent domain.

B. In the event any of the contingencies described in this Article 19, Section A, Paragraphs 1,2,4,5 and 6 herein occur, the rent shall be abated for those portions of the Leased Premises which are rendered untenable from the time of such happening until the affected premises are returned for Lessee's use.

20. **AGREEMENT SUBORDINATE TO BOND INSTRUMENTS**

[Intentionally blank].

21. **ASSIGNMENT AND SUBLETTING**

Neither Lessee nor any successor of Lessee shall in any manner, directly or indirectly, by operation of law or otherwise, assign, sublet, transfer or encumber any of Lessee's rights in and to this Agreement or any interest therein, nor license or permit the use or the rights herein granted in whole or in part without the prior written consent of DCN. Such consent shall not be unreasonably withheld, providing, that, any such assignee shall be a professional, competent business, acceptable to DCN, possess sufficient financial resources and security to assure compliance with all the terms and conditions of this Agreement.

22. **ADVANCES BY DCN**

If the Lessee should fail to do what is required to be done under the terms and conditions of this Agreement, except for the payment of rents, fees or charges, DCN may, at its sole option and after giving written notice to the Lessee, perform such act on behalf of the Lessee. Upon notification to the Lessee of the cost thereof by DCN, the Lessee shall promptly pay DCN the amount due, as additional rent.

23. **LEGAL CLAIMS AND ATTORNEY FEES**

A. Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with the Leased Premises or the operation of the Lessee's business. DCN and Lessee shall each have the right to settle and/or defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. The Lessee is an independent contractor in every respect, and not the agent of DCN.

- B. If any legal action is instituted by the parties hereto to enforce this Agreement, or any part thereof, the prevailing party shall be entitled to recover reasonable attorney's fees and court cost. Any such legal action shall be commenced and maintained in Burleigh County, North Dakota, regardless of Lessee's residence or place of business.

24. **ENCUMBRANCES AND LIENS**

- A. Lessee's interest in the Leased Premises may not be encumbered by the Lessee for any purpose.
- B. Lessee agrees that it shall, during the term of this Lease Agreement, pay directly or cause to be paid, all costs and expenses for work done and materials delivered to the Leased Premises and for improvements made to the Leased Premises at Lessee's request. Lessee shall keep the Leased Premises free and clear of all mechanic's or materialmen's liens or any other liens on account of any work done on the Leased Premises at Lessee's request. Lessee agrees to and shall indemnify, and hold DCN free from and harmless against all liability, loss, damage, cost, attorney's fees (where allowable by law) and all other expenses on account of claims of lien of laborers or materialmen, or others, for work performed or materials or supplies furnished to Lessee for use on the Leased Premises.

25. **NONDISCRIMINATION**

- A. Lessee, for it, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the

Leased Premises, for a purpose for which a United States Government program or activity is extended, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

- B. Lessee, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil

Rights Act of 1964, and as said Regulation may be amended.

- C. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, sex, age, disability or marital status be excluded from participation in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart E. Lessee assures that it will require that its covered suborganizations provide assurances to Lessee that they similarly will undertake affirmative action program and that they will require assurances from their suborganizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.
  
- D. Lessee agrees to comply with all other State and Federal statutory and constitutional non-discrimination provisions. In addition, Lessee agrees to comply with all pertinent provisions of the Americans with Disabilities Act of 1990, P.L. 101-336, July 26, 1990, 42 USC 12101, et seq.; and all pertinent regulations pursuant thereto. Lessee shall not discriminate in the use of the Leased Premises or any access thereto if such Leased Premises are used as a public accommodation or in connection with a public service. Lessee will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

- E. In this connection, DCN reserves the right to take whatever action it might be entitled by law to take in order to enforce this provision. This provision is to be considered as a covenant on the part of Lessee, a breach of which, continuing after notice by DCN to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this Agreement and will entitle DCN, at its option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.
- F. Lessee shall include the foregoing provisions in every agreement or concession pursuant to which any person or persons, other than Lessee, operates any facility on the Leased Premises providing service to the public and shall include thereon a provision granting DCN a right to take such action as to enforce such covenant.

26. **PRIOR AND COLLATERAL AGREEMENTS**

This Agreement shall constitute the entire Agreement between the parties and no other stipulation, letter of intent, agreement or understanding, written or oral, expressed or implied of the parties hereto or of their agents, relating to the Agreement and use of the Leased Premises demised in Article 2 herein, shall limit or modify its terms. This Agreement shall, as of the commencement date hereof, cancel and supersede all prior agreements, written or oral, expressed or implied, between the parties for the rights granted herein. This Agreement shall not be subject to modification or change except by written instrument duly signed.

27. **SEVERABILITY**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

28. **NON-WAIVER OF BREACH**

The waiving of any of the covenants of this Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by DCN to any act by Lessee requiring DCN's consent shall not be deemed to waive consent to any subsequent similar act by Lessee.

29. **VENUE**

This Agreement is to be construed in accordance with the applicable laws, rules and regulations of the State of North Dakota and the County of Burleigh.

30. **TIME OF ESSENCE**

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

31. **HOLDOVER POSSESSION OF LEASED PREMISES BY LESSEE**

Any holding over at the expiration or termination of the term of this Agreement, with or without the consent of DCN, shall constitute a tenancy from month-to-month. The month-to-month tenancy shall be subject to all other terms and

conditions of this Agreement, with the exception of rent; which shall be determined by DCN in its sole discretion.

32. **SURRENDER OF POSSESSION**

Upon the expiration of this Agreement or its earlier termination as herein provided, Lessee shall remove all of its personal property from the Leased Premises and surrender entire possession of its rights at Premises to DCN, unless, at the discretion of DCN, this Agreement is renewed or replaced.

33. **APPROVAL OR DIRECTION BY CITY**

Wherever consent, approval or direction by DCN is required under this Agreement, such consent, approval or direction by DCN shall be effective if given by the General Manager of DCN in writing.

34. **NOTICES**

All payments, demands and notices required herein shall be deemed to be properly served if hand delivered, or if sent by certified or registered mail, postage prepaid, or courier (FedEx, UPS, Airborne, OHL, etc.) to the last address previously furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

DCN:

GENERAL MANAGER

4202 Coleman Street

Bismarck, ND 58503

Lessee:



**CITY OF MANDAN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and agreed to this \_\_\_\_ day of \_\_\_\_\_, 2019:

**DCN, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ADDENDUM 1

The Design Professional hereby certifies the gross square footage of the Addition contains \_\_\_\_\_ square feet.

Date: \_\_\_\_\_

Design Professional: \_\_\_\_\_

Signature