June 23, 2020

Board of City Commissioners
Bismarck, ND

Dear Commissioners:

The Board of City Commissioners is scheduled to meet in regular session on Tuesday, June 23, 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:

- July 14 & 28, 2020
- August 11 & 25, 2020
- September 8 & 22, 2020

MEETING OF THE BOARD OF CITY COMMISSION

1. Consider the approval of the minutes.

   Documents:

   MN060920.pdf

2. Canvass returns of the City of Bismarck candidates for the June 9, 2020 Primary Election.

   Documents:

   City of Bismarck Canvass.pdf

3. Adjourn

   Oath of Office for Newly Elected commissioners, Administered by the City Attorney.

MEETING OF THE BOARD OF CITY COMMISSION

1. Assignment of Commission Portfolios.
2. Appoint Vice-Chair of City Commission.
3. CONSENT AGENDA

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

      Documents:

      Erosion_Issues.pdf

B. Consider approval of expenditures.

C. Consider the approval of personnel actions.

Documents:

HR Personnel Report.pdf

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

1. Approve unlocking City facilities, discontinue temporary authority and approve continuation of COVID-19 leave pay.
2. Consider applications for gaming.

Bismarck Lodge #302 Loyal Order of Moose

- Bismarck Moose 302 - 312 N. 20th St.

CHI St. Alexius Medical Center

- Bismarck Event Center - 315 S. 5th St.
- CHI St. Alexius Health Bismarck - 900 E. Broadway Ave.
- Clem Kelley Athletic Complex - 517 W. Arbor Ave.
- Scheels - 800 Kirkwood Mall

Documents:

(C) ADMIN - COVID Reopening.pdf
(C) ADMIN - Gaming Site Renewal - CHI St Alexius Medical Center.pdf
(C) ADMIN - Gaming Site Renewal - Bismarck Moose Lodge.pdf

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

1. Lease Agreement with the State Historical Society of North Dakota for a storage building.
2. Sole Source Purchase of three Bowmonk Decelerometers.

Documents:

(C) AIR - State Historical Society Lease Agreement.pdf
(C) AIR - Purchase Bowmonk Decelerometers.pdf

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

1. Ratify the June 13, 2020 State of Emergency Declaration relating to COVID-19 by the President of the City Commission and extend its effect to July 13, 2020.

Documents:

(C) ATTY - Emergency Declaration June.pdf

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

1. Accept COVID-19 CARES Act funding for Public Health and increase budget authority for Public Health Government Grants by $1,379,542.

Documents:

(C) BBPH - CARES Act Funds.pdf

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

1. Approve the 2020 5307 CARES Transit Grant Application.
2. Introduction of and call for a public hearing on a petition from the Bismarck Cancer Center to vacate the dedicated alley over the North 20 feet of Tract 500 of Block 27 and 38, Northern Pacific Second Addition, and the deeded alley over the East 8 feet of the North 20 feet of Lot 8, Block 38, and the deeded alley over the South 19.3 feet of the East 8 feet of Lot 9 and the South 19.3 feet of the West 8 feet of Lot 4, Block 38, Northern Pacific Second Addition. Staff recommends approval.

Documents:

(C) CD - CARES Transit Grant.pdf
(C) CD - Bismarck Cancer Center.pdf

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

1. Approve consultant services contract with KLJ Engineering LLC.
2. Approve contract for pavement condition data collection with Gorrondona & Associates, Inc.
3. Sidewalk Easement - Approve dedication of and acceptance of a sidewalk easement on Lots 1 & 32, Block 2, Suttle's Addition.
4. Street Improvement District No. 535 - Request for resolution receiving bids and ordering preparation of the Engineer's statement for SI 535. Request for resolution awarding contract for SI 535.
5. Street Improvement District No. 536 - Request for resolution receiving bids and ordering preparation of the Engineer's statement for SI 536.
6. Street Improvement District No. 537 - Request for resolution receiving bids and ordering preparation of the Engineer's statement for SI 537. Request for resolution awarding contract for SI 537.
7. Street Improvement District No. 538 - Request for resolution receiving bids and ordering preparation of the Engineer's statement for SI 538. Request for resolution awarding contract for SI 538.
8. Street Improvement District No. 540 - Request for resolution, approving plans and specifications for SI 540. Request for resolution directing the advertisement of bids and receive bids.
9. Utility Easement - Request dedication of a utility easement on Lot 1, Block 1, Municipal 3rd Addition.

Documents:

(C) ENG - Consultant Services.pdf
(C) ENG - Pavement Data Collection.pdf
(C) ENG - Sidewalk Easement.pdf
(C) ENG - Street Improvement District 535.pdf
(C) ENG - Street Improvement District 536.pdf
(C) ENG - Street Improvement District 537.pdf
(C) ENG - Street Improvement District 538.pdf
(C) ENG - Street Improvement District 540.pdf
(C) ENG - Utility Easement.pdf

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

1. Application for Abatement for 2019, Disabled Veteran. at 619 W. Interstate Ave.
2. Approve upgrade of existing Mitel VOIP phone system and corresponding equipment.
3. Approve upgrade of existing Tom Baker room system and corresponding equipment.

Documents:

(C) FIN - Abatement.pdf
(C) FIN - Mitel Upgrade.pdf
(C) FIN - Tom Baker Upgrade.pdf

**K. Consider the request for approval from the Fire Department for the following:**

1. **Permission to apply for the Emergency Management Performance (EMPG) Supplemental grant.**

**Documents:**

(C) FIR - Emergency Management Supplemental Grant.pdf

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

1. Accept donations received during the COVID-19 Pandemic.
2. Approve sole source purchase for PortaCount machine and accessories from TSI, Inc.

Documents:

(C) PD - Donations.pdf
(C) PD - PortaCount.pdf

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

1. Award contract for the 2020 Furnishing Street Maintenance Materials.
2. Award bid for traffic signal video detection systems.

Documents:

(C) PW-SO - 2020 Street Maintenance Materials.pdf
(C) PW-SO - Traffic Signal Detection Systems.pdf

4. REGULAR AGENDA

5. Consider the request from the Human Resources Department to receive an overview of the 2015 Condrey Study and hear recommendations from the group, Condrey & Associates.

Documents:

(R) HR - Condrey Overview.pdf
Condrey Presentation.pdf

6. Consider the request from the Administration Department to consider a request from the Vision Fund Committee regarding a Bank of North Dakota PACE program interest rate buy down for Cloverdale Foods Company.

Documents:

(R) ADMIN - Vision Fund Committee.pdf

7. Consider the request from the Community Development Department for the following:

1. Public hearing on Ordinance 6417, a request for the partial annexation of Elk Ridge Second Addition less the right-of-way for Tyler Parkway.
2. Public hearing on Ordinance 6418, a request for a zoning change from the A-Agricultural and R5 - Residential zoning district to the R5 - Residential and R10 - Residential zoning districts for Elk Ridge Second Addition.
3. Public hearing on a Fringe Area Road Master Plan amendment to eliminate the collector designation for a north-south roadway.
4. Final plat of Elk Ridge Second Addition.

The Bismarck Planning and Zoning Commission recommends approval.

Documents:

(C) CD - Elk Ridge.pdf

8. Consider the request from the Community Development Department for the following:

1. Public hearing on Ordinance 6425, a request for a zoning change from the R5-Residential zoning district to the R10 - Residential zoning district for Huntington Cottages Second Addition.
2. Minor subdivision final plat of Huntington Cottages Second Addition.
3. Development Agreement.
4. Private Drive and Private Utility Agreement.

The Bismarck Planning and Zoning Commission recommends approval.

Documents:

(C) CD - Huntington Cottages.pdf

9. Public hearing on Ordinance 6426, a request for the annexation of Heritage Ridge Second Addition, less the 15th St. NW right-of-way. The Bismarck Planning and Zoning Commission recommends approval.

Documents:

(C) CD - Heritage Ridge.pdf

10. Consider the request from the Attorney for discussion and approval of the Temporary License to Use Premises Agreement for the August 1, 2020 Medieval Rush event.

Documents:

(R) ATTY - Medieval Rush.pdf

Other Business

Adjourn

# 6/9/2020 - Minutes

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

   No member of the public appeared for comment.

2. Consider the approval of the minutes.

   Commissioner Marquardt moved to approve the minutes as presented. Commissioner Oban seconded the motion.

   Upon a roll call vote, all voted aye. M/C.

3. CONSENT AGENDA

   Commissioner Marquardt moved to approve the consent agenda as presented. Commissioner Oban seconded it.

   Upon a roll call vote, all voted aye. M/C.

   A. Consider approval of expenditures.

      Vouchers: 1093277 - 1093457.

   B. Consider approval of personnel actions.

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

      1. Approve bids for roof repair work above leased tenant space at the Parkade.
      2. Authorize gaming site renewals for the following:

      Bismarck Cancer Center Foundation

      - Bismarck Cancer Center - 500 N. 8th St.
      - Bismarck Elks Lodge - 900 S. Washington St.
      - Bismarck Larks - Bareknuckle Baseball, LLC - 303 W. Front Ave.
      - Bismarck Moose Lodge - 302 - 312 N. 20th St.
      - Puklich Chevrolet - 3701 State St.

      Bismarck Hockey Boosters, Inc.

      - Lucky's Bar - 2176 E. Thayer Ave.

Bismarck-Mandan Elks Lodge BPOE 1199

- Bismarck-Mandan Elks Lodge - 900 S. Washington St.

Cystic Fibrosis Association of North Dakota

- Cheap Shots - 3938 Miriam Ave.

Horse Race of North Dakota

- Golf Etc. - 511 Airport Rd.
- Jack's Steakhouse - 1201 S. 12th St.
- Los Lunas - 108 N. Mandan St.
- Sickies Garage - 3108 N. 14th St.

Mandan Baseball Club, Inc.

- Lucky's 13 - 915 S. 3rd St.
- Laughing Sun Brewing - 1023 E. Front Ave.

MATPAC Wrestling Club, Inc.

- Blarney Stone - 408 E. Main Ave.
- Main Bar - 804 E. Main Ave.
- The CraftCade - 405 N. 4th St.
- Sidelines - 300 S. 5th St.
- Sports Page - 1120 Tacoma Ave.

ND Chapters of Delta Waterfowl

- Delta Waterfowl Foundation Building - 1412 Basin Ave.
- Bismarck Amvets Club - 2402 Railroad Ave.

Prairie Public Broadcasting

- Bird Dog Brewing, LLC - 931 S. 9th St.
- Dakota Skies Bingo - 825 S. 8th St.

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

1. Award bid to Weisz and Sons Inc., for the Northwest Detention Area.
2. Approve the $500 sponsorship for the Commemorative Air Force.

E. Consider the request from the Community Development Department for the following:

1. Introduction of and call for a public hearing on Ordinance 6417, a request for the partial annexation of Elk Ridge Second Addition less the right-of-way for Tyler Parkway.
2. Introduction of and call for a public hearing on Ordinance 6418, a request for a zoning change from the A-Agricultural and R5-Residential zoning district to the R5-Residential and R10-Residential zoning districts for Elk Ridge Second Addition.

3. Introduction of and call for a public hearing on a Fringe Area Road Master Plan amendment to eliminate the collector designation for a north-south roadway within Sections 18 and 19, T139N-R80W/Hay Creek Township in the City of Bismarck, Burleigh County, North Dakota.
4. Introduction of and call for a public hearing on Ordinance 6425, a request for a zoning change from the R5-Residential zoning district to the R10-Residential zoning district for Huntington Cottages Second Addition.
5. Introduction of and call for a public hearing on Ordinance 6426, a request for the annexation of Heritage Ridge Second Addition, less the 15th St. NW right-of-way. The Bismarck Planning and Zoning Commission recommends approval.

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

1. Approve contracts and bonds for previously awarded special assessed projects.
2. Approve the Memorandum of Understanding with U.S. Fish and Wildlife Service for projects receiving state and federal funding.
3. Release an existing access, sanitary sewer and water main easement in Southbay Fifth Addition.
4. Change Order 1 for Street Improvement District No. 532.
5. Street Improvement District No. 540 - Request for resolution declaring petitions for improvements has been received. Request for resolution creating district SI 540 and ordering preparation of the preliminary report. Request for resolution approving preliminary report and directing preparation of plans and specifications.

6.

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

1. Change Order 2 to the Agreement with Custome Aire, Inc. for the HVAC renovation project at the Library.

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

1. Approve the Stonecrest Development Agreement with Liechty Homes, Inc.

4. REGULAR AGENDA

5. Receive a Budget Committee update from Dmitriy Chernyak, Finance Director.

No motion was made for this item.

Please see the link for Dmitriy Chernyak, the Finance Director's full presentation:

https://www.bismarcknd.gov/AgendaCenter/ViewFile/Item/5205?fileID=12667

6. Consider the request from the Community Development Department, regarding Carols Addition, requested by Paces Lodging Corporation, Larry Benzinger and Vivian Lang.

1. Minor subdivision final plat of Carols Addition.
2. Development Agreement.
3. Private Drive and Private Utility Agreement.

Commissioner Marquardt moved to approve the requests as presented. Commissioner Zenker seconded the motion.

Upon a roll call vote, all voted aye. M/C.

7. Consider the request from the Engineering Department for Street Improvement District No. 535 - Request for resolution receiving bids and ordering preparation of the Engineer's Statement for SI 535.

   This item was pulled from the agenda, no action was taken.

8. Consider the request from the Engineering Department for Street Utility Project SV 53 - Receive bids and award contract for SV 53.

   Commissioner Zenker moved to approve the street utility project as presented. Commissioner Oban seconded the motion.

   Upon a roll call vote, all voted aye. M/C.

   Submitted Bids:

   Engineers estimate: $142,489.80

   Bid amounts:

   Edling Electric - $133,850.00

   Fetzer Electric - $128,872.90

   Denny's Electric - $103,913.40

9. Consider the request from the Fire Department for Emergency Management to update the City's outdoor warning siren activation system.

   The City's Emergency Manager, Gary Stockert, reported to the Commission that the City's outdoor warning siren activation system has experience system wide failures in the recent past minutes. He recommended that the Commission consider replacing the radio activation system and implement a two-way system.

   President Bakken asked Commissioner Marquardt, a representative of the Budget Committee, if the funds are available for replacing the outdoor warning system. Commissioner Marquardt stated the project first would need to be bid and then the Budget Committee would determine the appropriate funding source.

   Commissioner Marquardt made a motion to direct staff to proceed with a request for a proposal, to receive bids for a fully functioning two-way system and another for a system that they would have to use if a two-way system is not possible. In addition, he requested a maintenance agreement to be developed for the vendor. Commissioner Marquardt also asked that the system, that is currently in place, be tested every Friday at noon.

   Commissioner Oban seconded the motion and requested to see the comprehensive step-

by-step action plan to see how the public will be notified in the event of an emergency. Moving forward he also requested Emergency Management provide the Commission with updates on the outdoor warning system.

Upon a roll call vote, all voted aye. M/C.

Emergency Manager Stockert stated they have several options in place, outside of the outdoor warning system, for alerting the public of an emergency, including the NOAA all hazards radio system and the wireless emergency alert system. Mr. Stockert noted these avenues will be utilized during the 2020 storm season.

It is estimated the new outdoor warning system will be in place when the new CenCom/EOC facility is finished around August, 2020.

10. Consider the request from the Administration Department for discussion regarding the annual alcohol license renewal process.

    At this time, no motion was made. The Commission agreed to revisit this item in August, 2020.

11. Consider the request from the Administration Department for discussion regarding firework displays within City limits.

    The City Attorney, Jannelle Combs, provided historical information about the fireworks ban in Bismarck, and fireworks ordinances in place in the surrounding jurisdictions.

    Commissioner Guy stated she did not feel the decision to overturn the ordinance which prohibits fireworks within the City limits should be made by the City Commission. She suggested the item be placed on the 2020 or 2022 election ballot for the public to vote on.

    Commissioner Oban stated he did not see a reason for this item to be on the ballot, due to the lack of need for fireworks in the City.

    Commissioner Marquardt called for more discussion on the issue.

    Commissioner Zenker asked staff to gather more information from Fire and Police departments, regarding fireworks, and report back to the Board of Commissioners after July 4, 2020.

Other Business

President Bakken announced the City is developing a plan for reopening the City offices to the general public on Tuesday June 16, 2020.

Adjourn

The meeting was adjourned at 7:08 p.m.

STATE OF NORTH DAKOTA

# County of Burleigh

221 NORTH 5TH STREET • P.O. BOX 5518 • BISMARCK, NORTH DAKOTA 58506-5518

June 15, 2020

Mr. Keith J. Hunke
City Administrator
City of Bismarck
221 N 5th St
Bismarck ND 58501

Dear Mr. Hunke:

Please accept this as the official vote for the City of Bismarck for the June 9, 2020 Primary Election as Officially Certified by the Burleigh County Canvass Board:

**City Commission**

| | |
|---|---|
| Brandi Jude | 7,160 |
| Michael Connelly | 4,627 |
| Steve Marquardt | 8,797 |
| Mark Splonskowski | 8,317 |

**Municipal Judge**

| | |
|---|---|
| William Severin | 13,595 |

**Park Board**

| | |
|---|---|
| Wayne Munson | 12,230 |
| Andrew Jordan | 12,194 |

**City Measure No. 1 – Article 3 Amendment**

| | |
|---|---|
| Yes | 6,293 |
| No | 10,498 |

**City Measure No. 2 – Publication of Minutes**

| | |
|---|---|
| Yes | 12,533 |
| No | 4,109 |

Witness my hand and seal this 15th day of June, 2020.

SEAL

Allan Vietmeier
Burleigh County Auditor/Treasurer

NORTH
akota Be Legendary.™

THINGS TO DO PLACES TO STAY

What kind of bike trail do you prefer? Share this and let us (and your friends!

ND LifeSpa
1332
PLANK
NOW
WINE
LATER
1109
SnapChad©2018

1:35:21
SnapChad©2018

apChad©2017

AT&T 3:20 PM

medievalrush.com

registration can only be transferred for the same location, wave time and price amount you initially signed up for. You can't transfer the registration to a different race time or location. Fill out this form and E-mail it to us at tanner@medievalrush.com downloaded

**What about the Weather?**

What about it? What if it rains dragons and lizards? The Run will be muddier and so will the Medieval Mud Dance Party! Hey! Go Medieval!!!

**and other events?**

Take a look at each locations specific registration page.

**The Wave Time I want to race in is sold out. Can I still get in?**

RITCHEY
SCHWALBE

# PERSONNEL ACTIONS FOR THE MEETING ON Jun 23, 2020

## Full-Time and Part-Time Appointments

| | | |
|---|---|---|
| Splonskowski, Mark<br>City Commissioner | Administration | Elected official<br>6/23/2020 |
| Eckert, Sandra<br>Client Services Representative | Public Health | Part time appointment<br>@ $17.25/hr. 6/22/2020 |

## Separations

| | | |
|---|---|---|
| Oban, Shawn<br>City Commissioner | Administration | End of elected term in office<br>6/23/2020 |
| Fleck, Lorel<br>Box Office Cashier I | Event Center | Resigned. 6/1/2020 |

## Others

| | | |
|---|---|---|
| Neary, Dane<br>Airport Operations Agent | Airport | Leave w/out pay<br>6/12/2020 pay period |
| Neary, Dane<br>Airport Operations Agent | Airport | Leave w/out pay<br>6/26/2020 pay period |
| Magelky, Cierra<br>Communications Specialist | CenCom | Suspended w/out pay – 40 hrs.<br>6/7 – 6/14/2020 |
| Flanders, Ian<br>Fire Captain | Fire | End light duty, resume normal shift<br>@ $29.10/hr. 5/31/2020 |
| Friesz, Daniel<br>Firefighter | Fire | End light duty, resume normal shift<br>@ $26.70/hr. 6/7/2020 |
| Cavett, Cory<br>Police Officer | Police | Leave w/out pay<br>6/12/2020 pay period |

# ADMINISTRATION

**DATE:** June 16, 2020

**FROM:** Keith J. Hunke, City Administrator

**ITEM:** COVID 19 – Unlocking City Facilities, Temporary Authority, COVID-19 Leave, Suspension of residential charges for items brought to the landfill

## REQUEST

Receive update on unlocking City facilities, discontinue temporary authority, continuation of COVID-19 Leave pay and resuming residential charges for items brought to the landfill.

Please place this item on the June 23, 2020 City Commission meeting.

## BACKGROUND INFORMATION

While never closed for business, the Commission authorized measures to protect staff from rapid spread of COVID-19. City buildings were locked with access gained only after screening. The main entrance doors of the City-County Building facing west on 5th Street, were opened for unscreened walk-in traffic on June 16, 2020, along with the Airport Administration office, Bismarck-Burleigh Public Health, Bismarck Event Center, Fire Headquarters Station, Police and Public Works buildings. The Bismarck Veterans Memorial Public Library continues to phase in their reopening plans as approved by the Library Board.

Temporary authority was granted to staff in mid-March allowing non-essential to COVID-19 operation employees to work from home, secondment of non-essential to COVID-19 operation employees to essential divisions and the modification of workflows and levels of service based on staffing needs as well as prioritizing COVID-19 needs. This temporary authority can be discontinued as all employees will be reporting to their originally assigned department work locations on June 24th.

The Commission approved the use of COVID-19 Leave for employees who are ill and presenting symptoms of COVID-19 and are at home waiting for test results and also for employees who have been identified through the ND Department of Health as a household or close contact and are quarantining. (See COVID-19 Employee Guidance For Supervisors attachment)
It is requested that the COVID-19 Leave continue. The Commission also approved leave for staff dealing with school and daycare closures. School is out of session and there are daycares available. This leave can be discontinued.

The Commission approved the suspension of residential charges for items brought to the landfill to minimize potential exposure of employees and customers. Work flow adjustments have been made and sneeze guards are in place at the landfill scale house. Residential fee charges for items brought to the landfill can resume.

The City of Bismarck continues to adhere to the ND Smart Restart guidelines to protect employees and customers alike and these methods may be adjusted as needed to appropriately address and respond to the evolving COVID-19 pandemic.

## RECOMMENDED CITY COMMISSION ACTION

Receive update on unlocking City facilities, approve pause of temporary authority, approve continuation of COVID-19 Leave pay for staff and care for their dependents if under isolation or quarantine orders due to COVID-19 and resume residential fee charges for items brought to the landfill.

## STAFF CONTACT INFORMATION

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

May 1, 2020

# COVID-19 EMPLOYEE GUIDANCE FOR SUPERVISORS

City of Bismarck supervisor guidance for when employees should be sent home due to illness for COVID-19 (letter from Dept of Health trumps all parameters):

1. If sick, stay home. This applies at all times no matter when employee is sick.
2. Employee has has 1 of the following symptoms:
   - ❑ Cough or
   - ❑ Shortness of breath/difficulty breathing

   **OR**

   Has 2 of the following symptoms:

   | | | |
   |---|---|---|
   | ❑ Fever | ❑ Headache | ❑ Body aches |
   | ❑ Chills | ❑ Sore throat | ❑ Runny nose |
   | ❑ Muscle pain | ❑ New loss of taste and/or smell | ❑ Fatigue |

   Employee should immediately contact their primary healthcare provider for COVID-19 testing. If they do not have a healthcare provider, employee contacts a local urgent care or walk-in clinic prior to arrival. At present, employee should qualify for a test.
3. Symptomatic Employee should isolate while awaiting test results (pay code of COVID-19 LEAVE):
   a. **Test Results are POSITIVE for COVID-19:**
      Employee remains home in isolation until the risk of secondary transmission is low. You must remain in home isolation until at least 7 days have passed since symptoms first appeared; **AND** at least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications **and** improvement of respiratory symptoms (e.g., cough, shortness of breath). (paycode of COVID-19 LEAVE)

   b. **Test results are NEGATIVE for COVID-19:**
      Employee remains home in isolation until fever free without the use of fever-reducing medications for at least 24 hours and have improved illness signs or symptoms. (pay code of regular sick leave)
4. **Household Contact:** A household contact is anyone residing in the same household as an identified positive COVID-19 case by the ND Department of Health. The household contact may be released from home quarantine when at least 14 days have passed since the date of the positive case's release from home isolation (see positive test result above). (paycode of COVID-19 LEAVE)
5. **Close Contact (Non-household):** A close contact is anyone identified through the ND Department of Health contact investigation process as a close contact of someone who has tested positive for COVID-19. Close contacts may be released from home quarantine when at least 14 days have passed since the date of last contact with the positive case. (paycode of COVID-19 LEAVE)

**Remember!**

Continue social distancing in all work areas (lunch rooms, briefing rooms, meeting rooms, work areas, job sites, etc.). Keep sanitizing frequently touched surfaces during the work day. Review alternate work variations or PPE if social distancing is not possible for operations.

# City Administration

**DATE:** June 16, 2020

**FROM:** Jason Tomanek, Assistant City Administrator

**ITEM:** Gaming Site Authorization

**REQUEST:**

Consider application for gaming:

- CHI St. Alexius Medical Center
  - Bismarck Event Center – 315 South 5th Street
  - CHI St. Alexius Health Bismarck – 900 East Broadway Avenue
  - Clem Kelley Athletic Complex – 517 West Arbor Avenue
  - Scheels – 800 Kirkwood Mall

Please place this item on the June 23, 2020 City Commission meeting agenda.

**BACKGROUND INFORMATION:**

Gaming site authorizations expire on June 30th of each year. The Bismarck Administration Department administers the annual gaming site authorizations and renewals.

**RECOMMENDED CITY COMMISSION ACTION:**

Consider approving the gaming applications.

**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) St. Alexius Medical Center | | Business Telephone Number: 701.530.7000 | |
| Business Address: (Street) 900 E Broadway Ave | City: Bismarck | State: ND | Zip Code: 58506 |
| Mailing Address: PO Box 5510 | City: Bismarck | State: ND | Zip Code: 58501 |
| Address where gaming accounting records are kept: 1310 E Main Avenue | City: Bismarck | State: ND | Zip Code: 58501 |
| E-mail Address: kharmon@primecare.org | Contact Person: Kilee Harmon | Official Position of Contact Person: Development Director | |
| 2. Is organization recognized as tax exempt by the Internal Revenue Service? [x] YES [ ] NO | | 3. Provide organization's Federal Employer Identification Number (EIN): 45-0226711 | |
| 4. Name and Title of Organization's Top Executive Official: (i.e., Cmdr., Pres., etc.) Kurt Schley, President/CEO | | Daytime Telephone Number: 701-530-7610 | |
| 5. Name of Gaming Manager: Kilee Harmon | | Daytime Telephone Number: 701-530-7394 | |
| 6. Signature of Gaming Manager: [signature] | | Date: 6-15-2020 | |

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: Timonthy Bopp, MD | Telephone Number: 701-530-8800 | Name: Todd Preszler, MD | Telephone Number: 701-530-5143 |
| Name: Kevin Dahmen, MD | Telephone Number: 701-530-7301 | Name: Kurt Schley | Telephone Number: 701-530-7610 |
| Name: John Giese | Telephone Number: 701-319-5137 | Name: Sr. Thomas Welder | Telephone Number: 701-530-7610 |
| Name: Shiraz Hyder, MD | Telephone Number: 701-530-7000 | Name: Mike Weisbeck | Telephone Number: 701-471-5725 |
| Name: Sr. Nancy Miller | Telephone Number: 701-355-8901 | Name: Cliff Robertson, MD | Telephone Number: 402-343-4340 |
| Name: John Mongeon | Telephone Number: 701-471-1581 | Name: | Telephone Number: |

8. Does the Organization Own or Rent the Premises at Which the Games of Chance will be Conducted?
[x] Own [X] 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: [signature] | Date: 6.15.2020 |

Office of Attorney General
SFN 53838 (Rev. 02-2017)

Cities or Counties (if site is outside limits of an incorporated city) in which games of chance will be conducted:

| City | County (provide only if renewing a county license) |
|---|---|
| Bismarck, Nd | |
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(If additional space is needed, attach separate sheet.)

Total number of licenses organization is applying for (add each city or county listed above): 1 x $150.00 150 Total fee.

**Enclose total license fee with this application.**
**(Check payable to: ND Attorney General)**

**RETURN TO:** Office of Attorney General
Licensing Section
600 E Boulevard Ave Dept. 125
Bismarck, ND 58505-0040
Telephone: 701-328-2329 **OR**
1-800-326-9240

License No. G- 0832

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

| | | |
|---|---|---|
| Organization Name: St. Alexius Medical Center | | |
| Mailing Address: PO Box 5510 | | |
| City: Bismarck | State: ND | Zip: 58506 |
| Business Phone: 701-530-7000 | Cell Phone: | |

* PLEASE PRINT OR TYPE *

**NAME OF GAMING MANAGER:** Kilee Harmon **DATE OF HIRE:** 2/28/2012

*NOTE: Volunteer Gaming Managers are required to have a record check completed.*

**Record Check Completed:** [X] YES [ ] NO

| | EMPLOYEE NAME<br>First name, Middle name, Last Name | JOB TITLE | DATE OF HIRE | DATE OF BIRTH | Check if Volunteer |
|---|---|---|---|---|---|
| 1. | Erica Beth Solseth (Erica Beth Davis) | Foundation Project Specialist | 9/8/2008 | 10/8/1975 | [ ] |
| 2. | | | | | [ ] |
| 3. | | | | | [ ] |
| 4. | | | | | [ ] |
| 5. | | | | | [ ] |
| 6. | | | | | [ ] |
| 7. | | | | | [ ] |
| 8. | | | | | [ ] |
| 9. | | | | | [ ] |
| 10. | | | | | [ ] |
| 11. | | | | | [ ] |
| 12. | | | | | [ ] |
| 13. | | | | | [ ] |
| 14. | | | | | [ ] |
| 15. | | | | | [ ] |
| 16. | | | | | [ ] |
| 17. | | | | | [ ] |
| 18. | | | | | [ ] |
| 19. | | | | | [ ] |
| 20. | | | | | [ ] |
| 21. | | | | | [ ] |
| 22. | | | | | [ ] |
| 23. | | | | | [ ] |
| 24. | | | | | [ ] |

**RETURN THIS FORM WITH THE STATE GAMING LICENSE REAPPLICATION DOCUMENTS.**

| | EMPLOYEE NAME<br>First name, Middle name, Last Name | JOB TITLE | DATE OF HIRE | DATE OF BIRTH | Check if Volunteer |
|---|---|---|---|---|---|
| 25. | | | | | ☐ |
| 26. | | | | | ☐ |
| 27. | | | | | ☐ |
| 28. | | | | | ☐ |
| 29. | | | | | ☐ |
| 30. | | | | | ☐ |
| 31. | | | | | ☐ |
| 32. | | | | | ☐ |
| 33. | | | | | ☐ |
| 34. | | | | | ☐ |
| 35. | | | | | ☐ |
| 36. | | | | | ☐ |
| 37. | | | | | ☐ |
| 38. | | | | | ☐ |
| 39. | | | | | ☐ |
| 40. | | | | | ☐ |
| 41. | | | | | ☐ |
| 42. | | | | | ☐ |
| 43. | | | | | ☐ |
| 44. | | | | | ☐ |
| 45. | | | | | ☐ |
| 46. | | | | | ☐ |
| 47. | | | | | ☐ |
| 48. | | | | | ☐ |
| 49. | | | | | ☐ |
| 50. | | | | | ☐ |
| 51. | | | | | ☐ |
| 52. | | | | | ☐ |
| 53. | | | | | ☐ |
| 54. | | | | | ☐ |
| 55. | | | | | ☐ |
| 56. | | | | | ☐ |

# 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: St. Alexius Medical Center (d/b/a CHI St. Alexius Health Bismarck)

**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: Bismarck Event Center | | | |
| Street: 315 S 5th St. | City: Bismarck | ZIP Code: 58504 | County: Burleigh |
| Beginning Date(s) Authorized: 7/1/20 | Ending Date(s) Authorized: 6/30/21 | | Number of twenty-one tables if zero, enter "0": 0 |
| Specific location where games of chance will be conducted and played at the site **(required)**: Hall A | | | |
| If conducting **Raffle** or **Poker** activity provide date(s) or month(s) of event(s) if known: April 17, 2021 | | | |

**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)

- [ ] Bingo
- [ ] **ELECTRONIC** Quick Shot Bingo
- [x] Raffles
- [ ] **ELECTRONIC** 50/50 Raffle
- [ ] Pull Tab Jar
- [ ] Pull Tab Dispensing Device
- [ ] **ELECTRONIC** Pull Tab Device
- [ ] Club Special
- [ ] Tip Board
- [ ] Seal Board
- [ ] Punchboard
- [ ] Prize Board
- [ ] Prize Board Dispensing Device
- [ ] Sports Pools
- [ ] Twenty-One
- [ ] Poker
- [ ] Calcuttas
- [ ] Paddlewheels with Tickets
- [ ] Paddlewheel Table

**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. 08-2019)

License Number (Office Use Only)

| | | | | |
|---|---|---|---|---|
| Site Owner (Lessor)<br>Bismarck Event Center | | Site Name<br>Hall A | | Site Phone Number<br>(701) 355-1370 |
| Site Address<br>315 S 5th St | City<br>Bismarck | State<br>ND | Zip Code<br>58504 | County<br>Burleigh |
| Organization (Lessee)<br>St. Alexius Medical Center | Rental Period<br>4/15/2021 to 4/17/2021 | | | Monthly Rent Amount |

| | | |
|---|---|---|
| 1. Is Bingo going to be conducted at this site?<br>1a. If "Yes" to number 1 above, is Bingo the **primary** game conducted?<br>If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts. | [X] No [ ] Yes<br>[ ] No [ ] Yes | $ |
| 2. Is Twenty-One conducted at this site?<br>Number of Tables with wagers **up to** $5 _____ X Rent per Table $ _____ | [X] No [ ] Yes | $ |
| Number of Tables with wagers **over** $5 _____ X Rent per Table $ _____ | | $ |
| 3. Is Paddlewheels conducted at this site?<br>Number of Tables _____ X Rent per Table $ _____ | [X] No [ ] Yes | $ |
| 4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site?<br>Please check: [ ] Jar Bar [ ] Standard Dispensing Device | [X] No [ ] Yes | $ |
| [ ] Electronic Dispensing Device Number of Electronic Devices _____ | | $ |
| Total Monthly Rent | | $ |

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

**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.

The LESSOR agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name.

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<br>Director, Bismarck Event Center | Date<br>6-12-20 |
| Signature of Lessee | Title<br>President | Date<br>6.15.2020 |

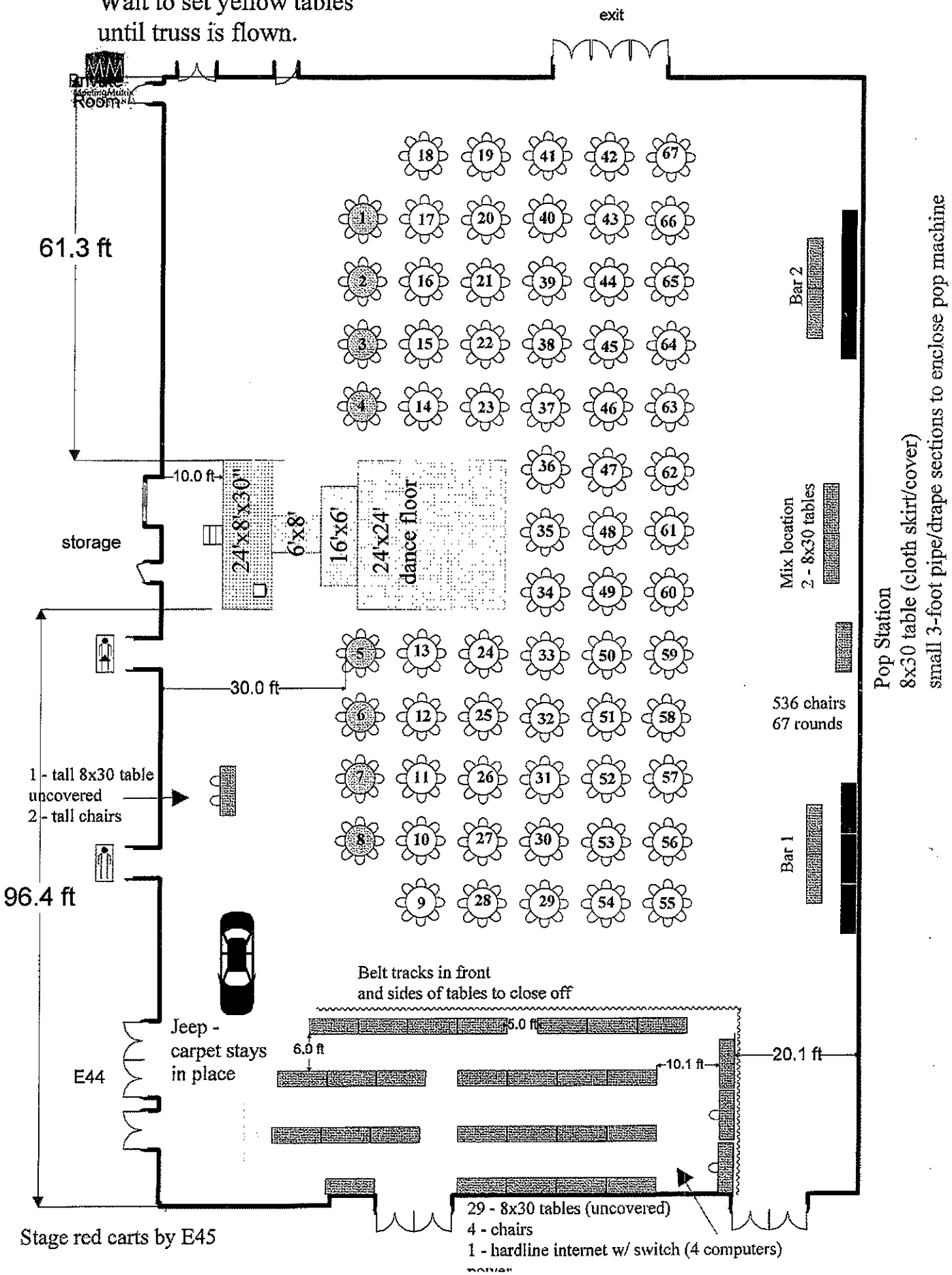
(over)

# Night for the Stars 2020

## Hall A

Wait to set yellow tables until truss is flown.

Bars:
2 - 8x30 registration height tables (black stretchy cover)
3 - 8x30 regular tables (blue cloth skirt/cover)
Rack of belt tracks at each



# 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: St. Alexius Medical Center (d/b/a CHI St. Alexius Health Bismarck)

**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: CHI St. Alexius Health Bismarck | | | |
| Street: 900 E Broadway Avenue | City: Bismarck | ZIP Code: 58506 | County: Burleigh |
| Beginning Date(s) Authorized: 7/1/20 | Ending Date(s) Authorized: 6/30/21 | | Number of twenty-one tables if zero, enter "0": 0 |
| Specific location where games of chance will be conducted and played at the site (**required**): Boniface Auditorium | | | |
| If conducting **Raffle** or **Poker** activity provide date(s) or month(s) of event(s) if known: July 1, 2020 thru June 30, 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)

- [x] Bingo
- [ ] **ELECTRONIC** Quick Shot Bingo
- [x] Raffles
- [ ] **ELECTRONIC** 50/50 Raffle
- [ ] Pull Tab Jar
- [ ] Pull Tab Dispensing Device
- [ ] **ELECTRONIC** Pull Tab Device
- [ ] Club Special
- [ ] Tip Board
- [ ] Seal Board
- [ ] Punchboard
- [ ] Prize Board
- [ ] Prize Board Dispensing Device
- [ ] Sports Pools
- [ ] Twenty-One
- [ ] Poker
- [ ] Calcuttas
- [ ] Paddlewheels with Tickets
- [ ] Paddlewheel Table

**APPROVALS**

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

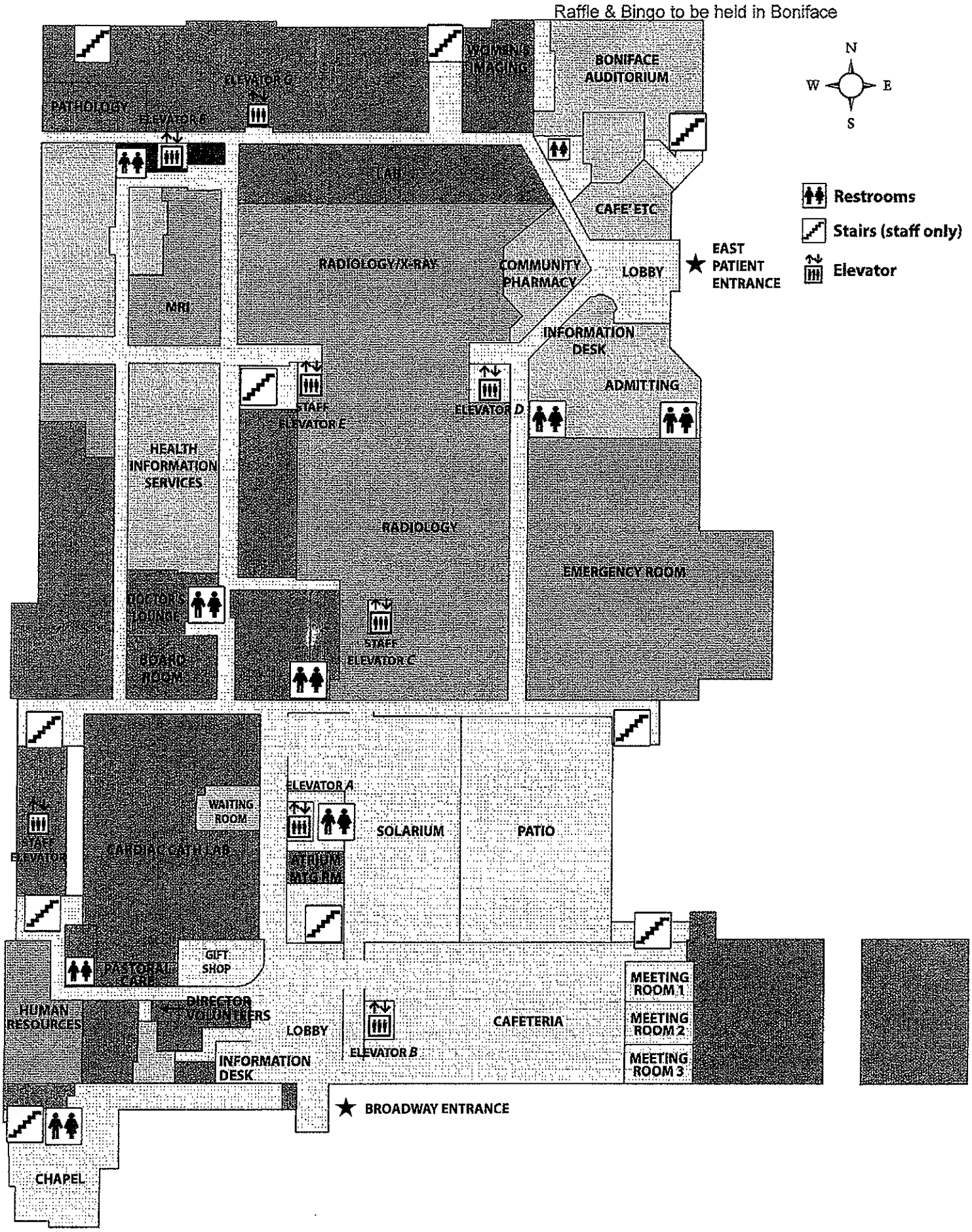
## INSTRUCTIONS:

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

# CHI St. Alexius Health First Floor



# 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: St. Alexius Medical Center (d/b/a CHI St. Alexius Health Bismarck)

**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: Clem Kelley Softball Complex | | | |
| Street: 517 W Arbor Avenue | City: Bismarck | ZIP Code: 58504 | County: Burleigh |
| Beginning Date(s) Authorized: 7/1/20 | Ending Date(s) Authorized: 6/30/21 | | Number of twenty-one tables if zero, enter "0": 0 |
| Specific location where games of chance will be conducted and played at the site **(required)**: Field 8 | | | |
| If conducting **Raffle** or **Poker** activity provide date(s) or month(s) of event(s) if known: September 26, 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)

- [ ] Bingo
- [ ] **ELECTRONIC** Quick Shot Bingo
- [x] Raffles
- [ ] **ELECTRONIC** 50/50 Raffle
- [ ] Pull Tab Jar
- [ ] Pull Tab Dispensing Device
- [ ] **ELECTRONIC** Pull Tab Device
- [ ] Club Special
- [ ] Tip Board
- [ ] Seal Board
- [ ] Punchboard
- [ ] Prize Board
- [ ] Prize Board Dispensing Device
- [ ] Sports Pools
- [ ] Twenty-One
- [ ] Poker
- [ ] Calcuttas
- [ ] Paddlewheels with Tickets
- [ ] Paddlewheel Table

**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. 08-2019)

License Number (Office Use Only)

| Site Owner (Lessor) | | Site Name | | Site Phone Number |
|---|---|---|---|---|
| Clem Kelley Softbal Complex | | Field 8 | | (701) 222-6455 |
| **Site Address** | **City** | **State** | **Zip Code** | **County** |
| 517 W Arbor Avenue | Bismarck | ND | 58504 | Burleigh |
| **Organization (Lessee)** | **Rental Period** | | | **Monthly Rent Amount** |
| St. Alexius Medical Center | 9/26/2020 | to 9/26/2020 | | |

| | | |
|---|---|---|
| 1. Is Bingo going to be conducted at this site? | ☒ No ☐ Yes | |
| 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. | ☐ No ☐ Yes | $ |
| 2 Is Twenty-One conducted at this site? Number of Tables with wagers **up to** $5 _____ X Rent per Table $ _____ | ☒ No ☐ Yes | $ |
| 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 $ _____ | ☒ No ☐ Yes | $ |
| 4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site? Please check: ☐ Jar Bar ☐ Standard Dispensing Device | ☒ No ☐ Yes | $ |
| ☐ Electronic Dispensing Device Number of Electronic Devices _____ | | $ |
| 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.

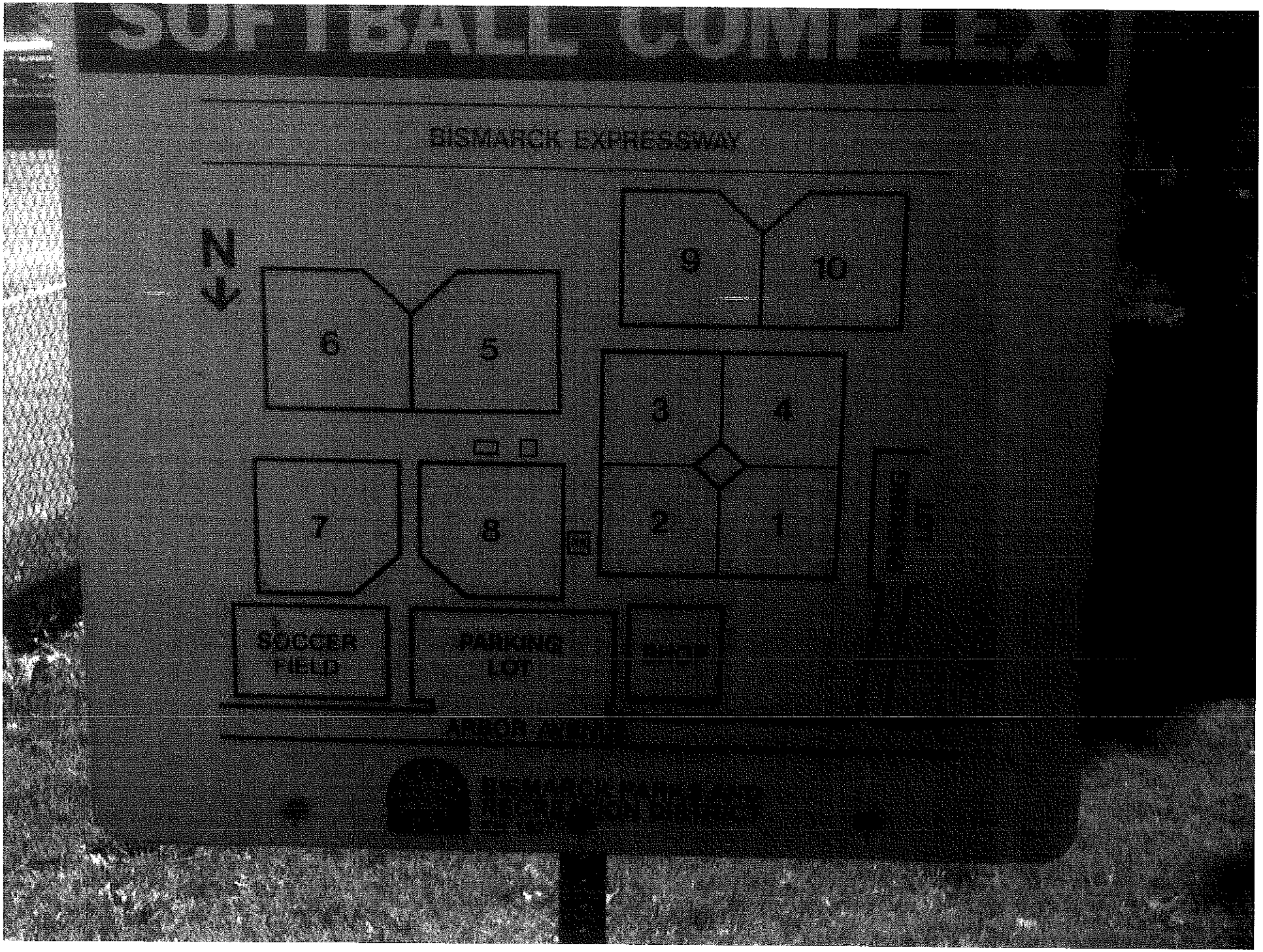
The LESSOR agrees not to loan money to, provide gaming equipment to, or count drop box cash for the lessee.

The LESSOR agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name.

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 | Date |
|---|---|---|
| | Facilities and Programs Director | 6/10/2020 |
| **Signature of Lessee** | **Title** | **Date** |
| | President | 6.15.2020 |

(over)


BISMARCK EXPRESSWAY
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3
4
7
8
2
1
SOCCER FIELD
PARKING LOT

**Harmon, Kilee L.**

| | |
|---|---|
| **From:** | billpay@paymentus.com |
| **Sent:** | Monday, June 15, 2020 1:54 PM |
| **To:** | Harmon, Kilee L. |
| **Subject:** | Payment Confirmation |

## USE CAUTION - EXTERNAL EMAIL

**Dear KYLEE HARMON,**
We are pleased to confirm your payment with the City of Bismarck. Below is the summary of your payment transaction. Your payment has been received and will be posted to your account next business day. Thank you for your continued relationship with the City of Bismarck.

| | |
|---|---|
| Confirmation Number: | **440616953** |
| Payment Date: | **Jun 15, 2020 1:53:28 PM** |
| Payment Amount: | **$400.00** |
| Total Amount Charged: | **$400.00** |

**Contact Information**

| | |
|---|---|
| First Name: | **KYLEE** |
| Last Name: | **HARMON** |
| ZIP code: | **58501** |
| Daytime Phone Number: | **(701) 530-7999** |
| Email Address: | **kharmon@primecare.org** |

**Account Information**

| | |
|---|---|
| Payment Type: | **Permit** |
| Receipt Number: | **R12345** |
| Payment Method: | **Credit Card** |

**Payment Method Information**

| | |
|---|---|
| Card Type: | **MasterCard** |
| Card Number: | **************5066** |
| Card Holder Name: | **KILEE HARMON** |

# 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: St. Alexius Medical Center (d/b/a CHI St. Alexius Health Bismarck)

**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: Scheels | | | |
| Street: 800 Kirkwood Mall | City: Bismarck | ZIP Code: 58504 | County: Burleigh |
| Beginning Date(s) Authorized: 7/1/20 | Ending Date(s) Authorized: 6/30/21 | | Number of twenty-one tables if zero, enter "0": 0 |
| Specific location where games of chance will be conducted and played at the site (required): In the store | | | |
| If conducting **Raffle** or **Poker** activity provide date(s) or month(s) of event(s) if known: November 17 - 18, 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)

- [ ] Bingo
- [ ] **ELECTRONIC** Quick Shot Bingo
- [x] Raffles
- [ ] **ELECTRONIC** 50/50 Raffle
- [ ] Pull Tab Jar
- [ ] Pull Tab Dispensing Device
- [ ] **ELECTRONIC** Pull Tab Device
- [ ] Club Special
- [ ] Tip Board
- [ ] Seal Board
- [ ] Punchboard
- [ ] Prize Board
- [ ] Prize Board Dispensing Device
- [ ] Sports Pools
- [ ] Twenty-One
- [ ] Poker
- [ ] Calcuttas
- [ ] Paddlewheels with Tickets
- [ ] Paddlewheel Table

**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. 08-2019)

License Number (Office Use Only)

| Site Owner (Lessor) | | Site Name | | Site Phone Number |
|---|---|---|---|---|
| Scheels | | Store | | (701) 255-7255 |
| **Site Address** | **City** | **State** | **Zip Code** | **County** |
| 800 Kirkwood Mall | Bismarck | ND | 58504 | Burleigh |
| **Organization (Lessee)** | **Rental Period** | | | **Monthly Rent Amount** |
| St. Alexius Medical Center | 11/17/2020 | to 11/18/2020 | | |

| | | |
|---|---|---|
| 1. Is Bingo going to be conducted at this site? | [X] No [ ] Yes | |
| 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. | [ ] No [ ] Yes | $ |
| 2. Is Twenty-One conducted at this site? Number of Tables with wagers up to $5 _____ X Rent per Table $ _____ | [X] No [ ] Yes | $ |
| 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 $ _____ | [X] No [ ] Yes | $ |
| 4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site? Please check: [ ] Jar Bar [ ] Standard Dispensing Device | [X] No [ ] Yes | $ |
| [ ] Electronic Dispensing Device Number of Electronic Devices _____ | | $ |
| Total Monthly Rent | | $ |

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

**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.

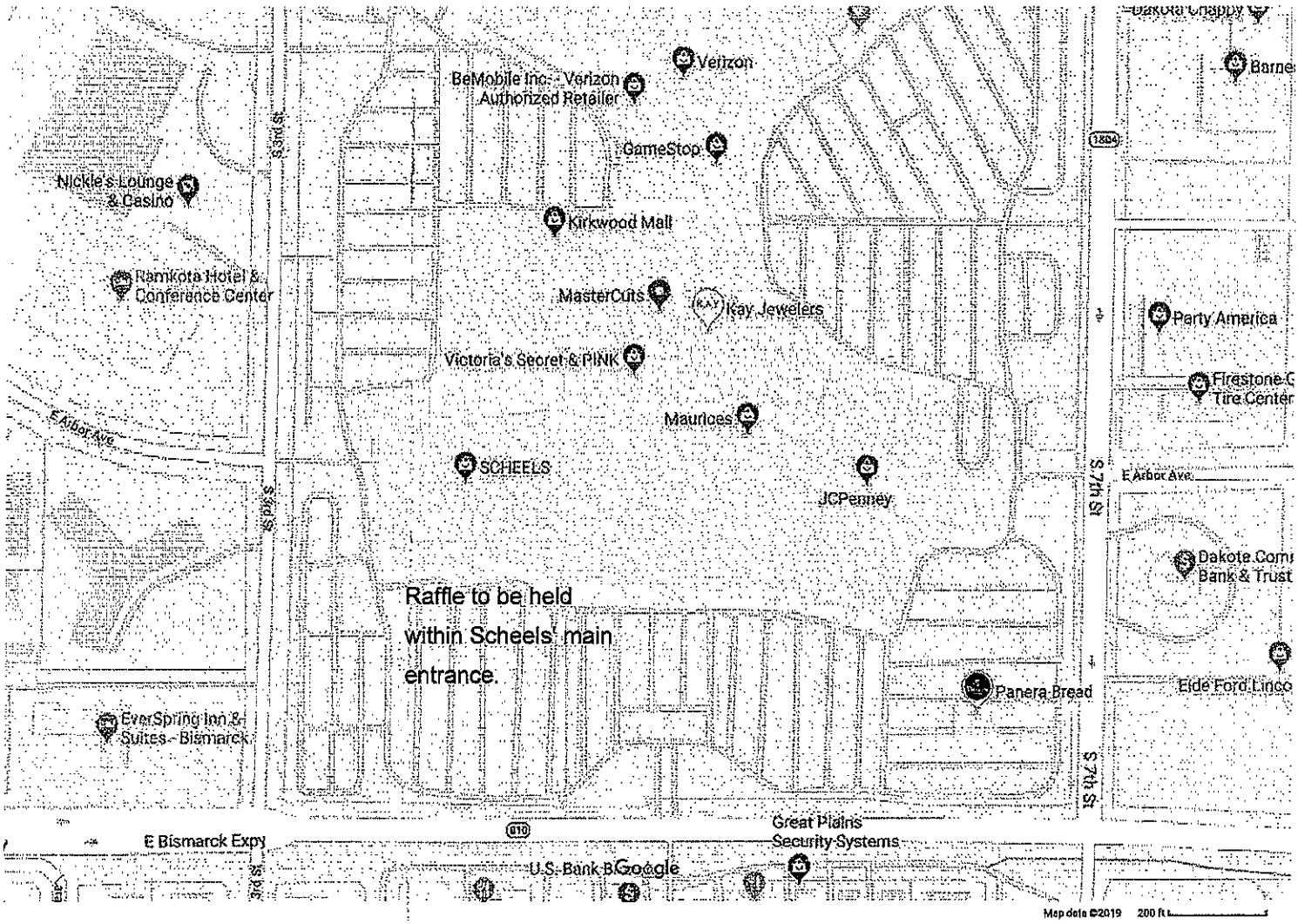
The LESSOR agrees not to loan money to, provide gaming equipment to, or count drop box cash for the lessee.

The LESSOR agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name.

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 | Date |
|---|---|---|
| [signature] | Store Leader / V.P. | 6/11/2020 |
| **Signature of Lessee** | **Title** | **Date** |
| [signature] | President | 6.15.2020 |

(over)


Verizon
BeMobile Inc. - Verizon Authorized Retailer
GameStop
Nickle's Lounge & Casino
Kirkwood Mall
Ramkota Hotel & Conference Center
MasterCuts
Kay Jewelers
Party America
Victoria's Secret & PINK
Firestone C Tire Center
Maurices
E Arbor Ave
SCHEELS
JCPenney
S 7th St
Dakota Com Bank & Trust
Raffle to be held within Scheels' main entrance.
Panera Bread
Eide Ford Linco
EverSpring Inn & Suites - Bismarck
E Bismarck Expy
Great Plains Security Systems
U.S. Bank
Google
Map data ©2019 200 ft

# City Administration

**DATE:** June 16, 2020

**FROM:** Jason Tomanek, Assistant City Administrator

**ITEM:** Gaming Site Authorization

**REQUEST:**

Consider application for gaming:

- Bismarck Lodge #302 Loyal Order of Moose
    - Bismarck Moose 302 – 312 North 20th Street

Please place this item on the June 23, 2020 City Commission meeting agenda.

**BACKGROUND INFORMATION:**

Gaming site authorizations expire on June 30th of each year. The Bismarck Administration Department administers the annual gaming site authorizations and renewals.

**RECOMMENDED CITY COMMISSION ACTION:**

Consider approving the gaming applications.

**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) Loyal Order of Moose Lodge 1302 | | Business Telephone Number: 701-224-8326 | |
| Business Address: (Street) 312 Nth 20st | City: Bismarck | State: ND | Zip Code: 58501 |
| Mailing Address: 312 Nth 20st | City: Bismarck | State: ND | Zip Code: 58501 |
| Address where gaming accounting records are kept: 312 Nth 20st | City: Bismarck | State: ND | Zip Code: 58501 |
| E-mail Address: mooselodge302@midcoNetwest.com | Contact Person: Tom St Peter | Official Position of Contact Person: Administrator | |
| 2. Is organization recognized as tax exempt by the Internal Revenue Service? ☒ YES ☐ NO | | 3. Provide organization's Federal Employer Identification Number (EIN): 45-0228689 | |
| 4. Name and Title of Organization's Top Executive Official: (i.e., Cmdr., Pres., etc.) Gary Funston - Governor | | Daytime Telephone Number: 701-220-0201 | |
| 5. Name of Gaming Manager: Christal Agnes | | Daytime Telephone Number: 701 333 8718 | |
| 6. Signature of Gaming Manager: Christal L Agnes | | Date: 6/8/2020 | |

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: Gary Funston | Telephone Number: 220-0201 | Name: | Telephone Number: |
| Name: Tom St Peter | Telephone Number: 202-1800 | Name: | Telephone Number: |
| Name: Ken Vetter | Telephone Number: 391-8512 | Name: | Telephone Number: |
| Name: Danny Hugelen | Telephone Number: 226-2606 | Name: | Telephone Number: |
| Name: Erik Moe | Telephone Number: 226-4310 | Name: | Telephone Number: |
| Name: Dennis Schenn | Telephone Number: 400-7460 | Name: | Telephone Number: |

8. Does the Organization Own or Rent the Premises at Which the Games of Chance will be Conducted?
☒ Own ☐ 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: X Danny Funston | Date: 6-8-20 |

Office of Attorney General
SFN 53838 (Rev. 02-2017)

Cities or Counties (if site is outside limits of an incorporated city) in which games of chance will be conducted:

| City | County (provide only if renewing a county license) |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| 701 333 8718 | Christal Agnes |
| 4/8/2020 | Christal Agnes |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

(If additional space is needed, attach separate sheet.)

Total number of licenses organization is applying for (add each city or county listed above): _____ x $150.00 _____ Total fee.

**Enclose total license fee with this application.**
**(Check payable to: ND Attorney General)**

**RETURN TO:** Office of Attorney General
Licensing Section
600 E Boulevard Ave Dept. 125
Bismarck, ND 58505-0040
Telephone: 701-328-2329 **OR**
1-800-326-9240

License No. G- ___ ___ ___ ___

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

| | | |
|---|---|---|
| Organization Name: Moose Lodge 302 | | |
| Mailing Address: 312 N 20th Street | | |
| City: Bismarck | State: ND | Zip: 58504 |
| Business Phone: 701 224-8326 | Cell Phone: | |

* PLEASE PRINT OR TYPE *

**NAME OF GAMING MANAGER:** Christal Agnes **DATE OF HIRE:** 10-2-17

*NOTE: Volunteer Gaming Managers are required to have a record check completed.*

**Record Check Completed:** ☐ YES ☐ NO

| | EMPLOYEE NAME<br>First name, Middle name, Last Name | JOB TITLE | DATE OF HIRE | DATE OF BIRTH | Check if Volunteer |
|---|---|---|---|---|---|
| 1. | Christal Agnes | Gaming Manager | 8-13-07 | 05-17-82 | ☐ |
| 2. | Amy Gieser | Assisant Manager | 5-15-17 | 12-19-72 | ☐ |
| 3. | Roxy Hawley | Bar (currency) | 01-26-07 | 06-19-49 | ☐ |
| 4. | Jessica Silk | Black Jack/Gaming | 05-17-19 | 11-8-74 | ☐ |
| 5. | Delane Heupel | Black Jack/Gaming | 01-05-20 | 04-20-62 | ☐ |
| 6. | Corey Wetzstein | Bar (currency) | 10-10-04 | 04-14-66 | ☐ |
| 7. | Robin Griffin | Bar (currency) | 06/01/20 | | ☐ |
| 8. | Francis Greff | Bookkeeper | 02/21/01 | | ☐ |
| 9. | Tom St. Peter | Ticket Counter | | | ☑ |
| 10. | | | | | ☐ |
| 11. | | | | | ☐ |
| 12. | | | | | ☐ |
| 13. | | | | | ☐ |
| 14. | | | | | ☐ |
| 15. | | | | | ☐ |
| 16. | | | | | ☐ |
| 17. | | | | | ☐ |
| 18. | | | | | ☐ |
| 19. | | | | | ☐ |
| 20. | | | | | ☐ |
| 21. | | | | | ☐ |
| 22. | | | | | ☐ |
| 23. | | | | | ☐ |
| 24. | | | | | ☐ |

**RETURN THIS FORM WITH THE STATE GAMING LICENSE REAPPLICATION DOCUMENTS.**

| | EMPLOYEE NAME<br>First name, Middle name, Last Name | JOB TITLE | DATE OF HIRE | DATE OF BIRTH | Check if Volunteer |
|---|---|---|---|---|---|
| 25. | | | | | ☐ |
| 26. | | | | | ☐ |
| 27. | | | | | ☐ |
| 28. | | | | | ☐ |
| 29. | | | | | ☐ |
| 30. | | | | | ☐ |
| 31. | | | | | ☐ |
| 32. | | | | | ☐ |
| 33. | | | | | ☐ |
| 34. | | | | | ☐ |
| 35. | | | | | ☐ |
| 36. | | | | | ☐ |
| 37. | | | | | ☐ |
| 38. | | | | | ☐ |
| 39. | | | | | ☐ |
| 40. | | | | | ☐ |
| 41. | | | | | ☐ |
| 42. | | | | | ☐ |
| 43. | | | | | ☐ |
| 44. | | | | | ☐ |
| 45. | | | | | ☐ |
| 46. | | | | | ☐ |
| 47. | | | | | ☐ |
| 48. | | | | | ☐ |
| 49. | | | | | ☐ |
| 50. | | | | | ☐ |
| 51. | | | | | ☐ |
| 52. | | | | | ☐ |
| 53. | | | | | ☐ |
| 54. | | | | | ☐ |
| 55. | | | | | ☐ |
| 56. | | | | | ☐ |

# GAMING ORGANIZATION E-MAIL CONTACT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
SFN 54481 (10-2016)

Gaming License Number

G - _____

This form should be used to update or change information regarding a contact person and e-mail address on file for an organization who has a state gaming license.

☐ New Contact ☐ Replacing previous contact ☐ Additional contact

Official, Legal Name of Gaming Organization: Loyal Order of Moose 302

E-mail Address: mooselodge302@MdcNetwork.Com

Contact Person: Christal Agnes

Official Title: Bar/Gaming manager

Contact Person's Daytime Telephone Number: (701) 333-8718

By signing and submitting this form, the contact person agrees to receive information from the Office of Attorney General at the above e-mail address.

Christal L Agnes
Signature

6/8/2020
Date

**RETURN FORM TO:**

Email to: agolicensing@nd.gov
Fax to: (701) 328-3535

Questions contact Licensing Section:
(701) 328-2329

# 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: Loyal Order of Moose Lodge 302

**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: Bismarck Moose 302 | | | |
| Street: 312 Nth 20th | City: Bismarck | ZIP Code: 58501 | County: County |
| Beginning Date(s) Authorized: 7-1-20 | Ending Date(s) Authorized: 6-30-21 | | Number of twenty-one tables if zero, enter "0": 1 |
| Specific location where games of chance will be conducted and played at the site **(required)**: East end of Bar Area | | | |
| If conducting **Raffle** or **Poker** activity provide date(s) or month(s) of event(s) if known: November 9, 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)

- [ ] Bingo
- [x] **ELECTRONIC** Quick Shot Bingo
- [ ] Raffles
- [ ] **ELECTRONIC** 50/50 Raffle
- [x] Pull Tab Jar
- [x] Pull Tab Dispensing Device
- [x] **ELECTRONIC** Pull Tab Device
- [ ] Club Special
- [ ] Tip Board
- [x] Seal Board
- [ ] Punchboard
- [ ] Prize Board
- [ ] Prize Board Dispensing Device
- [x] Sports Pools
- [x] Twenty-One
- [x] Poker
- [x] Calcuttas
- [ ] Paddlewheels with Tickets
- [ ] Paddlewheel Table

**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. 08-2019)

License Number (Office Use Only)

| | | | | |
|---|---|---|---|---|
| Site Owner (Lessor): Clarence Jahner | | Site Name: Moose lodge 302 | | Site Phone Number: 701-224-8326 |
| Site Address: 312 Nth 20st | City: Bismarck | State: ND | Zip Code: 58501 | County: Burleigh |
| Organization (Lessee): Moose Lodge 302 | | Rental Period: 7-1-20 to 6-30-21 | | Monthly Rent Amount |

| | | | |
|---|---|---|---|
| 1. Is Bingo going to be conducted at this site? | | ☒ No ☒ Yes | |
| 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. | | ☐ No ☐ Yes | $ 0 |
| 2 Is Twenty-One conducted at this site? | | ☒ No ☒ Yes | |
| Number of Tables with wagers **up to** $5 | X Rent per Table $ | | $ 0 |
| Number of Tables with wagers **over** $5 | 1 X Rent per Table $ — | | $ 0 |
| 3. Is Paddlewheels conducted at this site? Number of Tables | X Rent per Table $ | ☒ No ☐ Yes | $ 0 |
| 4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site? Please check: ☒ Jar Bar ☒ Standard Dispensing Device | | ☐ No ☒ Yes | $ 0 |
| ☒ Electronic Dispensing Device Number of Electronic Devices 10 | | | $ 0 |
| Total Monthly Rent | | | $ 0 |

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.

The LESSOR agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name.

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: Clarence Jahner | Title: Owner | Date: 6-9-20 |
| Signature of Lessee: Gary Fennell | Title: Governor | Date: 6-8-20 |

(over)

## **North Dakota Century Code § 53-06.1-11** (Gross Proceeds - Allowable expenses – Rent limits)

4. For a site where bingo is conducted:

   a. If bingo is the primary game, the monthly rent must be reasonable.

   b. If bingo is not the primary game, but is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.

5. For a site where bingo is not the primary game:

   a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables based on criteria prescribed by the gaming rule. For each twenty-one table with a wager greater than five dollars, an additional amount up to one hundred dollars may be added to the monthly rent. If pull tabs is also conducted involving only a jar bar, the monthly rent for pull tabs may not exceed an additional one hundred seventy-five dollars. If pull tabs is conducted involving only a dispensing device, or a jar bar and dispensing device, the monthly rent for pull tabs may not exceed an additional three hundred twenty-five dollars.

   b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving either a jar bar or dispensing device, the monthly rent may not exceed four hundred dollars.

   c. If pull tabs is conducted using one or more electronic pull tab devices, the monthly rent may not exceed an additional one hundred dollars per machine for the first five machines in the same venue. Fore each additional machine in the same venue beyond five, the monthly rent may not exceed an additional fifty dollars per machine.

## **North Dakota Administrative Code § 99-01.3-02-06** (Rental agreement)

3. Rent must be a fixed dollar amount per month.

   a. A participatory or graduated rate arrangement based on gross proceeds or adjusted gross proceeds is prohibited.

   b. If bingo is the primary game or if a site is leased by an organization that has the alcoholic beverage license for that site, the monthly rent must be reasonable. Factors include time usage, floor space, local prevailing rates, and available sites and services. An organization may pay seasonal expenses, such as snow removal, air-conditioning and heating, to a vendor.

   c. If bingo is not the primary game, the maximum monthly rent must be according to subsection 5 of North Dakota Century code section 53-06.1-11.

      Special considerations are:

      (1) If two or more organizations conduct twenty-one or paddlewheels, or both, involving a table and pull tabs for less than a month at a temporary site which is a public or private premise, or if two or more organizations are issued site authorizations to conduct games at a site on different days of the week, the maximum monthly rent, in the aggregate, may not exceed the limit set by subsection 5 of the North Dakota Century Code section 53-06.1-11; and

      (2) If a raffle, calcutta, sports pool, or poker is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.

   d. Except for applying subsection 3 or 4 of section 99-01.3-03-04, and additional rent paid to a lessor for simulcast racing, an organization or employee may not pay any additional rent or expense, from any source, or for any other purpose, including office or storage space, snow removal, maintenance or cleaning fees, equipment, furnishings, entertainment, or utilities. Except for a leased site at which bingo is the primary game conducted, an organization may not pay for any capital or leasehold improvements or remodeling.

*4. If there is a change in the monthly rent or any other material change to a rental agreement, the agreement must be amended and a copy received by the attorney general **before** its effective date.

## **North Dakota Administrative Code § 99-01.3-03-04** (Restrictions and requirements)

20. If an organization conducts twenty-one, it may pay monthly rent for more than one table provided that each additional table is used at least thirteen times a quarter. This level of activity is based on a site's historical experience, or seasonal activity, for each of the previous four quarters, regardless of which organization conducted twenty-one at the site. For a new site or a site that has been completely remodeled in appearance and function, the level of activity must be reviewed and reestablished after the first full quarter. If an additional table is used at least thirteen times in at least one but not all of the previous four quarters, the allowable monthly rent for that table must be prorated over all the active months of the licensing year. For example, if a second table was used at least thirteen times in only two of the previous four quarters, the additional monthly rent for the second table would be a maximum of two hundred dollars per month (or three hundred dollars per month if a wager greater than five dollars is accepted on the table) multiplied by six months (totaling one thousand two hundred dollars) and prorated to one hundred dollars per month for the licensing year.

Bismarck

Airport

**DATE:** June 16, 2020

**FROM:** Greg Haug, Airport Director

**ITEM:** Consider a lease agreement with the State Historical Society of North Dakota for a storage building.

**REQUEST**

Please place this item on the 6/23/2020 City Commission meeting agenda.

**BACKGROUND INFORMATION**

The State Historical Society of North Dakota has rented a parcel for a storage building along Airway Avenue just west of the NPCC for a number of years. The building is in the top center of the picture provided (Enclosure 1). The lease (Enclosure 2) is for one year. The contract is written so the City must agree to any new improvements, structures, or alterations to the leased property. The ground lease has the same language in it as the one the Board approved last year. Required Federal Aviation Administration (FAA) clauses are included. CPI adjustment was not adjusted upward this year because the CPI all items increased just 0.3% for the 12 months ending in April. The lease represents $891.11 of income to the Airport Enterprise Fund.

**RECOMMENDED CITY COMMISSION ACTION**

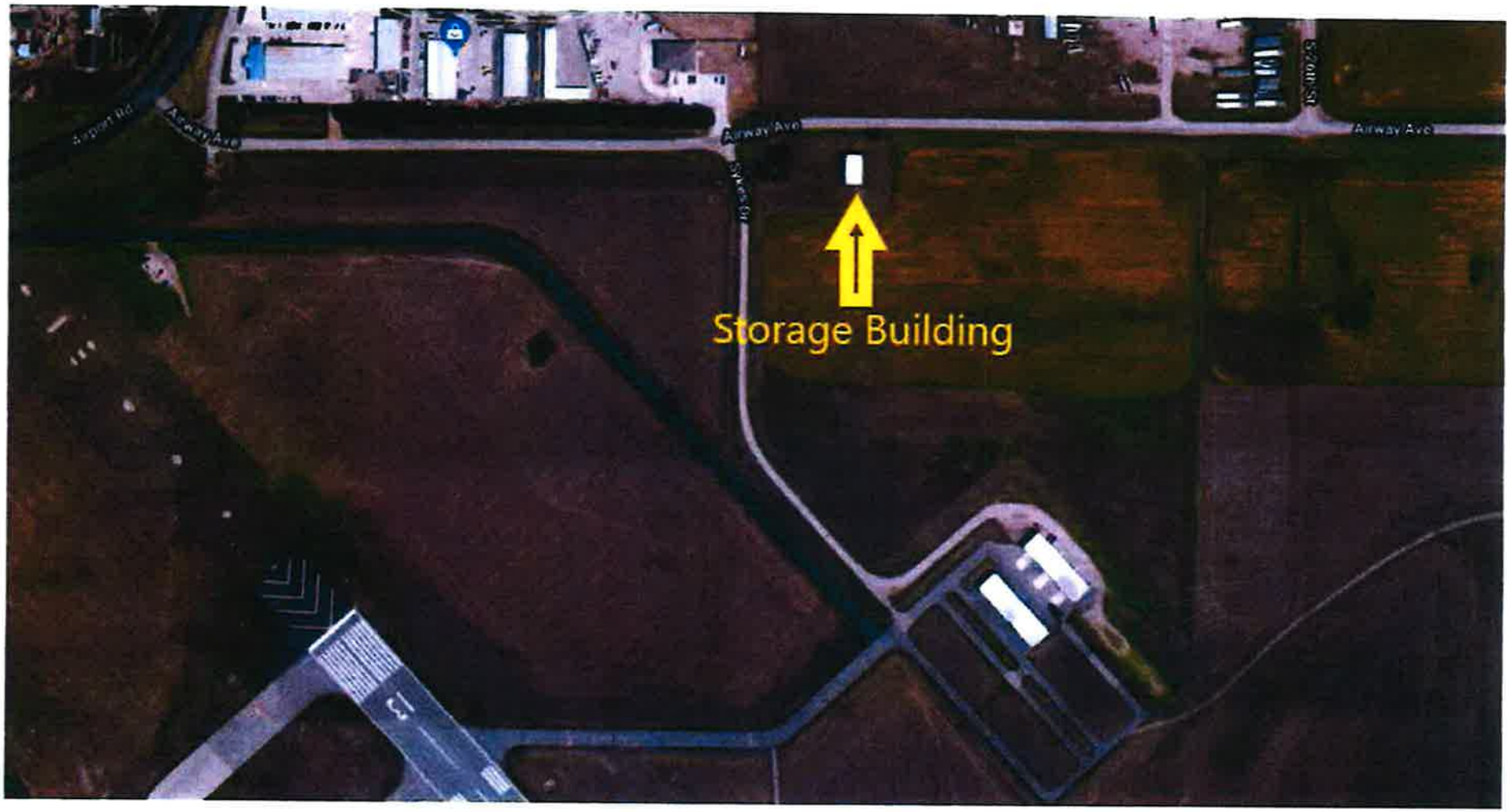
1. Approve the lease agreement at enclosure 2.

**STAFF CONTACT INFORMATION**

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

**ENCLOSURES:**

1. Building location diagram
2. Lease




Enclosure 1

ON JUNE 23, 2020
AGENDA

# CONTRACT REVIEW FORM

## DEPARTMENT

Contract between the City of Bismarck and STATE HISTORICAL SOCIETY of ND

Purpose of Contract: PARCEL LEASE FOR STORAGE BUILDING

Contract Amount: $991.11

Contract Period: 1 YEAR JULY 1, 2020 - JUNE 30, 2021

Funding Source: INCOME TO AIRPORT ENTERPRISE FUND

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

Comments:

After Mayor's Signature, route to: AIRPORT

Date:

Department Head Signature:

Date:

## CITY ATTORNEY

Comments:

City Attorney Signature:

Date:

## FINANCE

Comments:

Director of Finance Signature:

Date:

## ADMINISTRATION

City Administrator Signature:

Date:

Please send copy of completed contracts to Administration.



ENCL 2

# LEASE

## PARTIES

The parties to this lease (Lease) are the state of North Dakota, acting through its State Historical Society (STATE), and City of Bismarck, a North Dakota municipal corporation, having its principal place of business at 221 N. 5th St., Bismarck, ND 58506 (LANDLORD);

## SCOPE OF LEASE

LANDLORD, in consideration of the rent to be paid and the covenants to be performed by STATE, hereby leases to STATE the following described premises (Premises) situated in the city of Bismarck, county of Burleigh, and state of North Dakota:

A tract of land at the Bismarck Municipal Airport, being a tract in the Southeast Quarter of the Southwest Quarter (SE¼SW¼) of Section Ten (10), Township One Hundred Thirty-Eight North (T. 138 N.), Range Eighty (80), Burleigh County, North Dakota, described as follows, to wit: Lot Eighteen (18) which is 60 feet by 115 feet, tract contains 6,900 square feet and shown in Exhibit "A" attached hereto and made a part hereof.

The property is leased to be used for warehousing and for any other lawful business if approved in writing by the City.

## TERM OF LEASE

The term of this Lease (Term) is for a period of 12 months, commencing on the 1st day of July, 2020 and terminating on the 30th day of June, 2021.

## HOLDING OVER

If STATE remains in possession of the Premises after this Lease expires, and LANDLORD accepts rent from STATE, this Lease shall be deemed renewed on a month-to–month basis with all other terms and conditions of this Lease remaining in effect until otherwise agreed in writing.

## RENTAL PAYMENTS

STATE will pay rent for the Premises, consisting of 6,900 square feet, at $891.11 per annum.

Rent will be payable annually on or before July 1.

Rent is payable at the address of LANDLORD, unless STATE is notified otherwise in writing by LANDLORD.

**OBLIGATIONS**

The STATE is taking the premises as is and the STATE shall be responsible for all charges for utility or other services and for applicable taxes and the City as LANDLORD assumes no responsibility for upkeep or maintenance or charges or costs of any kind.

No additional improvements, structures, alterations, or additions shall be made in, to, or upon the leased premises without the prior written consent of the city. The STATE has the right to remove any buildings on termination of the lease provided that the premises are left in good condition.

**TERMINATION OF LEASE**

STATE has no obligation under this Lease for the initial or succeeding terms if the North Dakota Legislature fails to appropriate to STATE sufficient funds to defray the full rental costs. STATE, without any liability, may terminate this Lease by providing thirty (30) days' written notice, if its legislative appropriations are reduced or if its authority to spend its appropriations is reduced or limited by law or by reductions in federal or other grant funds to a point STATE, in its sole discretion, deems insufficient to pay the full rental cost for the remainder of the Term of this Lease.

During the Term of this Lease or any renewal or extension, STATE may terminate this Lease by providing thirty (30) days' written notice to LANDLORD, if LANDLORD fails to comply with any of its obligations under this Lease, or if STATE determines it must relocate to comply with the Americans With Disabilities Act of 1990 or any rules adopted under the act, or with any other state or federal law or rules.

**TERMINATION OF LEASE IN THE EVENT OF DESTRUCTION OF PREMISES**

If the leased Premises are destroyed or damaged by fire or the elements to the extent they become untenable, this Lease will terminate immediately, unless LANDLORD, within twenty (20) days of the happening of the event, gives written notice of intention to restore the building and fully restores the Premises within a reasonable time. During the term between destruction and restoration of the Premises rent will not be due, and if rent has already been paid LANDLORD shall refund to STATE all that portion of the prepaid rent attributable to the time during which STATE was unable to use the Premises for its intended use.

**MERGER AND MODIFICATION**

This Lease constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Lease. This Lease may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

**SEVERABILITY**

If any term of this Lease is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if this Lease did not contain that term.

**ASSIGNMENT – SALE OF PREMISES**

This Lease must not be assigned or subleased by STATE without LANDLORD's written consent, but the LANDLORD shall not withhold such permission in an unreasonable or capricious fashion. This Lease does not terminate if the Premises are sold, but continues throughout the entire Term.

**NOTICE**

All notices or other communications required under this Lease must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

| STATE | LANDLORD |
|---|---|
| Name: Claudia Berg | Name: Jannelle Combs |
| Title: Director, SHSND | Title: City Attorney, Bismarck |
| Address: 612 E. Boulevard Ave. | Address: P.O. Box 5503 |
| City, State, Zip: Bismarck, ND 58505 | City, State, Zip: Bismarck, ND 58506 |

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

**APPLICABLE LAW AND VENUE**

This Lease is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Lease must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

**ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

By entering into this Lease, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

**SPOLIATION – PRESERVATION OF EVIDENCE**

LANDLORD shall promptly notify STATE of all potential claims that arise from or result from this Lease. LANDLORD shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such evidence, including the scene of an accident.

**INDEMNIFICATION**

LANDLORD and STATE each 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 Lease.

**INSURANCE**

Both parties shall maintain appropriate insurance or self-insurance as appropriate.

**CONFIDENTIALITY**

LANDLORD shall not use or disclose any information it receives from STATE under this Lease that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Lease or as authorized in advance by STATE. STATE shall not disclose any information it receives from LANDLORD that LANDLORD has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of STATE and LANDLORD to maintain confidentiality of information under this section continues beyond the Term of this Lease.

LANDLORD acknowledges that STATE possesses substantial amounts of information at the leased Premises that is confidential pursuant to state law. LANDLORD, if it views, comes into possession of, or otherwise becomes knowledgeable of confidential information located at the leased Premises, shall maintain the confidentiality of that information and shall refrain from re-disclosing that information to any third party. LANDLORD shall require, by contract, any agent it retains to fulfill its obligations otherwise set out in this Lease to similarly maintain the confidentiality of any information it views, comes into possession or of which otherwise becomes knowledgeable. Those indemnity provisions otherwise set out in the Lease agreement specifically apply to this confidentiality requirement.

**COMPLIANCE WITH PUBLIC RECORDS LAWS**

LANDLORD understands that, in accordance with this Lease's Confidentiality clause, STATE must disclose to the public upon request any records it receives from LANDLORD. LANDLORD further understands that any records obtained or generated by LANDLORD under this Lease, may, under

certain circumstances, be open to the public upon request under the North Dakota public records law. LANDLORD agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

**STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of LANDLORD relevant to this Lease are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. LANDLORD shall maintain all of these records for at least three (3) years following completion of this Lease and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to LANDLORD prior to conducting examination.

**FAA REQUIREMENTS**

The FAA required clauses are part of the agreement and are listed in enclosure 1.

**EFFECTIVENESS OF LEASE**

This Lease is not binding on STATE until it is reviewed and executed by the Office of Attorney General and approved and executed by the Director of Facility Management Division, OMB, as required in N.D.C.C. § 54-21-24.1.

CITY OF BISMARCK

BY: _____
President, Board of City Commissioners

Attest: _____
City _____

THE STATE HISTORICAL SOCIETY OF
NORTH DAKOTA

Director: _____

Form approved by the Attorney General

_____ Date: _____

Form approved by Facility Management

_____ Date:_____

Enclosure 1

Civil Rights – General

Civil Rights – Title VI Assurances
(1) Notice Solicitation
(2) Clause –Contracts
(3) Clause – Transfer of U.S. Property
(4) Clause – Transfer of Real Property
(5) Clause – Construct/Use/Access to Real Property
(6) List – Pertinent Authorities

Federal Fair Labor Standards Act

Occupational Safety and Health Act

# Attachment A
# 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 |

Bismarck

Airport

**DATE:** June 16, 2020

**FROM:** Greg Haug, Airport Director

**ITEM:** Consider a Sole Source Purchase of Bowmonk Decelerometers.

**REQUEST**

Please place this item on the 6/23/2020 City Commission meeting agenda.

**BACKGROUND INFORMATION**

Bismarck Airport has three Bowmonk Decelerometers used to measure breaking action on the runways and other paved surfaces as part of the Federal Aviation Administration (FAA) approved Snow and Ice Control Plan. The current Bowmonk Decelerometers were purchased in 2005 and are reaching the end of their service life. Staff has found the existing Bowmonk devices to be durable, reliable and very easy to operate even in challenging winter conditions. They have performed well over the years.

Staff is requesting permission for sole source purchase of three replacement Bowmonk Decelerometers to retain commonality with existing operational procedures and training. The new Decelerometers retain an integrated screen needing no separate monitor, similar printing capability, are able to be moved from vehicle to vehicle into existing mountings, are familiar, user friendly and will need minimum training to put into use. Sherwin Industries Inc is the supplier for Bowmonk Decelerometers in the United States. The purchase is accommodated in the approved airport spending plan.

**RECOMMENDED CITY COMMISSION ACTION**

1. Approve the sole source purchase of three Bowmonk Decelerometers for $14,260 at Enclosure 1.

**STAFF CONTACT INFORMATION**

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

**ENCLOSURES:**

1. Bowmonk Decelerometer Proposal.

# QUOTE

**Sherwin Industries, Inc.**

2129 W. Morgan Ave. Milwaukee, WI 53221
Phone 804-275-6900 Fax 804-275-6999
trushing@sherwinindustries.com

JUNE 10, 2020

**TO** Bismarck Airport
Attn: Matthew Remynse

| SALESPERSON | JOB | PAYMENT TERMS | QUOTE VALID UNTIL |
|---|---|---|---|
| 16-TR | | Net 30 | 120 Days |

| QTY | DESCRIPTION | UNIT PRICE | LINE TOTAL |
|---|---|---|---|
| 3 | Bowmonk AFM2 MK III | 4,400.00 | 13,200.00 |
| | Includes: | | |
| | AFM2 Decelerometer, Aluminum Carrying Case, A/C & D/C Chargers, Spare Printer Ribbon, 10 Rolls Printer Paper, Owner's Manual, Quick Reference Guide | | |
| 1 | PC Downloader Computer Program | 660.00 | 660.00 |
| 2 | Additional Key PC Downloader Computer Program | 200.00 | 400.00 |
| | ***Price Includes Delivery to Destination | | |
| | | SUBTOTAL | 14,260.00 |
| | | SALES TAX | EXEMPT |
| | | TOTAL | 14,260.00 |

Quotation prepared by: *Todd L. Rushing*

**THANK YOU FOR YOUR BUSINESS!**

# City Attorney

**DATE:** June 16, 2020

**FROM:** Jannelle Combs, City Attorney

**ITEM:** State of Emergency Declaration ratification

## REQUEST

Ratify the June 13, 2020, state of emergency declaration relating to COVID-19 by the President of City Commission and extend its effect to July 13, 2020.

Please place this item on the 6/23/2020 City Commission consent meeting agenda.

## BACKGROUND INFORMATION

The May 14, 2020, emergency declaration lapsed June 13, 2020. Mayor Bakken signed a new declaration June 13, 2020. Bismarck City ordinance 2-08-03 provides that the President of the City Commission can declare a local state of emergency. The emergency declaration will exist for a period not to exceed 15 days, unless the City Commission ratifies the declaration within the 15-day period. If it is ratified, it is then valid for another 15 days.

## RECOMMENDED CITY COMMISSION ACTION

Ratify the June 14, 2020 state of emergency declaration relating to COVID-19 by President Bakken and extend its effect to July 13, 2020.

## STAFF CONTACT INFORMATION

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

# NEWS RELEASE

**For Immediate Release:**
June 13, 2020

**For More Information, Contact:**
Gloria David
Public Information Officer
Phone: 701.355.1306
E-mail: gdavid@bismarcknd.gov

**COVID-19 EMERGENCY DECLARATION,**
**CITY OF BISMARCK, NORTH DAKOTA**

Bismarck, N.D.

WHEREAS, COVID-19 is a severe respiratory illness, caused by the SARS-CoV-2 virus, a new strain of coronavirus that is spread from person to person, posing a threat to the health and safety of the residents of the City of Bismarck; and

WHEREAS, no drug or vaccine is currently available to treat or prevent COVID-19; and

WHEREAS, United States Department of Health and Human Services Secretary Alex Azar declared a national public health emergency for COVID-19 on January 27, 2020; and

WHEREAS, the World Health Organization declared COVID-19 a global pandemic on March 11, 2020; and

WHEREAS, on March 13, 2020, President Donald Trump issued a declaration of a national emergency due to the growing COVID-19 crisis in the United States; and

WHEREAS, on March 13, 2020, Governor Doug Burgum issued a declaration of a state emergency in response to the public health crisis resulting from the novel coronavirus (COVID-19);

WHEREAS, on March 15, 2020, the City of Bismarck declared a disaster emergency, which was ratified by the City Commission, and a second declaration was declared and ratified by the City Commission on April 14, 2020, which extended the emergency to May 14, 2020, and a third declaration on May 14, 2020, which was ratified by the City Commission on May 26, 2020, but such emergency still exists,

WHEREAS, Bismarck City Ordinance 2-08-03 provides that the President of the Commission has the power to declare a local disaster emergency, and

WHEREAS, preparedness, response and recovery from the COVID-19 virus requires a whole-of-government and whole-of-community approach across all governments as well as private and nonprofit sectors, and the virus has the risk of substantially endangering the health, safety and property of the citizens of Bismarck.

NOW, THEREFORE, BE IT RESOLVED, that the President of the Board of City Commissioners does declare a state of disaster emergency exists in the City of Bismarck, North Dakota in response to the public health crisis resulting from the novel coronavirus (COVID-19).

DATED at Bismarck, North Dakota this 13th day of June, 2020.

_____

Steve Bakken, President
City of Bismarck Commission

# BISMARCK-BURLEIGH PUBLIC HEALTH

**DATE:** June 15, 2020

**FROM:** Renae Moch, MBA, FACMPE, Director

**ITEM:** Requesting permission to accept COVID-19 Cares Act Funding for public health and authorize an increase in budget authority for Public Health Govt.Grants

## REQUEST

Bismarck-Burleigh Public Health is requesting permission to accept Cares Act Funding in the amount of $1,379,542 and increase budget authority for Public Health Govt. Grants by that amount.

Please place this item on the June 23, 2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

Bismarck-Burleigh Public Health is requesting permission to accept Cares Act Funding in the amount of $1,379,542 and increase budget authority for Public Health Govt.Grants. This funding is allocated to public health and will be used for public health services to contain and mitigate the spread of COVID-19. Expenditures to be reimbursed include but are not limited to costs associated with contact tracing, testing, planning, fit testing, overtime and supplies. Expenditures will be covered as early as March 1, 2020 and ends December 30, 2020. An increase in budget authority is needed to accept these funds since these funds were not part of the 2020 budget.

## RECOMMENDED CITY COMMISSION ACTION

Recommend approval to accept COVID-19 Cares Act funding for Public Health and increase budget authority for Public Health Govt.Grants by $1,379,542.

## STAFF CONTACT INFORMATION

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

# Community Development Department

**DATE:** June 16, 2020

**FROM:** Ben Ehreth, AICP, Community Development Director

**ITEM:** Review of FY2020 5307 CARES Transit Grant Application

## REQUEST

Bis-Man Transit requests that the Bismarck Board of City Commissioners consider the attached grant application for approval.

Please place this item on the June 23, 2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

Coronavirus Aid, Relief, and Economic Security (CARES) Act provides $2 trillion of economic support to the American public dealing with the COVID-19 pandemic. A portion of this funding has been allocated to the Federal Transit Administration (FTA) for use by Transit agencies nationwide. The City of Bismarck/ Bis-Man Transit's CARES allocation is $3,788,862. This grant will fund emergency needs, as well as regular operating needs, incurred by Bis-Man Transit during the pandemic. The reimbursement period begins February 2020. CARES funding is 100% federal match and requires no local share.

The grant successfully passed the City's "Fast Track" grant application review process and was forwarded to FTA for to begin federal review. However, since the grant is over $250,000, it requires City Commission approval prior to award. The grant is undergoing the standard grant review process and will complete its review by the date of the Commission meeting.

## RECOMMENDED CITY COMMISSION ACTION

Commission is requested to consider approval of the grant application.

## STAFF CONTACT INFORMATION

Rachel Drewlow, MPO Transportation Planner, 355-1852 or rdrewlow@bismarcknd.gov

DOT FTA

**U.S. Department of Transportation** **Federal Transit Administration**

# Application

| | |
|---|---|
| **Federal Award Identification Number (FAIN)** | 1155-2020-2 |
| **Temporary Application Number** | 1155-2020-2 |
| **Application Name** | COB/Bis-Man Transit Section 5307 CARES Act - Capital; Operations, Administration, and Salaries; Preventive Maintenance; and Security |
| **Application Status** | In-Progress |
| **Application Budget Number** | 0 |

| | | |
|---|---|---|
| **Period of Performance Start Date** | N/A | |
| **Original Period of Performance End Date** | 12/31/2021 | |
| **Current Period of Performance End Date** | N/A | Revision #: N/A |

## Part 1: Recipient Information

### Name: Bismarck, City Of

| Recipient ID | Recipient OST Type | Recipient Alias | Recipient DUNS |
|---|---|---|---|
| 1155 | City | Bismarck, City of | 080245640 |

| Location Type | Address | City | State | Zip |
|---|---|---|---|---|
| Headquarters | 221 N 5TH St | Bismarck | ND | 58501 |
| Physical Address | 221 N. 5th Street | Bismarck | ND | 58506 |
| Mailing Address | PO BOX 5503 | BISMARCK | ND | 58506 |

### Union Information

There are no union contacts for this application

## Part 2: Application Information

# Title: COB/Bis-Man Transit Section 5307 CARES Act - Capital; Operations, Administration, and Salaries; Preventive Maintenance; and Security

| FAIN | Application Status | Application Type | Date Created | Last Updated Date | From TEAM? |
|---|---|---|---|---|---|
| 1155-2020-2 | In-Progress | Grant | 6/3/2020 | 6/3/2020 | No |

**Application Executive Summary**
This is an FFY2020 Section 5307 CARES Act grant in the amount of $3,766,362.00 (full apportionment). Per the CARES Act, the grant requests 100% federal share. This grant utilizes CARES Act funding to prevent, prepare for, and respond to COVID-19. The grant scope of work includes the following projects:

1. Capital Expenses – software, hardware, acquisition shop equipment, rehab shop equipment – $163,000
2. Operations expenses – administration, salaries, general operating needs – $3,529,862
3. Preventive Maintenance (PM) – facilities - $58,000.00
4. 1% Security Expenditure – $38,000

Total CARES Act Section 5307 Funding: $3,766,362.00
Total Eligible Project Cost: $3,766,362.00

We agree that if we receive federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a different federal agency, or insurance proceeds for any portion of a project activity approved for FTA funding under this Grant Agreement, we will provide written notification to FTA, and reimburse FTA for any federal share that duplicates funding provided by FEMA, or another federal agency or an insurance company.

Per the CARES Act, the projects in this grant are not required to be programmed in the Long Range Transportation Plan, TIP or STIP.

The City of Bismarck contracts out the operations of its Transit System to Bis-Man Transit, contract attached in recipient documents.

There is no local match required for this grant.

1% Security Expenditure will be used to continue installing locks at the Transit building, to purchase security cameras, install barriers on buses, and fund other security needs as they arise.

The North Dakota Governor's Apportionment Letter for the FFY 2020 Section 5307 CARES Act grant is attached to this application under application documents.

**Frequency of Milestone Progress Reports (MPR)**
No Selection Made

**Frequency of Federal Financial Reports (FFR)**
No Selection Made

**Does this application include funds for research and/or development activities?**
This award does not include research and development activities.

**Pre-Award Authority**
This award is using Pre-Award Authority.

**Does this application include suballocation funds?**
Recipient organization is directly allocated these funds and is eligible to apply for and receive these funds directly.

**Will this Grant be using Lapsing Funds?**
No Selection Made

**Will indirect costs be applied to this application?**
This award does not include an indirect cost rate.

*Indirect Rate Details*: N/A

**Requires E.O. 12372 Review**
No, this application does not require E.O. 12372 Review.

**Delinquent Federal Debt**
No, my organization does not have delinquent federal debt.

## Application Point of Contact Information

| First Name | Last Name | Title | E-mail Address | Phone |
|---|---|---|---|---|
| Rachel | Drewlow | Transportation Planner | rdrewlow@bismarcknd.gov | 701-355-1852 |

## Application Budget Control Totals

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $3,788,862 |
| Local | | | $0 |
| Local/In-Kind | | | $0 |
| State | | | $0 |
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$3,788,862** |

## Application Budget

| Project Number | Budget Item | | FTA Amount | Non-FTA Amount | Total Eligible Amount | Quantity |
|---|---|---|---|---|---|---|
| 1155-2020-2-P1 | 114-00 (114-) | BUS: SUPPORT EQUIP AND FACILITIES | $163,000.00 | $0.00 | $163,000.00 | 4 |
| 1155-2020-2-P1 | 11.42.07 | ACQUIRE - ADP HARDWARE | $25,000.00 | $0.00 | $25,000.00 | 1 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1155-2020-2-P1 | | 11.42.08 | ACQUIRE - ADP SOFTWARE | $120,000.00 | $0.00 | $120,000.00 | 1 |
| 1155-2020-2-P1 | | 11.44.06 | REHAB/RENOVATE - SHOP EQUIPMENT | $18,000.00 | $0.00 | $18,000.00 | 2 |
| 1155-2020-2-P2 | 300-00 (300-) | OPERATING ASSISTANCE | | $3,529,862.00 | $0.00 | $3,529,862.00 | 3 |
| 1155-2020-2-P2 | | 30.09.08 | EMER RELIEF - OPERATING ASSIST - 100% Fed Share | $3,529,862.00 | $0.00 | $3,529,862.00 | 3 |
| 1155-2020-2-P3 | 117-00 (117-) | OTHER CAPITAL ITEMS (BUS) | | $58,000.00 | $0.00 | $58,000.00 | 1 |
| 1155-2020-2-P3 | | 11.7A.00 | PREVENTIVE MAINTENANCE | $58,000.00 | $0.00 | $58,000.00 | 1 |
| 1155-2020-2-P4 | 113-00 (113-) | BUS - STATION/STOPS/TERMINALS | | $38,000.00 | $0.00 | $38,000.00 | 1 |
| 1155-2020-2-P4 | | 11.32.07 | ACQUIRE - SURVEIL/SECURITY EQUIP | $38,000.00 | $0.00 | $38,000.00 | 1 |

## Discretionary Allocations

This application does not contain discretionary allocations.

# Part 3: Project Information

## Project Title: Capital

| Project Number | Temporary Project Number | Date Created | Start Date | End Date |
|---|---|---|---|---|
| 1155-2020-2-P1 | 1155-2020-2-P1 | 6/3/2020 | 6/30/2020 | 9/30/2021 |

**Project Description**
This grant is requesting $163,000.00 for capital expenses. The federal share is 100%. Funds will be used for:

(In four separate ALIs)
AVL Software ($120,000)
Hoist ($12,000)
New Computers ($25,000)
Shop Sweeper Repair ($6,000)

TOTAL Capital Funds: $163,000.00
Total Eligible Project Cost: $163,000.00

It is not expected that additional grants will be needed to complete that activities of this project.

**Project Benefits**
Thru these capital purchases, Bis-Man Transit will be able to maintain their operations to acceptable standards and ensure efficient ticket purchasing/ ride tracking for the public.

**Additional Information**
*None provided.*

**Location Description**
The project will be carried out at the Bis-Man Transit Building (3750 E Rosser Ave, Bismarck, ND 58501).

**Security**
Yes -- our organization will expend at least 1% of the 5307 funds in this application for security-related projects

## Project Location (Urbanized Areas)

| UZA Code | Area Name |
|---|---|
| 380000 | North Dakota |
| 383090 | Bismarck, ND |

## Congressional District Information

| State | District | Representative |
|---|---|---|
| North Dakota | 1 | Kelly Armstrong |

## Program Plan Information

### STIP/TIP
Date: N/A
Description: N/A

### UPWP
Date: N/A
Description: N/A

### Long Range Plan
Date: N/A
Description: N/A

## Project Control Totals

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $163,000 |
| Local | | | $0 |
| Local/In-Kind | | | $0 |

| | | | |
|---|---|---|---|
| State | | | $0 |
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$163,000** |

## Project Budget

| Project Number | Budget Item | | FTA Amount | Non-FTA Amount | Total Eligible Amount | Quantity |
|---|---|---|---|---|---|---|
| 1155-2020-2-P1 | 114-00 (114-) | BUS: SUPPORT EQUIP AND FACILITIES | $163,000.00 | $0.00 | $163,000.00 | 4 |
| 1155-2020-2-P1 | 11.42.07 | ACQUIRE - ADP HARDWARE | $25,000.00 | $0.00 | $25,000.00 | 1 |
| 1155-2020-2-P1 | 11.42.08 | ACQUIRE - ADP SOFTWARE | $120,000.00 | $0.00 | $120,000.00 | 1 |
| 1155-2020-2-P1 | 11.44.06 | REHAB/RENOVATE - SHOP EQUIPMENT | $18,000.00 | $0.00 | $18,000.00 | 2 |

## Project Budget Activity Line Items

**Budget Activity Line Item: 11.42.08 - ACQUIRE - ADP SOFTWARE**

| Scope Name / Code | Line Item # | Line Item Name | Activity | Quantity |
|---|---|---|---|---|
| BUS: SUPPORT EQUIP AND FACILITIES (114-00) | 11.42.08 | ACQUIRE - ADP SOFTWARE | ACQUISITION OF BUS SUPPORT EQUIP/FACILITIES | 1 |

**Extended Budget Description**
Transit intends to replace Route-Match with a new AVL software.

**Will 3rd Party contractors be used to fulfill this activity line item?**
No, 3rd Party Contractors will not be used for this line item.

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $120,000 |
| Local | | | $0 |

| | | | |
|---|---|---|---|
| Local/In-Kind | | | $0 |
| State | | | $0 |
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$120,000** |

| Milestone Name | Est. Completion Date | Description |
|---|---|---|
| RFP | 9/30/2020 | The RFP will be released in September 2020. |
| Bids | 10/30/2020 | Bids will come in in July 2020. |
| Installation | 11/30/2020 | Installation will occur in November 2020. |
| Payment | 1/29/2021 | Payment will occur in January 2021. |
| ALI Draw Down | 6/30/2021 | The ALI will be drawn down by the end of June 2021. |

**Budget Activity Line Item: 11.42.07 - ACQUIRE - ADP HARDWARE**

| Scope Name / Code | Line Item # | Line Item Name | Activity | Quantity |
|---|---|---|---|---|
| BUS: SUPPORT EQUIP AND FACILITIES (114-00) | 11.42.07 | ACQUIRE - ADP HARDWARE | ACQUISITION OF BUS SUPPORT EQUIP/FACILITIES | 1 |

**Extended Budget Description**
Transit intends to update all computers to Microsoft windows 10 software and purchase one new computer.

**Will 3rd Party contractors be used to fulfill this activity line item?**
Yes, 3rd Party Contractors will be used for this line item.

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $25,000 |
| Local | | | $0 |
| Local/In-Kind | | | $0 |
| State | | | $0 |
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$25,000** |

| Milestone Name | Est. Completion Date | Description |
|---|---|---|
| Purchase | 6/30/2020 | Purchase of software for existing transit computers and one new computer. |
| Payment | 7/31/2020 | Payment will occur in July 2020. |
| Grant Draw Down | 9/30/2021 | This ALI will be drawn down in September 2020. |

**Budget Activity Line Item: 11.44.06 - REHAB/RENOVATE - SHOP EQUIPMENT**

| Scope Name / Code | Line Item # | Line Item Name | Activity | Quantity |
|---|---|---|---|---|
| BUS: SUPPORT EQUIP AND FACILITIES (114-00) | 11.44.06 | REHAB/RENOVATE - SHOP EQUIPMENT | REHAB/RENOVATE BUS SUPPORT FACIL/EQUIP | 2 |

**Extended Budget Description**
This line item will repair a hoist and a shop sweeper that are used at the transit building. Cost are below.
Hoist ($12,000)
Shop Sweeper Repair ($6,000)

**Will 3rd Party contractors be used to fulfill this activity line item?**
No, 3rd Party Contractors will not be used for this line item.

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $18,000 |
| Local | | | $0 |
| Local/In-Kind | | | $0 |
| State | | | $0 |
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$18,000** |

| Milestone Name | Est. Completion Date | Description |
|---|---|---|
| Repair | 6/30/2020 | The repair of both the hoist and the shop sweeper is expected by the end of June 2020 |
| Payment | 7/31/2020 | Payment for the repair services is expected to be completed by end of July 2020. |
| ALI Close Out | 9/30/2020 | The ALI is expected to be drawn down by the end of September 2020. |

# Project Environmental Findings

**Finding: Class II(c) - Categorical Exclusions (C-List)**

**Class Level Description**
Class II(c) consists of projects called categorical exclusions (CEs) which are known not to have, either individually or cumulatively, a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. Class II(c) does not require documentation.

**Categorical Exclusion Description**

Type 05: Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

| Date Description | Date |
|---|---|
| Class IIc CE Approved | |

| Scope Name / Code | Line Item Number | Line Item Name | Quantity | FTA Amount | Total Eligible Cost |
|---|---|---|---|---|---|
| BUS: SUPPORT EQUIP AND FACILITIES (114-00) | 11.42.08 | ACQUIRE - ADP SOFTWARE | 1 | $120,000.00 | $120,000.00 |

**Finding: Class II(c) - Categorical Exclusions (C-List)**

**Class Level Description**
Class II(c) consists of projects called categorical exclusions (CEs) which are known not to have, either individually or cumulatively, a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. Class II(c) does not require documentation.

**Categorical Exclusion Description**

Type 04: Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

| Date Description | Date |
|---|---|
| Class IIc CE Approved | |

| Scope Name / Code | Line Item Number | Line Item Name | Quantity | FTA Amount | Total Eligible Cost |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| BUS: SUPPORT EQUIP AND FACILITIES (114-00) | 11.42.07 | ACQUIRE - ADP HARDWARE | 1 | $25,000.00 | $25,000.00 |

**Finding: Class II(c) - Categorical Exclusions (C-List)**

**Class Level Description**
Class II(c) consists of projects called categorical exclusions (CEs) which are known not to have, either individually or cumulatively, a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. Class II(c) does not require documentation.

**Categorical Exclusion Description**

Type 07: Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.

| Date Description | Date |
|---|---|
| Class IIc CE Approved | |

| Scope Name / Code | Line Item Number | Line Item Name | Quantity | FTA Amount | Total Eligible Cost |
|---|---|---|---|---|---|
| BUS: SUPPORT EQUIP AND FACILITIES (114-00) | 11.44.06 | REHAB/RENOVATE - SHOP EQUIPMENT | 2 | $18,000.00 | $18,000.00 |

## Project Title: Operating Assistance

| Project Number | Temporary Project Number | Date Created | Start Date | End Date |
|---|---|---|---|---|
| 1155-2020-2-P2 | 1155-2020-2-P2 | 6/3/2020 | 2/1/2020 | 12/31/2021 |

**Project Description**
This grant is requesting $3,529,862.00 for operating assistance. The federal share is 100%. Funds will be used for:

(Under one ALI)
Operations ($2,925,362.00)
Administration ( $409,5.00)
Salaries ($195,000.00)

TOTAL Operating Assistance Funds: $3,529,862.00
Total Eligible Project Cost: $3,529,862.00

It is not expected that additional grants will be needed to complete the activities of this project.

**Project Benefits**

Thru these funds, the City of Bismarck/ Bis-Man Transit will continue to provide transit service to the public during and beyond the COVID-19 pandemic.

**Additional Information**
*None provided.*

**Location Description**
The project will be carried out at the Bis-Man Transit Building (3750 E Rosser Ave, Bismarck, ND 58501).

**Security**
Yes -- our organization will expend at least 1% of the 5307 funds in this application for security-related projects

## Project Location (Urbanized Areas)

| UZA Code | Area Name |
|---|---|
| 380000 | North Dakota |
| 383090 | Bismarck, ND |

## Congressional District Information

| State | District | Representative |
|---|---|---|
| North Dakota | 1 | Kelly Armstrong |

## Program Plan Information

**STIP/TIP**
Date: Not Provided
Description: This project includes only operating assistance with no substantial functional, location, or capacity change. Therefore, per CARES Act requirements, no STIP/TIP documentation is needed.

**UPWP**
Date: Not Provided
Description: N/A

**Long Range Plan**
Date: Not Provided
Description: N/A

## Project Control Totals

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $3,529,862 |
| Local | | | $0 |
| Local/In-Kind | | | $0 |
| State | | | $0 |

| | | | |
|---|---|---|---|
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$3,529,862** |

## Project Budget

| Project Number | | Budget Item | | FTA Amount | Non-FTA Amount | Total Eligible Amount | Quantity |
|---|---|---|---|---|---|---|---|
| 1155-2020-2-P2 | 300-00 (300-) | OPERATING ASSISTANCE | | $3,529,862.00 | $0.00 | $3,529,862.00 | 3 |
| 1155-2020-2-P2 | | 30.09.08 | EMER RELIEF - OPERATING ASSIST - 100% Fed Share | $3,529,862.00 | $0.00 | $3,529,862.00 | 3 |

## Project Budget Activity Line Items

**Budget Activity Line Item: 30.09.08 - EMER RELIEF - OPERATING ASSIST - 100% Fed Share**

| Scope Name / Code | Line Item # | Line Item Name | Activity | Quantity |
|---|---|---|---|---|
| OPERATING ASSISTANCE (300-00) | 30.09.08 | EMER RELIEF - OPERATING ASSIST - 100% Fed Share | OPERATING ASSISTANCE | 3 |

**Extended Budget Description**
This grant is requesting $3,529,862.00 for operating assistance. Funds will be used for:

(Under one ALI)
Operations ($2,925,362.00)
Administration ( $409,5.00)
Salaries ($195,000.00)

**Will 3rd Party contractors be used to fulfill this activity line item?**
Yes, 3rd Party Contractors will be used for this line item.

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $3,529,862 |
| Local | | | $0 |

| | | | |
|---|---|---|---|
| Local/In-Kind | | | $0 |
| State | | | $0 |
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$3,529,862** |

| Milestone Name | Est. Completion Date | Description |
|---|---|---|
| Start Date | 2/1/2020 | Operating Assistance will begin as of February 1, 2020. |
| End Date | 12/31/2021 | Operating Expenses will be exhausted by the end of December 2021, or possibly sooner if operations returns to normal levels. |

## Project Environmental Findings

**Finding: Class II(c) - Categorical Exclusions (C-List)**

**Class Level Description**
Class II(c) consists of projects called categorical exclusions (CEs) which are known not to have, either individually or cumulatively, a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. Class II(c) does not require documentation.

**Categorical Exclusion Description**

Type 04: Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

| Date Description | Date |
|---|---|
| Class IIc CE Approved | |

| Scope Name / Code | Line Item Number | Line Item Name | Quantity | FTA Amount | Total Eligible Cost |
|---|---|---|---|---|---|
| OPERATING ASSISTANCE (300-00) | 30.09.08 | EMER RELIEF - OPERATING ASSIST - 100% Fed Share | 3 | $3,529,862.00 | $3,529,862.00 |

## Project Title: Preventive Maintenance - Facility

| Project Number | Temporary Project Number | Date Created | Start Date | End Date |
|---|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| 1155-2020-2-P3 | 1155-2020-2-P3 | 6/3/2020 | 6/30/2020 | 12/31/2021 |

**Project Description**
This grant is requesting $58,000.00 for preventive maintenance. The federal share is 100%. Funds will be primarily used for building repairs/caulking and, if needed, bus shelters/ bench replacements.

TOTAL Preventive Maintenance Funds: $58,000.00
Total Eligible Project Cost: $58,000.00

It is not expected that additional grants will be needed to complete that activities of this project.

**Project Benefits**
Transit will be able to maintain their building and rider facilities in a a state of good repair, ensuring they are comfortable and safe.

**Additional Information**
*None provided.*

**Location Description**
The project will be carried out at the Bis-Man Transit Building (3750 E Rosser Ave, Bismarck, ND 58501).

**Security**
Yes -- our organization will expend at least 1% of the 5307 funds in this application for security-related projects

## Project Location (Urbanized Areas)

| UZA Code | Area Name |
|---|---|
| 380000 | North Dakota |
| 383090 | Bismarck, ND |

## Congressional District Information

| State | District | Representative |
|---|---|---|
| North Dakota | 1 | Kelly Armstrong |

## Program Plan Information

### STIP/TIP
Date: Not Provided
Description: This project includes only preventive maintenance expenses with no substantial functional, location, or capacity change. Therefore, per CARES Act requirements, no STIP/TIP documentation is needed.

### UPWP
Date: Not Provided
Description: N/A

### Long Range Plan
Date: Not Provided
Description: N/A

## Project Control Totals

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $58,000 |
| Local | | | $0 |
| Local/In-Kind | | | $0 |
| State | | | $0 |
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$58,000** |

## Project Budget

| Project Number | Budget Item | | FTA Amount | Non-FTA Amount | Total Eligible Amount | Quantity |
|---|---|---|---|---|---|---|
| 1155-2020-2-P3 | 117-00 (117-) | OTHER CAPITAL ITEMS (BUS) | $58,000.00 | $0.00 | $58,000.00 | 1 |
| 1155-2020-2-P3 | 11.7A.00 | PREVENTIVE MAINTENANCE | $58,000.00 | $0.00 | $58,000.00 | 1 |

## Project Budget Activity Line Items

**Budget Activity Line Item: 11.7A.00 - PREVENTIVE MAINTENANCE**

| Scope Name / Code | Line Item # | Line Item Name | Activity | Quantity |
|---|---|---|---|---|
| OTHER CAPITAL ITEMS (BUS) (117-00) | 11.7A.00 | PREVENTIVE MAINTENANCE | OTHER CAPITAL ITEMS (BUS) | 1 |

**Extended Budget Description**
This grant is requesting $58,000.00 for preventive maintenance. Funds will be primarily used for building repairs/caulking and, if needed, bus shelters/ bench replacements.

**Will 3rd Party contractors be used to fulfill this activity line item?**
Yes, 3rd Party Contractors will be used for this line item.

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $58,000 |
| Local | | | $0 |
| Local/In-Kind | | | $0 |
| State | | | $0 |

| | | | |
|---|---|---|---|
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$58,000** |

| Milestone Name | Est. Completion Date | Description |
|---|---|---|
| RFP | 6/30/2020 | The RFP is expected to be completed in June 2020. |
| Installation | 6/30/2020 | Repair/caulking is expected to occur in July 2020. |
| Payment | 8/31/2020 | Payment for services is expected to occur in August 2020. |
| ALI Close Out | 12/31/2021 | The ALI is expected to be closed out by the end of December 2021, or sooner if there are many PM expenses in 2020 and 2021. |

## Project Environmental Findings

**Finding: Class II(c) - Categorical Exclusions (C-List)**

**Class Level Description**
Class II(c) consists of projects called categorical exclusions (CEs) which are known not to have, either individually or cumulatively, a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. Class II(c) does not require documentation.

**Categorical Exclusion Description**

Type 08: Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.

| Date Description | Date |
|---|---|
| Class IIc CE Approved | |

| Scope Name / Code | Line Item Number | Line Item Name | Quantity | FTA Amount | Total Eligible Cost |
|---|---|---|---|---|---|
| OTHER CAPITAL ITEMS (BUS) (117-00) | 11.7A.00 | PREVENTIVE MAINTENANCE | 1 | $58,000.00 | $58,000.00 |

## Project Title: 1% Security

| Project Number | Temporary Project Number | Date Created | Start Date | End Date |
|---|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| 1155-2020-2-P4 | 1155-2020-2-P4 | 6/5/2020 | 6/30/2020 | 12/31/2020 |

**Project Description**
This grant is requesting $38,000.00 for the 1% security expenditure. The federal share is 100%. Funds will be used to continue installing locks at the Transit building, to purchase security cameras, to install barriers on buses, and to fund other security needs as they arise. All activities will use one ALI.

TOTAL Security Funds: $38,000.00
Total Eligible Project Cost: $38,000.00

It is not expected that additional grants will be needed to complete the activities of this project.

**Project Benefits**
Security Enhancements will increase the security of the transit building and transit services to the public

**Additional Information**
*None provided.*

**Location Description**
The project will be carried out at the Bis-Man Transit Building (3750 E Rosser Ave, Bismarck, ND 58501) and possibly on buses that travel throughout the community.

**Security**
Yes -- our organization will expend at least 1% of the 5307 funds in this application for security-related projects

## Project Location (Urbanized Areas)

| UZA Code | Area Name |
|---|---|
| 380000 | North Dakota |
| 383090 | Bismarck, ND |

## Congressional District Information

| State | District | Representative |
|---|---|---|
| North Dakota | 1 | Kelly Armstrong |

## Program Plan Information

### STIP/TIP
Date: Not Provided
Description: This project includes only security expenditures with no substantial functional, location, or capacity change. Therefore, per CARES Act requirements, no STIP/TIP documentation is needed.

### UPWP
Date: Not Provided
Description: N/A

### Long Range Plan
Date: Not Provided
Description: N/A

## Project Control Totals

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $38,000 |
| Local | | | $0 |
| Local/In-Kind | | | $0 |
| State | | | $0 |
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$38,000** |

## Project Budget

| Project Number | Budget Item | | FTA Amount | Non-FTA Amount | Total Eligible Amount | Quantity |
|---|---|---|---|---|---|---|
| 1155-2020-2-P4 | 113-00 (113-) | BUS - STATION/STOPS/TERMINALS | $38,000.00 | $0.00 | $38,000.00 | 1 |
| 1155-2020-2-P4 | 11.32.07 | ACQUIRE - SURVEIL/SECURITY EQUIP | $38,000.00 | $0.00 | $38,000.00 | 1 |

## Project Budget Activity Line Items

**Budget Activity Line Item: 11.32.07 - ACQUIRE - SURVEIL/SECURITY EQUIP**

| Scope Name / Code | Line Item # | Line Item Name | Activity | Quantity |
|---|---|---|---|---|
| BUS - STATION/STOPS/TERMINALS (113-00) | 11.32.07 | ACQUIRE - SURVEIL/SECURITY EQUIP | ACQUISITION - BUS STATIONS/TERMINALS | 1 |

**Extended Budget Description**
Funds will be used to continue installing locks at the Transit building, to purchase security cameras, to install barriers on buses, and to fund other security needs as they arise. All activities will use one ALI.

**Will 3rd Party contractors be used to fulfill this activity line item?**
No, 3rd Party Contractors will not be used for this line item.

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $38,000 |

| | | | |
|---|---|---|---|
| Local | | | $0 |
| Local/In-Kind | | | $0 |
| State | | | $0 |
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$38,000** |

| Milestone Name | Est. Completion Date | Description |
|---|---|---|
| RFP | 6/30/2020 | The first RFP for security expenses will be released in June 2020. |
| Installation | 7/31/2020 | Initial installation will begin in July 2020. |
| Payment | 9/30/2020 | Payment for initial security expenses are expected to occur in September 2020. |
| Grant Draw Down | 12/31/2020 | The 1% security funding is expected to be drawn down by the end of December 2020. |

## Project Environmental Findings

**Finding: Class II(c) - Categorical Exclusions (C-List)**

**Class Level Description**
Class II(c) consists of projects called categorical exclusions (CEs) which are known not to have, either individually or cumulatively, a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. Class II(c) does not require documentation.

**Categorical Exclusion Description**

Type 05: Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

| Date Description | Date |
|---|---|
| Class IIc CE Approved | |

| Scope Name / Code | Line Item Number | Line Item Name | Quantity | FTA Amount | Total Eligible Cost |
|---|---|---|---|---|---|
| BUS - STATION/STOPS/TERMINALS (113-00) | 11.32.07 | ACQUIRE - SURVEIL/SECURITY EQUIP | 1 | $38,000.00 | $38,000.00 |

# Part 4: Fleet Details

No fleet data exists for this application.

# Part 5: FTA Review Comments

There are no review comments to display at this time.

# Part 6: Agreement

**UNITED STATES OF AMERICA**
**DEPARTMENT OF TRANSPORTATION**
**FEDERAL TRANSIT ADMINISTRATION**

**GRANT AGREEMENT**
**(FTA G-26, October 1, 2019)**

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official signs this Grant Agreement, FTA has obligated and awarded federal assistance as provided below. Upon execution of this Grant Agreement by the Recipient named below, the Recipient affirms this FTA Award, enters into this Grant Agreement with FTA, and binds its compliance with the terms of this Grant Agreement.

The following documents are incorporated by reference and made part of this Grant Agreement:
(1) "Federal Transit Administration Master Agreement," FTA MA(26), October 1, 2019, http://www.transit.dot.gov,
(2) The Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA, and
(3) Any Award notification containing special conditions or requirements, if issued.

WHEN THE TERM “FTA AWARD” OR “AWARD” IS USED, EITHER IN THIS GRANT AGREEMENT OR THE APPLICABLE MASTER AGREEMENT, “AWARD” ALSO INCLUDES ALL TERMS AND CONDITIONS SET FORTH IN THIS GRANT AGREEMENT.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE RECIPIENT DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING FTA's AWARD DATE SET FORTH HEREIN.

**FTA AWARD**

Federal Transit Administration (FTA) hereby awards a Federal Grant as follows:

**Recipient Information**

Recipient Name: Bismarck, City Of

Recipient ID: 1155

DUNS No: 080245640

**Application Information**

Federal Award Identification Number: 1155-2020-2

Application Name: COB/Bis-Man Transit Section 5307 CARES Act - Capital; Operations, Administration, and Salaries; Preventive Maintenance; and Security

Application Start Date: N/A

Original Award End Date: 12/31/2021

Current Award End Date: N/A

Application Executive Summary: This is an FFY2020 Section 5307 CARES Act grant in the amount of $3,766,362.00 (full apportionment). Per the CARES Act, the grant requests 100% federal share. This grant utilizes CARES Act funding to prevent, prepare for, and respond to COVID-19. The grant scope of work includes the following projects:

1. Capital Expenses – software, hardware, acquisition shop equipment, rehab shop equipment – $163,000
2. Operations expenses – administration, salaries, general operating needs – $3,529,862
3. Preventive Maintenance (PM) – facilities - $58,000.00
4. 1% Security Expenditure – $38,000

Total CARES Act Section 5307 Funding: $3,766,362.00
Total Eligible Project Cost: $3,766,362.00

We agree that if we receive federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a different federal agency, or insurance proceeds for any portion of a project activity approved for FTA funding under this Grant Agreement, we will provide written notification to FTA, and reimburse FTA for any federal share that duplicates funding provided by FEMA, or another federal agency or an insurance company.

Per the CARES Act, the projects in this grant are not required to be programmed in the Long Range Transportation Plan, TIP or STIP.

The City of Bismarck contracts out the operations of its Transit System to Bis-Man Transit, contract attached in recipient documents.

There is no local match required for this grant.

1% Security Expenditure will be used to continue installing locks at the Transit building, to purchase security cameras, install barriers on buses, and fund other security needs as they arise.

The North Dakota Governor's Apportionment Letter for the FFY 2020 Section 5307 CARES Act grant is attached to this application under application documents.

Research and Development: This award does not include research and development activities.

Indirect Costs: This award does not include an indirect cost rate.

Suballocation Funds: Recipient organization is directly allocated these funds and is eligible to apply for and receive these funds directly.

Pre-Award Authority: This award is using Pre-Award Authority.

**Application Budget**

Total Application Budget: $3,788,862.00

Amount of Federal Assistance Obligated for This FTA Action (in U.S. Dollars): $3,788,862.00

Amount of Non-Federal Funds Committed to This FTA Action (in U.S. Dollars): $0.00

Total FTA Amount Awarded and Obligated (in U.S. Dollars): $3,788,862.00

Total Non-Federal Funds Committed to the Overall Award (in U.S. Dollars): $0.00

**Application Budget Control Totals**

(The Budget includes the individual Project Budgets (Scopes and Activity Line Items) or as attached)

| Funding Source | Section of Statute | CFDA Number | Amount |
|---|---|---|---|
| 5307 - Urbanized Area Formula Grants (CARES Act) | 5307-6 | 20507 | $3,788,862 |
| Local | | | $0 |
| Local/In-Kind | | | $0 |
| State | | | $0 |
| State/In-Kind | | | $0 |
| Other Federal | | | $0 |
| Transportation Development Credit | | | $0 |
| Adjustment | | | $0 |
| **Total Eligible Cost** | | | **$3,788,862** |

(The Transportation Development Credits are not added to the amount of the Total Award Budget.)

**U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:**

Original Certification Date:

**Special Conditions**

There are no special conditions.

**FINDINGS AND DETERMINATIONS**

By signing this Award on behalf of FTA, I am making all the determinations and findings required by federal law and regulations before this Award may be made.

**FTA AWARD OF THE GRANT AGREEMENT**

Awarded By:

FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
Contact Info:
Award Date:

**EXECUTION OF THE GRANT AGREEMENT**

Upon full execution of this Grant Agreement by the Recipient, the Effective Date will be the date FTA or the Federal Government awarded Federal assistance for this Grant Agreement.

By executing this Grant Agreement, the Recipient intends to enter into a legally binding agreement in which the Recipient:
(1) Affirms this FTA Award,
(2) Adopts and ratifies all of the following information it has submitted to FTA:
  (a) Statements,
  (b) Representations,
  (c) Warranties,
  (d) Covenants, and
  (e) Materials,
(3) Consents to comply with the requirements of this FTA Award, and
(4) Agrees to all terms and conditions set forth in this Grant Agreement.

Executed By:

*Bismarck, City Of*

# Community Development Department

**DATE:** June 16, 2020

**FROM:** Ben Ehreth, AICP, Community Development Director

**ITEM:** Vacation of Alley Rights-of-Way – Block 38, Northern Pacific Second Addition

## REQUEST

Bismarck Cancer Center is requesting approval of the vacation of alleys within Block 38, Northern Pacific Second Addition, as shown in the attached exhibit and legally described in the attached resolution. A new access easement would be recorded to replace the east-west alley in a location north of the existing alley. The purpose of this request is to facilitate an expansion of the Bismarck Cancer Center building.

Please place this item on the June 23, 2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

North Dakota Century Code requires four weeks of legal ads before a public hearing to vacate public rights-of-way. If the Board of City of Commissioners wishes to proceed with this hearing, the ads will be placed and the hearing would be scheduled for August 11, 2020. A draft of the resolution to vacate is attached. However, this resolution would not be signed and recorded until after the hearing is held and a decision is made.

## RECOMMENDED CITY COMMISSION ACTION

Based on the above findings, staff recommends calling for a public hearing to vacate the dedicated alley over the North 20 feet of Tract 500 of Block 27 and 38, Northern Pacific Second Addition, and the deeded alley over the East 8 feet of the North 20 feet of Lot 8, Block 38, and the deeded alley over the South 19.3 feet of the East 8 feet of Lot 9 and the South 19.3 feet of the West 8 feet of Lot 4, Block 38, Northern Pacific Second Addition, as shown in the attached exhibit and the attached resolution, with the following condition:

1. A replacement access easement sufficient to provide for all access and utility need for this area is recorded in conjunction with the vacation.

**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, 355-1850 or dnairn@bismarcknd.gov

# STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

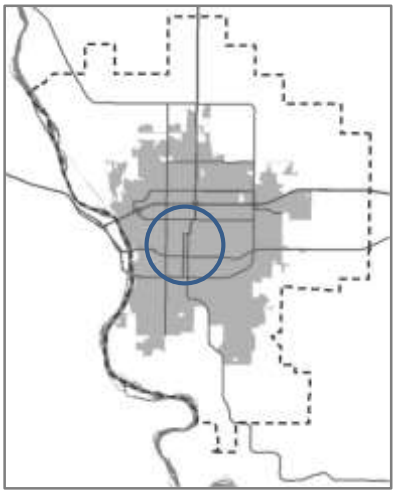
**June 24, 2020**

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

*TRAKiT Project ID:* PLMD2020-006

**Project Summary**

| | |
|---|---|
| *Title:* | Vacation of alleys in Block 38, Northern Pacific 2nd Addition |
| *Status:* | Board of City Commissioners - Consideration |
| *Owner(s):* | Bismarck Cancer Center |
| *Project Contact:* | Lon Romsaas, PE, Swenson, Hagen & Co. |
| *Location:* | In central Bismarck, north of East Rosser Avenue and between North 7th Street and North 8th Street |
| *Project Size:* | 20' width by 150' length, plus 16' width by 19.3' length |
| *Request:* | Release existing public alleys to facilitate an expansion of the Bismarck Cancer Center building |



**Staff Analysis**

Bismarck Cancer Center is requesting approval of the vacation of alleys within Block 38, Northern Pacific Second Addition, as shown in the attached exhibit and legally described in the attached resolution. A new access easement would be recorded to replace the east-west alley in a location north of the existing alley. The purpose of this request is to facilitate an expansion of the Bismarck Cancer Center building.

These alleys were not dedicated with the plat of Northern Pacific Second Addition, which was recorded in 1911. The north-south alley proposed for vacation has existed through the middle of Block 38 of this subdivision for many years, and was deeded after the plat was recorded. The east-west alley proposed for vacation was dedicated as a public right-of-way by recorded instrument in 1998.

Representatives from Capital Electric, MDU, CenturyLink and Midcontinent have all consented to this vacation, with the understanding that an alternate access easement would be granted.

The replacement easement would suffice for all access and utility needs to this area. A draft of the easement will be provided by the public hearing on this action, and, if approved, would be recorded in conjunction with the attached resolution.

North Dakota Century Code requires four weeks of legal ads before a public hearing to vacate public rights-of-way. If the Board of City of Commissioners wishes to proceed with this hearing, the ads will be placed and the hearing would be scheduled for August 11, 2020. A draft of the resolution to vacate is attached. However, this resolution would not be signed and recorded until after the hearing is held and a decision is made.

The applicant is also requesting a zoning change to the HM – Health Medical zoning district in conjunction with this request, as well as lot modification.

**Required Findings of Fact** (relating to land use)

1. The right-of-way proposed to be vacated does not substantially contribute to the function or safety of the overall roadway network in the area;

*(continued)*

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

**Staff Recommendation**

Based on the above findings, staff recommends calling for a public hearing to vacate the dedicated alley over the North 20 feet of Tract 500 of Block 27 and 38, Northern Pacific Second Addition, and the deeded alley over the East 8 feet of the North 20 feet of Lot 8, Block 38, and the deeded alley over the South 19.3 feet of the East 8 feet of Lot 9 and the South 19.3 feet of the West 8 feet of Lot 4, Block 38, Northern Pacific Second Addition, as shown in the attached exhibit and the attached resolution, with the following condition:

1. A replacement access easement sufficient to provide for all access and utility needs for this area is recorded in conjunction with the vacation.

**Attachments**

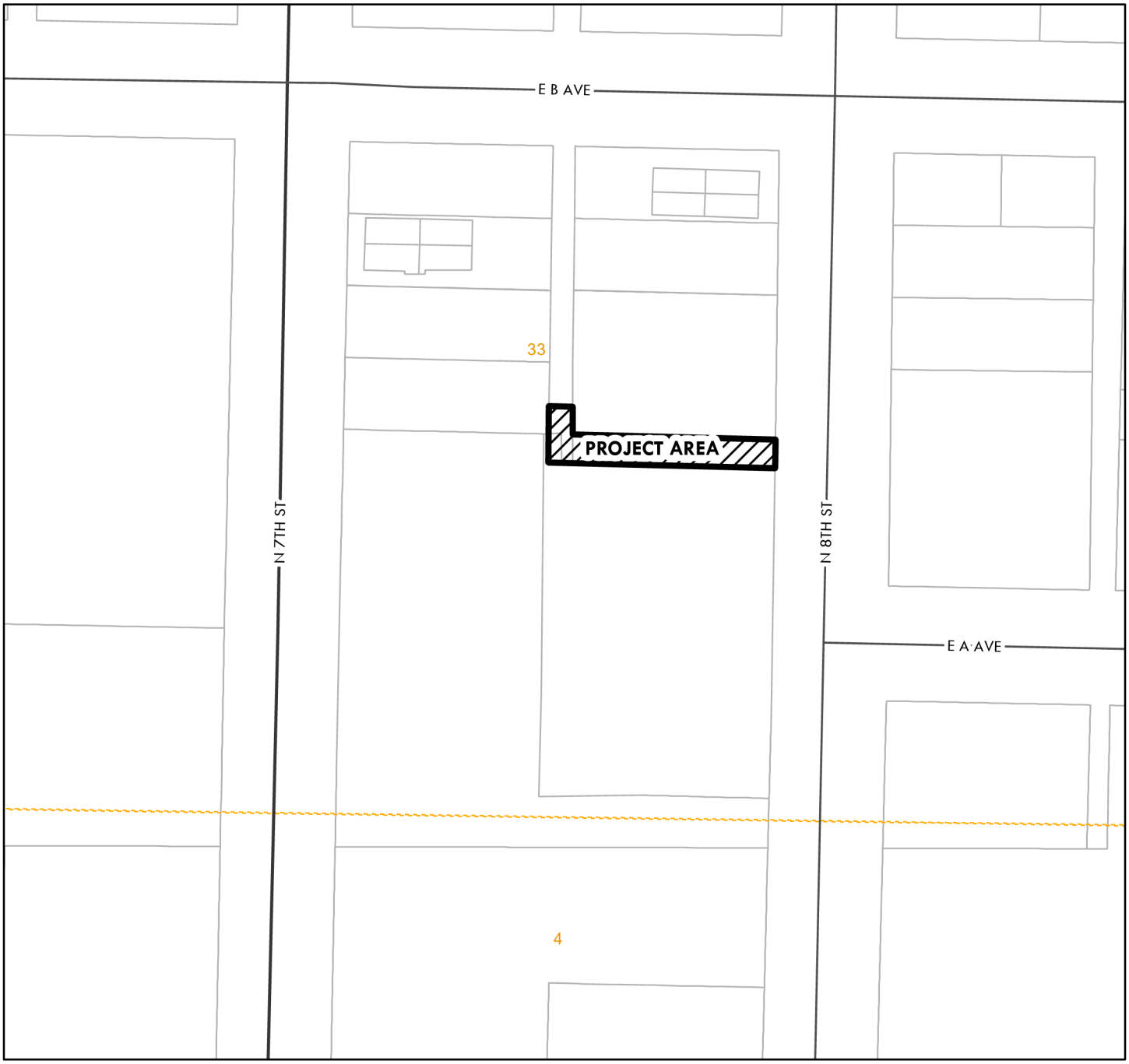
1. Location Map
2. Resolution
3. Exhibit of Vacation
4. Aerial Map
5. Application/Petition
6. Letters from Utilities

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

# Location Map

NORTHERN PACIFIC 2ND ADD, PT L3,4&9,B38

PLMD2020-006



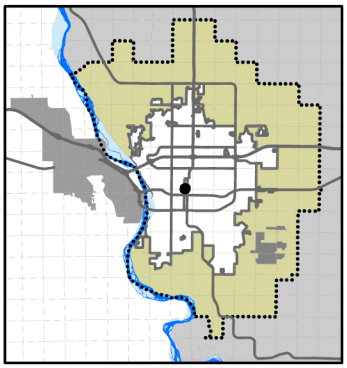

0 0.02 0.04 0.09 Miles

City Limits

County Outside ETA

Bismarck ETA Jurisdiction

*Section, township, and range indicated in orange*



City of Bismarck
Community Development Department
Planning Division
June 16, 2020 (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.*

**RESOLUTION**

**VACATION OF RIGHT-OF-WAY**
**ALLEY IN BLOCK 38 NORTHERN PACIFIC ADDITION**

**WHEREAS**, the owners of property described as Tract 500 of Block 27 and 38, Northern Pacific Second Addition and Lot 3, less the West 8 feet for alley and Lot 9, less the East 8 feet for alley, all within Block 38, Northern Pacific Second Addition adjoining and contiguous to the alley right-of-way proposed for vacation, have heretofore joined in petition requesting that part of said right-of-way contiguous to these lots be vacated, verified by oath of at least one petitioner and accompanied by a plat of said right-of-way to be vacated, having set forth the facts and reason for said vacation; and

**WHEREAS,** said right-of-way is within plat of Northern Pacific Second Addition, which was recorded on 1911. A portion of the right-of-way proposed for vacation was dedicated on September 29,1998 through document number 534789; and

**WHEREAS**, an access easement providing a similar function to the alley to be hereby vacated will be recorded in conjunction with this resolution.

**WHEREAS,** the City Traffic Engineer has determined that the part of the alley to be vacated is not necessary for efficient traffic movement or public safety, on the condition that an equivalent easement will be provided; and

**WHEREAS,** public utility companies known to have facilities in this area have consent to the proposed action; and

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

**WHEREAS**, the Board of City Commissioners ordered that notice be given on hearing the aforesaid petitions and the same was so given by publication in the official newspaper of said City on July 3, July 10, July 17, and July 24, 2020, in accordance with law. The Board of City Commissioners at the time appointed, investigated and considered the matter and heard testimony of the persons interested therein.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of City Commissioners of the City of Bismarck, North Dakota Petitions heretofore described to vacate that portion of the right-of-way described as**:**

> The dedicated alley of over the North 20 feet of Tract 500 of Block 27 and 38, Northern Pacific Second Addition, and the deeded alley over the East 8 feet of the North 20 feet of Lot 8, Block 38, and the deeded alley over the South 19.3 feet of the East 8 feet of Lot 9 and the South 19.3 feet of the West 8 feet of Lot 4, Block 38, Northern Pacific Second Addition in the City of Bismarck, Burleigh County, North Dakota.

is in all things allowed and granted.

**BE IT FURTHER RESOLVED** that the City Administrator is hereby authorized to file a transcript thereof for record in the office of the County Recorder, Burleigh County, North Dakota.

Adopted this 11th day of August, 2020.

## CERTIFICATE

I, Jason Tomanek, do hereby certify that I am the duly appointed, qualified Assistant City Administrator of the City of Bismarck, North Dakota, and that the foregoing is a full, true and correct copy of a resolution adopted at a legally convened meeting of the Board of City Commissioners held on August 11, 2020.

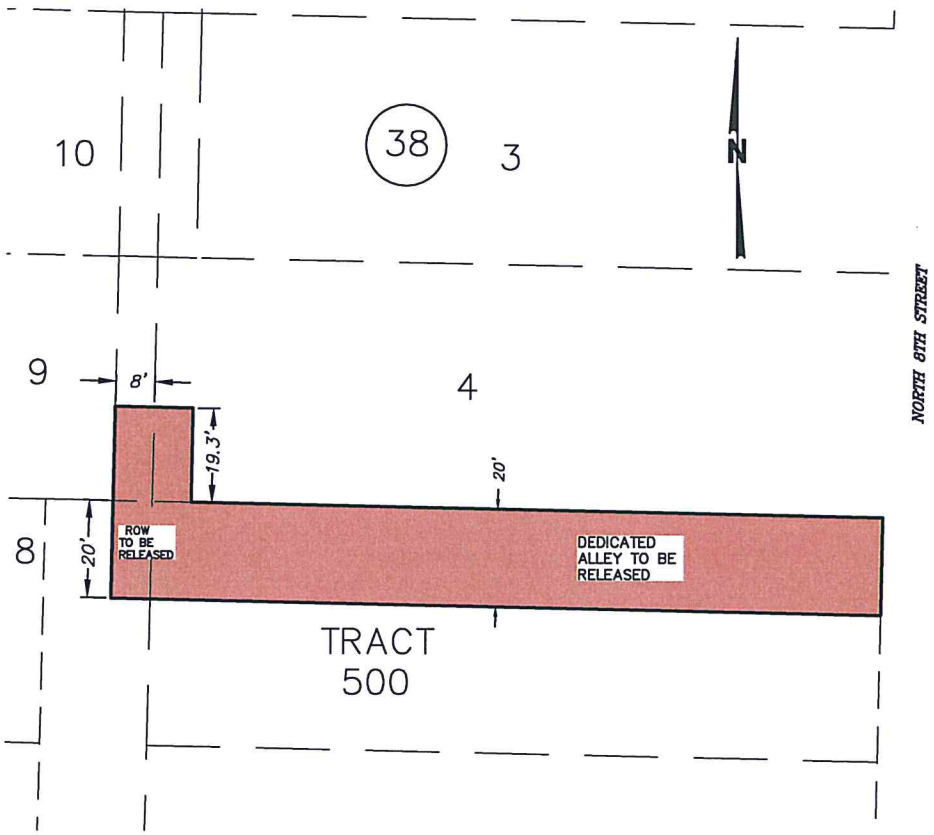
IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Bismarck, North Dakota, this 11th day of August, 2020.

(SEAL)

_____

Jason Tomanek
Assistant City Administrator
Bismarck, North Dakota

# ALLEY VACATE EXHIBIT




Vacate the dedicated alley of the North 20' of Tract 500
& Vacate the deeded alley of the E 8' of the N. 20' of Lot 8
& the S. 19.3' of the E 8' of Lot 9 & the S. 19.3' of the W 8' of Lot 4

# Aerial Map

NORTHERN PACIFIC 2ND ADD, PT L3,4&9,B38

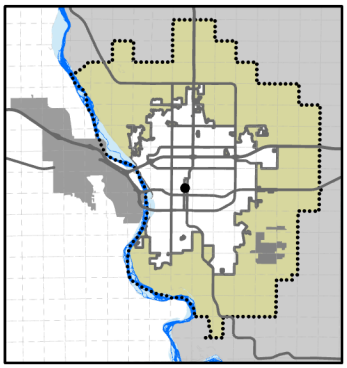
PLMD2020-006
ZC2020-006

0 0.01 0.03 0.05 Miles

City Limits  Bismarck ETA Jurisdiction

Aerial Imagery from 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
June 16, 2020

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

*Last Revised: 1/1/2019*

# UNIFIED DEVELOPMENT APPLICATION

***NOTE: APPLICATIONS ARE NOT COMPLETE UNTIL ALL REQUIRED SUBMITTALS HAVE BEEN RECEIVED***

***Application submitted for (check all that apply):***

- ☐ Preliminary Major Plat
- ☐ Final Major Plat
- ☐ Minor Plat
- ☐ Plat Vacation
- ☐ Annexation
- ☐ Zoning Change
- ☐ PUD Zoning Change / PUD Amendment
- ☐ Special Use Permit
- ☐ Variance
- ☐ Rural Lot Split (RR & RR5)
- ☐ Fringe Area Road Master Plan Amendment
- ☐ Land Use Plan Amendment

Lot Modification
- ☐ Lot Line Adjustment
- ☐ Lot Split
- ☐ Lot Combination

Plat Modification
- ☒ Street/Alley Vacation
- ☐ Easement Release
- ☐ Non-Access Line Release

| ***PROPERTY INFORMATION*** | | | |
|---|---|---|---|
| Project Name: | Alley Vacation--Bismarck Cancer Center | | |
| Legal description: (Lot, Block, Addition/Subdivision) | Lots 4, 8, 9, & Tract 500 Block 38 Northern Pacific 2nd | | |
| Street address of property: | 500 N. 8th St | | |
| Existing Zoning | | Proposed Zoning: | |
| Acreage: | | Number of Lots: | |
| Brief description of development proposal, including reason(s) for the request: | Vacate the dedicated alley of the North 20' of Tract 500 & Vacate the deeded alley of the E 8' of the N. 20' of Lot 8 & the S. 19.3' of the E 8' of Lot 9 & the S. 19.3' of the W 8' of Lot 4 | | |

| ***APPLICANT/DEVELOPER*** | |
|---|---|
| Name: | Bismarck Cancer Center |
| Mailing Address: | PO Box 5598, Bismarck, ND 58506 |

| ***PROPERTY OWNER (IF DIFFERENT THAN APPLICANT/DEVELOPER)*** | |
|---|---|
| Name: | |
| Mailing Address: | |

| ***CONTACT PERSON/CONSULTANT (IF DIFFERENT THAN APPLICANT/DEVELOPER)*** | |
|---|---|
| Name: | Swenson Hagen & Co |
| Mailing Address: | 909 Basin Ave., Bismarck, ND 58504 |

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

| | | |
|---|---|---|
| Amy J Gross | Amy J. Gross | 06-10-20 |
| (Applicant's Signature) | (Printed Name) | (Date) |
| | | |
| (Owner's Signature, if different) | (Printed Name) | (Date) |
| | | |
| (Additional Owner's Signature, if applicable) | (Printed Name) | (Date) |
| | | |
| (Additional Owner's Signature, if applicable) | (Printed Name) | (Date) |

**VERIFICATION FOR PLAT MODIFICATION REQUESTS:**

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

STATE OF NORTH DAKOTA )
: SS
COUNTY OF BURLEIGH )

On this 10th day of JUNE, 2020, before me, a notary public in and for said county and state, appeared AMY GROSS, known to be personally to be the same person described in and whom executed the above instrument, and severally acknowledged that he/she executed the same.

LANDON NIEMILLER
Notary Public
State of North Dakota
My Commission Expires Mar 23, 2022

Landon Niemiller
Notary Public
Burleigh County, State of North Dakota

**Submission Deadlines:**

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

The Board of Adjustment regularly meets on the first Thursday of each month. All development applications for variances are due at **5:00 p.m. on the Monday that is 24 calendar days prior** to the meeting.

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

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

June 9, 2020

Mr. Mike Berg
Capital Electric Cooperative
PO Box 730
Bismarck, ND 58502-0730

Re: Northern Pacific 2nd Addition

Dear Mike,

Bismarck Cancer Center wishes to vacate the dedicated alley of the north 20' of Tract 500 and vacate the deeded alley of the east 8' of the north 20' of Lot 8, and the south 19.3' of the east 8' of Lot 9, and the south 19.3' of the west 8' of Lot 4 Block 38 Northern Pacific 2nd Addition. This will be replaced with an easement upon City of Bismarck approval.

If you agree with this alley vacation, please sign your consent below and return to the office of Swenson, Hagen & Co. within the next 10 business days.

Sincerely,

Landon Niemiller
Land Development Tech

LN;lm

I, Michael Berg, a representative of Capital Electric Cooperative, hereby consent to the proposed vacation of the above described utility easement.

Michael Berg - Staking Engineer
Capital Electric Cooperative

June 9, 2020

Montana-Dakota Utilities (Gas)
Shelley Vetter
400 North 4th Street
Bismarck, ND 58501

Re: Northern Pacific 2nd Addition

Dear Shelley,

Bismarck Cancer Center wishes to vacate the dedicated alley of the north 20' of Tract 500 and vacate the deeded alley of the east 8' of the north 20' of Lot 8, and the south 19.3' of the east 8' of Lot 9, and the south 19.3' of the west 8' of Lot 4 Block 38 Northern Pacific 2nd Addition. This will be replaced with an easement upon City of Bismarck approval.

If you agree with this easement vacation, please sign your consent below and return to the office of Swenson, Hagen & Co. within the next 10 business days.

Sincerely,

Landon Niemiller
Land Development Tech

LN;lm

I, Robert Frank, a representative of Montana-Dakota Utilities (Gas), hereby consent to the proposed vacation of the above described utility easement.

Robert Frank
Montana-Dakota Utilities (Gas)

June 9, 2020

Century Link
Connie Kassian
1101 16th Street NE
Mandan, ND 58554

Re: Northern Pacific 2nd Addition

Dear Connie,

Bismarck Cancer Center wishes to vacate the dedicated alley of the north 20' of Tract 500 and vacate the deeded alley of the east 8' of the north 20' of Lot 8, and the south 19.3' of the east 8' of Lot 9, and the south 19.3' of the west 8' of Lot 4 Block 38 Northern Pacific 2nd Addition. This will be replaced with an easement upon City of Bismarck approval.

If you agree with this easement vacation, please sign your consent below and return to the office of Swenson, Hagen & Co. within the next 10 business days.

Sincerely,

Landon Niemiller
Land Development Tech

LN;lm

I, CONNIE M KASSIAN, a representative of Century Link, hereby consent to the proposed vacation of the above described utility easement.

Century Link

June 9, 2020

Midcontinent Communications
Derek Weigel
719 Memorial Highway
Bismarck, ND 58504

Re: Northern Pacific 2nd Addition

Dear Derek

Bismarck Cancer Center wishes to vacate the dedicated alley of the north 20' of Tract 500 and vacate the deeded alley of the east 8' of the north 20' of Lot 8, and the south 19.3' of the east 8' of Lot 9, and the south 19.3' of the west 8' of Lot 4 Block 38 Northern Pacific 2nd Addition. This will be replaced with an easement upon City of Bismarck approval.

If you agree with this easement vacation, please sign your consent below and return to the office of Swenson, Hagen & Co. within the next 10 business days.

Sincerely,

Landon Niemiller
Land Development Tech

LN;lm

I, Derek Weigel, a representative of Midcontinent Communications, hereby consent to the proposed vacation of the above described utility easement.

Midcontinent Communications

Bismarck

# Engineering Department

**DATE:** June 16, 2020

**FROM:** Gabe Schell, City Engineer

**ITEM:** Engineering Consultant Services - 43rd Ave NE Reconstruction - State St to 26th St - HC 131

## REQUEST

Approval of consultant services contract and Scope of Work with KLJ Engineering LLC (KLJ) relating to 43rd Avenue NE Reconstruction Project HC 131.

Please place this item on the 6/23/2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

The Engineering Department developed a request for proposals from qualified consulting engineering firms to prepare preliminary engineering documents and design plans for a reconstruction project on 43rd Avenue NE from State Street to N 26th Street and 19th Street from 43rd Avenue NE to N Valley Loop.

The project would reconstruct 43rd Avenue NE to an urban multi-lane roadway including pedestrian facilities, lighting, intersection traffic control, signing and pavement marking. Proposals were received by two consulting engineering firms. The selection committee reviewed the proposals and conducted oral interviews on June 4, 2020. The selection committee makes the recommendation to award the project to KLJ. The contract and scope of services are attached. The planning and preliminary design for this project were included in the 2020 capital improvement plan.

This project is currently programmed for 2024 construction using $4.8 million federal aid and $9.2 million local funds but could be advanced constructed prior to 2024 using local funds with reimbursement for the federal share in 2024 if federal funds are available. This is a similar process that was used for the 43rd Avenue NE project west of State Street currently under construction. The schedule that we established in the request for proposals dictates completion of preliminary design and final design in 2021 with the

ability to advance construct in 2022 if desired by this Board.

If the preliminary engineering contract is approved, we will be back to the Board for discussion and decisions on items such as advance construction, funding source, lane configuration, intersection traffic control and other higher level decisions that have a significant impact on the project design and schedule.

This contract may be amended with Board approval to include final design and construction observation.

**RECOMMENDED CITY COMMISSION ACTION**

Approve consultant services contract with KLJ Engineering LLC

**STAFF CONTACT INFORMATION**

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

**CITY OF BISMARCK, NORTH DAKOTA**
**ENGINEERING SERVICES AGREEMENT**
**FOR**
**43rd AVENUE NE RECONSTRUCTION**
**City Number: HC 131**

Location: 43rd Avenue from N State Street to N 26th Street and N 19th Street from 43rd Avenue NE to N Valley Loop

**1.**

THIS AGREEMENT is entered into by and between the City of Bismarck, hereinafter known as the City; and KLJ Engineering LLC, hereinafter known as the Engineer.

## SCOPE OF WORK

The City agrees to engage the Engineer and the Engineer agrees to perform, within the approved pay and time schedule, the Work Statement as set forth in the attached City's Request For Proposals provided in Attachment "B" and as further defined by the attached Scope of Work provided in Attachment "A".

The Engineer agrees to perform the engineering services for the 43rd Avenue NE project in three separate phases, subject to satisfactory performance, funding availability and subsequent agreement of scope and fees for each phase. The three separate phases include Environmental Document and Preliminary Design in Phase I, Final Design in Phase II, and Construction, Administration, and Supervision in Phase III.

The Engineer shall prepare a Documented CATEX (DCE) per North Dakota Department of Transportation requirements and the Work Task Descriptions in Attachment "A" and Attachment "B". The Engineer shall also develop the DCE per Federal Highway Administration standards under this phase. The environmental classification will be determined by the FHWA upon completion of the DCE.

The Engineer shall prepare engineering concepts, plans and specifications in accordance with AASHTO Policy on Geometric Design of Highways and Streets, North Dakota Department of Transportation Standard Specifications for Road and Bridge Construction dated 2014 and revisions thereof, North Dakota Department of Transportation Design Standards and Special Provisions and City of Bismarck Standard Specifications.

The Engineer shall perform the needed construction administration work such as, but not limited to, staking, cross sectioning, inspection, sampling and testing of materials, and measuring and computing pay quantities. He shall prepare the required engineering and administrative documents and records as required by the City and NDDOT. It is the Engineer's responsibility to perform construction inspections to verify the Contractor's work is performed according to the governing specifications, plans, and special provisions for Road and Bridge Construction, Materials Sampling and Testing Manual, Field Office Procedures Manual, and Construction Manual.

The City may elect to have the Engineer provide Right-of-Way Acquisitions on its behalf. All costs for providing those services would be negotiated once a defined scope can be determined.

**2.**

The City will pay the Engineer as follows:

A. Maximum Payment: The total contract costs for Phase I, to include the Environmental Documentation and Preliminary Engineering shall be $491,333.84 unless changed according to Section 7. Breakdown of the contract costs are found in Attachment "A".

B. Salary Costs:

1. The salaries of the Engineer's employees shall be reimbursed for actual working time on the project, except as provided for under item 2 of this section.

2. Non-engineer employee salaries will be increased by 50 percent per hour for time worked in excess of 40 hours per week. Averaging of pay rates and overtime between federally funded highway projects and non-federally funded projects is permissible, providing:

a. The practice of averaging is consistent and performed in accordance with generally accepted accounting principles.

b. There shall be a reasonable balance between overtime costs incurred on federally and non-federally funded projects.

c. The Engineer will hold open all records supporting the averaging, including pertinent records of non-federally funded projects.

C. Payroll Additives and Overhead Costs: A rate equal to 193.73 percent of the total employees' salaries will be paid as indirect costs. Such percentages are based on the prior fiscal year's costs of the Engineer, as approved by NDDOT. These percentages will be adjusted upon the completion of additional audits performed by NDDOT.

D. Expenses: Supplies, material costs, printing, direct project costs, and outside consultants will be payable on an actual cost basis.

E. Profit: The Engineer will be paid a fixed payment of $53,117.69 as profit for Phase I.

F. Payment Schedule: Payments will be made to the Engineer by the City upon receipt of the Engineer's monthly vouchers. The City shall remit full payment of approved invoices within 30 days of invoice receipt according to schedules listed above.

G. Cost principles and allowable costs are covered under Title 48 CFR Part 31, and procurement procedures are covered under Title 49 CFR Part 18.

**3.**

The work under this agreement shall be performed as required to facilitate construction of the project in 2022.

**4.**

Duly authorized representatives of the City, NDDOT, and Federal Highway Administration (FHWA) shall have the right to inspect and copy the Engineer's files and records relating to the work included in this agreement.

On federal aid projects, the Engineer shall furnish to NDDOT all project records and documents including, but not limited to, diary, quantity books, and haul tickets.

All books, documents, papers, accounting records, and other evidence pertaining to the costs incurred under the agreement and all plans, files, records, and field notes pertaining to the project shall be retained by the Engineer and kept available for inspection by NDDOT or FHWA for a period of three years after the date of final payment. Unless any litigation, claim or audit is started before the expiration of the three years, then the records shall be retained until such action is satisfied in accordance with the "Single Audit Act of 1984", Public Law 98-502.

These files and records shall be available in the Engineer's office located at 4585 Coleman Street, Bismarck, North Dakota.

**5.**

Final inspection and project acceptance shall be made by the City Engineer, NDDOT's district Engineer and by FHWA. The Engineer shall be responsible to the City Engineer and NDDOT's District Engineer and inform the City and NDDOT of project progress and all changes and problems on the project.

**6.**

The Engineer warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this agreement, and that has not paid or agreed to pay any company or person, other than bona fide employees working solely for the Engineers, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the City shall have the right to annul this agreement without liability, or to deduct from the agreement price or consideration, percentage, brokerage fee, gift, or contingent fee.

**7.**

No change in the type or extent of the work to be performed by the Engineers shall be made except by supplemental agreement in writing between the City and the Engineer. The supplemental agreement shall set forth the reasons for a need to change the agreement, the adjustment to the fee to be paid by the City to the Engineer, and time extensions if any.

**8.**

This agreement may be terminated by the City at any time upon written notice to the Engineer. In the event such termination should take place before completion of the work to be performed hereunder, the City shall pay the Engineers for the services rendered under the terms of the Agreement and the prorated share of the profit as the cost of engineering work accomplished bears to the estimated total required. Such termination shall not affect any legal right of the City against the Engineer for any breach of this Agreement.

**9.**

If through any cause, either party shall fail to fulfill in timely and proper manner his obligations under this contract, or if either party shall violate any of the covenants, agreements, or stipulations of this contract, the other party shall thereupon have the right to terminate this contract by giving written notice of such termination which shall be effective upon receipt of the written notice. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports, or their material prepared by the Engineer under this contract shall, at the option of the City, become property of the City and State/Federal grantor agencies, the Engineer shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. Not withstanding the above, the Engineer shall not to be relieved of liability to the City and State/Federal grantor agencies for any damages sustained by the City and State/Federal grantor agencies by virtue of any breach of the contract by the Engineer, and the City may withhold any payment to the Engineer for the purpose of setoff until such time as the exact amount of damages due the City from the Engineer is determined.

**10.**

The Engineer shall indemnify, save, and hold harmless the City, NDDOT, FHWA, and employees thereof, from any and all claims, demands, actions, or causes of action arising out of the negligent acts, errors, or omissions of the Engineer, his/her employees, or agent in the performance of the agreement, or matters incidental thereto. Liability shall be limited to the amount of insurance proceeds as listed in Section 22.

Any and all persons employed directly or indirectly by the Engineer who are engaged in the performance of any work or services required by the Engineer under this agreement shall be considered employees of the Engineer only and not of the City, FHWA, and NDDOT.

The Engineer shall comply with federal, state, and local laws together with all ordinances and regulations applicable to the work. He/she will procure all licenses, permits, and other rights necessary for the fulfillment of his/her obligations under this agreement.

**11.**

The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

**12.**

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

(a) Compliance and Regulations:

The Engineer shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(b) Solicitations for Subcontracts, Including Procurements of Materials and Equipment:

In all solicitations, either by competitive bidding or negotiation, made by the Engineer for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Engineer of the Engineer's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, age, national origin, disability/handicap, or income status.

(c) Engineer, for itself, its employees, agents and subconsultants, 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 construction of the project; (2) that Engineer shall be 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 Regulations may be amended.

The City 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 material to this

Agreement, a breach of which, continuing after notice by the City 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 the City, 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.

Engineer shall indemnify and hold harmless the City from any claims and demands of third persons including the United States of America resulting from Engineer's noncompliance with any of the provisions of this Section and Engineer shall reimburse the City for any loss or expense incurred by reason of such noncompliance.

(d) Information and Reports:

The Engineer shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the North Dakota Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the North Dakota Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance:

In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

1. Withholding of payments to the Engineer under the contract until the Engineer complies, and or

2. Cancellation, termination, or suspension of the contract, in whole or in part.

(f) Incorporation of Provisions:

The Engineer shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Engineer shall take such action with respect to any subcontract or procurement as the City or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Engineer becomes involved in or is threatened with, litigation by a subconsultant or supplier as a result of such direction, the Engineer may request the City to enter into such

litigation to protect the interests of the City, and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

The Engineer will include the above stated provisions in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Engineer becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction by the contracting agency, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

**13.**

The services of the Engineer to be performed hereunder are personal and shall not be assigned, sublet, or transferred except for specialized services. The contract with the firm or agency doing the work shall contain all the provisions of this agreement.

**14.**

The Engineer shall ensure that the project will be in full compliance with North Dakota Century Code Section 48-02-19 and any amendments thereto, and with the Uniform Federal Accessibility Standards contained in 41 CFR part 1010-19-6 (Appendix A) and the American With Disabilities Act (ADA), 36 CFR 1191, and any amendments thereto.

**15.**

Upon payment therefore, the City and State/Federal grantor agencies shall have exclusive ownership of all data resulting from the work performed under this Agreement, provided; however, that the City and State/Federal grant or agencies shall use such data only for the purpose intended by this Agreement and shall indemnify the Engineer for use of such data for any other purpose or project.

**16.**

The Engineer is advised that his/her signature on this contract certifies that the company or any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility 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.

This agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the State of North Dakota, at the time this contract was executed.

**17.**

1. DBE Policy: It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with the Federal Funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement.

2. DBE Obligations: The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 40 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or part with Federal Funds provided under this agreement. In this regarding all recipients or contrast shall take all necessary and reasonable steps in accordance with 40 CFr Part 23 to ensure the disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, creed, color, national origin, age, or sex in the award and performance of 'DOT-assisted contracts".

**18.**

The provisions of this agreement shall be binding upon and shall ensure to the benefit of the parties hereby, and their respective successors and assigns.

**19.**

The failure of the City of its State/Federal grantor to enforce any provisions of this contract shall not constitute a waiver by the City or its State/Federal grantors of that or any other provisions.

**20.**

City and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

**21.**

Engineer will maintain insurance coverage for Workers' Compensation, General Liability, Professional Liability, and Automobile Liability and will provide certificates of insurance to Owner upon request.

**22.**

Engineer shall procure and maintain insurance as required by and set forth below:

a. Employer's Liability –

| | |
|---|---|
| 1) Each Accident: | $1,000,000 |
| 2) Disease, Policy Limit: | $1,000,000 |
| 3) Disease, Each Employee: | $1,000,000 |

b. General Liability –

| | |
|---|---|
| 1) Each Occurrence (Bodily Injury and Property Damage): | $1,000,000 |
| General Aggregate | $2,000,000 |

c. Excess or Umbrella Liability –

| | |
|---|---|
| 1) Each Occurrence: | $2,000,000 |
| 2) General Aggregate: | $4,000,000 |

d. Automobile Liability –

| | |
|---|---|
| 1) Combined Single Limit (Bodily Injury and Property Damage) | |
| 2) Each Accident: | $1,000,000 |

e. Professional Liability –

| | |
|---|---|
| 1) Each Claim Made: | $2,000,000 |
| 2) Annual Aggregate: | $4,000,000 |

f. The City will be listed on Engineer's policies of insurance as additionally insured.

**23.**

This agreement constitutes the entire agreement between 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 effected only in the specific purpose given. There are not understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The Engineer, by the signature below of its authorized representative, herby acknowledges that the Engineer has read this agreement, understands it, and agrees to be bound by its terms and conditions.

**IN WITNESS WHEREOF**, this Agreement has been executed the _____ day of _____, _____.

KLJ ENGINEERING LLC

Mark Anderson, P.E.

CITY OF BISMARCK

WITNESS

Erika Lorenz

WITNESS

Attest_____

43rd Avenue NE

## CERTIFICATION OF CONSULTANT

I hereby certify that I am a Vice President, EPW and duly authorized representative of the firm of KLJ Engineering LLC, whose address is 4585 Coleman Street, Bismarck ND 58503, and that neither I nor the firm I here represent has;

A. Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement.

B. Agreed, as an express or implied condition for obtaining this agreement, to employ, or retain the services or any firm or person in connection with carrying out the agreement.

C. Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for or in connection with, procuring, or carrying out the agreement; except as here expressly stated (if any): none.

I acknowledge that this certificate is to be furnished to the North Dakota Department of Transportation and the Federal Highway Administration, in connection with this agreement involving participation of federal aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

WITNESS:

Erika Lorenz
NAME (TYPE OR PRINT)

SIGNATURE

CONSULTANT:

Mark Anderson
NAME (TYPE OR PRINT)

Mark Anderson
SIGNATURE

6/16/2020
DATE

## CERTIFICATION OF CITY

I hereby certify that I am the Mayor of the City of _____Bismarck_____, North Dakota, and that the consulting firm or his representative has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this agreement to:

A. Employ or retain, or agree to employ or retain, and firm or person, or

B. Pay, or agree to pay, or any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; expressly stated (if any): _____.

I acknowledge that this certificate is to be furnished to the North Dakota Department of Transportation and the Federal Highway Administration, in connection with this agreement involving participation of federal aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

PRESIDENT
BOARD OF CITY COMMISSIONERS

_____
NAME (TYPE OR PRINT)

_____
SIGNATURE

_____
DATE

ATTEST:

_____
NAME (TYPE OR PRINT)

_____
SIGNATURE

_____
DATE

**ATTACHMENT "A"**
**June 15, 2020**
**PHASE I - ENVIRONMENTAL DOCUMENT & PRELIMINARY DESIGN**
**SCOPE OF SERVICES**
**43rd Avenue NE Reconstruction Project**
**State Street to N 26th Street and**
**N 19th Street from 43rd Avenue NE to N Valley Loop**
**City Project: HC 131**
**NDDOT Project: NHU-1-981(123)**

## PURPOSE

KLJ Engineering LLC (KLJ) will provide the engineering services for the 43rd Avenue NE Reconstruction project in three separate phases, subject to satisfactory performance, funding availability, and subsequent agreement of scope and fees for each phase. The three separate phases include preliminary engineering and environmental documentation in Phase I, final design and plan preparation in Phase II, and construction administration in Phase III. The purpose of this exhibit is to describe the scope of work and responsibilities required in connection with Phase I, including preliminary survey; preliminary engineering/reports; public involvement; and environmental documentation necessary to obtain environmental clearance for the project. The following Phase I scope of work and corresponding fee summary is based upon the assumption that the proposed projects would have no significant impacts and Federal Highway Administration (FHWA) approval of a Categorical Exclusion (CATEX). If it is determined that an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required, the additional work may be added by supplement to this agreement. The purpose of this attachment is to describe the scope of services and responsibilities required to conduct the preliminary engineering and environmental documentation.

The following assumptions were made in preparing the scope of services:

### 43rd Avenue NE

- Two roadway typical section alternatives will be studied for 43rd Avenue NE. These include a 5-lane section, 3-lane section and/or transition from 5-lane to 3-lane. These alternatives will include standard intersection layouts and a traffic signal at the N 19th Street intersection, if warranted.
- Roundabout intersection options at N 19th Street and N 26th Street.
- Two profile options between State Street and N 15th Street.
- Two options for the frontage road intersection east of State Street. Right-in/right-out or extending the frontage road to N 15th Street.
- Two options will be considered at N 26th Street for addressing the intersection sight distance. These include lowering the profile along 43rd Avenue NE or realignment of the N 26th Street intersection.

### N 19th Street

- Two roadway typical section alternatives will be studied for N 19th Street.

### Project Study Area

The study area will cover the 43rd Avenue NE corridor, starting west of the State Street Intersection and ending approximately 1000 feet east of the N 26th Street intersection. The study area also includes N 19th Street extending from 400 feet south of the N Valley Loop intersection to the Skyline Boulevard intersection. See attached study area map.

## SERVICES TO BE PERFORMED BY KLJ

## 1. PROJECT MANAGEMENT & COORDINATION

### Project Management & Coordination

KLJ will manage the project and provide overall coordination of the work completed by the planning and design team. This work shall consist of managing work assignments, internal team meetings, client coordination, project budget and schedule.

### Progress Reports (Bi-weekly updates) (Est. 12 Updates)

KLJ shall submit a biweekly status report via email to the NDDOT Local Government Representative and the City of Bismarck which will summarize the work performed in the current period, upcoming activities in the next period, summary of project decisions and potential out of scope work activities. The reports shall include percent complete for key project activities. The status report shall also identify any milestone activity that is not completed or anticipated not to be completed on time. The report shall include the reasons why any milestone date was missed and what actions will be taken to get the project back on schedule.

### Project Schedule

KLJ will submit and maintain a schedule for the completion of Phase I of the project. The schedule will include the establishment of milestone dates for the major work items. The schedule will be reviewed and adjusted as necessary to incorporate changes in the work concept and progress to date.

## 2. PRELIMINARY SURVEY

### Preliminary Survey

KLJ will conduct the preliminary ground survey of project limits to include Topographic, Cadastral, Boundary, and Utility Surveys. KLJ will download the field survey data and generate AutoCADD and Civil 3D base maps for plan drawings. Existing data to be compiled includes project control, horizontal & vertical alignment, topography, right-of-way, property boundaries and utilities. The survey limits will cover the 43rd Avenue NE and N 19th Street corridors covering the project study areas as previously defined.

All project information will be generated in the following formats and standards:

| | |
|---|---|
| Projection: | Modified State Plane |
| Zone: | North Dakota South Zone (3302) |
| Horizontal Datum: | North American Datum 1983 (2011) |
| Vertical Datum: | North American Vertical Datum 1929 |
| Geoid Model: | Geoid12B |
| Units: | International feet |
| Scale Factor: | 1.0001485221 |

### CADD Editing

KLJ will complete the CADD editing with data obtained from ground survey, PLSS information, utility data, and existing right of way information.

### Access Notification

A direct mailing will be sent to the landowners adjacent to the project notifying them of the survey work.

## 3. PRELIMINARY ENGINEERING REPORTS

### Traffic Study

The objective of the traffic operations report is to provide a recommendation on the proposed geometric and traffic control device improvements necessary to meet the demands of the future traffic for all modes of travel; vehicular, pedestrian, bicycle, rail and transit. The key items in the traffic operations report are the existing conditions assessment, traffic forecasts, crash analysis, operational analysis, warrant analysis, railroad grade-crossing analysis, alternative assessment and report development.

#### *Existing Conditions Assessment*

- Roadway Inventory
  - Intersection geometry – lane configurations, storage lengths, posted speeds
  - Traffic control devices and lighting inventory
  - Pedestrian and bicycle conditions assessment
- Traffic Data Collection
  - KLJ has access to recent turning movement count data at 43rd Avenue NE intersections with State Street and N 19th Street, and the intersection of N 19th Street with Calgary Avenue.
  - KLJ will obtain a Tube Count at 26th Street to supplement the 2019 tube counts along the corridor.
  - KLJ will supplement existing traffic data with Streetlight geospatial data to provide the following insights:
    - Origin-destination data
    - Estimate turning movement counts at N 26th Street and the State Street Frontage Roads
    - Monthly and seasonal traffic volume changes along the corridor
    - Trip length and travel time data

### *Crash Analysis*

Crash history at intersections and along the study roadways will be provided from the North Dakota Department of Transportation. Five years of crash data will be analyzed to determine any patterns that may indicate a problem with the existing roadway geometry or traffic control devices.

### *Traffic Forecasts*

KLJ will develop the 2045 average annual daily traffic (AADT) volumes on all approaches of the study intersections. The 2045 volumes would represent a 20-year projection from the planned opening of the facility in 2022. The 2045 Bismarck Mandan MPO Transportation Model will be used as a basis for the projections. Where irregularities occur, KLJ will review and adjust projections based on engineering judgement and an understanding of planned development activities.

### *Operational Analysis*

KLJ will evaluate vehicular level of service (LOS). KLJ will use a 12-hour daily Vissim microsimulation model to analyze the corridor. The daily model will help assess daily traffic and safety conditions. Measures of effectiveness will include intersection level of service, corridor level of service, intersection conflict points, travel times and travel time reliability. KLJ will analyze 2020 and 2045 conditions.

### *Warrant Analysis*

The collected traffic count data will be supplemented with historical data to determine if the study intersections meet MUTCD warrants. NDDOT left-turn phasing warrants will be evaluated at traffic signals. If there are no warrants met with the current traffic volumes, an estimation of when the signal will be warranted will be made based on the projected traffic growth. Signal warrants will be used to assess applicability for traffic signals and roundabouts. Pedestrian hybrid beacons, although not likely warranted, will be considered at key pedestrian crossings as well.

### *Railroad Grade-Crossing Analysis*

KLJ will analyze the at-grade railroad crossing of 43rd Avenue NE between N 19th and N 26th Streets. This will include the following analyses.

- Data will be collected at the grade crossing to understand rail crossing volumes, train lengths and blockage times.
- The grade separation will be analyzed within the Vissim model to model delay and safety impacts.
- Grade separation warrants and criteria set forth in the FHWA Highway-Rail Crossing Handbook will be studied.
- Safety aspects of the grade crossing will be analyzed using the FRA Quiet Zone Calculator to provide a quiet zone compliant crossing configuration if a grade separation is not recommended. Quiet zone calculations provide a strong foundation for understanding FRA standards for safety and do not require that a quiet zone be implemented.

### *Alternative Assessment*

KLJ will analyze the following alternatives:

- ***Capacity.*** Based on the findings of the operational analysis, KLJ will determine whether analysis of both a 3 lane and 5 lane roadway segments are warranted. KLJ has preliminarily budgeted for both. Both concepts will include details on turn-lane requirements.

- ***Traffic Control.*** KLJ will analyze traffic control at the State Street Frontage Road, N 19th Street, N 26th Street, Schilling driveway, break in non-access lines south of 43rd Avenue NE, N 15th Street, River of Hope, and Pointe Loop. Access control concepts may include traffic signals, roundabouts, two-way stop control or restricted access. Where traffic signals are present, signal progression analysis and results will be provided.
- ***Pedestrian and Bicycle Amenities.*** KLJ will analyze two pedestrian and bicycle concepts on both 43rd Avenue and N 19th Street. Concepts may include on and off-road bike facilities, shared use paths or sidewalks on one or both sides of the road, and traffic control.

### *Sensitivity Analysis*

KLJ will analyze two 2045 sensitivity analysis scenarios. Scenarios will be determined once 2045 traffic forecasts are reviewed. Scenarios may be as simple as an additional 10-20% traffic increases to test capacity limitations, altered regional pattern scenarios (i.e. northeast Bismarck infrastructure and growth permutations) or altered traffic generation scenarios (i.e. increased work from home scenarios).

### *Traffic Operations Report*

KLJ will develop an NDDOT compliant Traffic Operations Report, including the analyses and supporting appendices required for approval.

### *Presentation of Results*

KLJ will present the findings of the Traffic Operations Report in the following two ways to facilitate easy consumption of the materials. Presentations will include Vissim model outputs for visualizations.

- Formal presentation to City Staff, NDDOT and project stakeholders.
- 1-page Executive Summary that can easily be distributed to the decision makers and the public.

## Geotechnical Report (Subconsultant/Terracon)

Coordinate a geotechnical evaluation to determine existing pavement and soil conditions to be used for the pavement design. The geotechnical evaluation will include a total of 13 soil borings along 43rd Avenue NE. Eight of the borings will advanced to a depth of 10 feet to determine existing soil conditions, and five borings will be 20 feet deep due to the anticipated cut and utility depth in the Hay Creek Valley. Two borings at a depth of 10 feet will also be taken along N 19th Street. The borings will be tested to determine the recompacted California Bearing Ratio (CBR), moisture density relationship, and Atterberg Limits. A monitoring well is planned for Boring 15 to record ground water levels.

## Pavement Design Report

Based upon the geotechnical information, a pavement design report will be completed for a concrete and asphalt pavement section. The pavement design will be in accordance with the 1993 AASHTO Guide for Design of Pavement Structures. A life cycle cost analysis will be prepared to compare the asphalt and concrete pavement sections.

## Regional Stormwater Analysis/Preliminary Storm Water Evaluation

AE2S will complete a regional stormwater analysis and will provide a summary of the flow rates entering the roadway corridor resulting from off-site drainage. KLJ will input data from the regional stormwater analysis completed by AE2S and develop a preliminary storm sewer system network. KLJ will evaluate

the storm drainage system and prepare a Preliminary Storm Water Evaluation Memo sizing the mainline storm sewer network, estimating inlet locations, and developing a cost estimate for the system.

### Floodplain Modeling (Subconsultant/AE2S)

Coordinate the development of floodplain modeling of the Hay Creek, N 4th Street, and N Valley watersheds.

### Water & Sewer Preliminary Design (Subconsultant/AE2S)

Coordinate the preliminary design layouts and cost estimates for the proposed water and sanitary sewer improvements.

### Preliminary Lighting Analysis/Memo

Roadway lighting will be designed to meet AASHTO recommended minimum illuminance and maximum uniformity (average/minimum) levels using a computer-generated lighting analysis. The proposed lighting design will be analyzed using Visual Professional Edition software developed by Acuity Brands Lighting, Inc. using the illuminance method of calculation. The lighting analysis will be completed for up to up two roadway alternatives. The lighting analysis will include appropriate mounting heights, mast arm lengths, placement configurations, fixture wattages and light distribution types to maximize lighting efficiency. The lighting analysis will be completed for a LED lighting system.

## 4. PRELIMINARY ENGINEERING

### Preliminary Horizontal Alignment

KLJ will prepare one preliminary horizontal alignment for each of the roadway alternatives on 43rd Avenue NE and N 19th Street.

### Preliminary Vertical Alignment

KLJ will prepare one preliminary vertical alignment for each of the roadway alternatives on 43rd Avenue NE and N 19th Street.

- Two options will be analyzed for the vertical alignment on 43rd Avenue NE between State Street and N 15th Street.

### Preliminary Intersection Geometry

Based upon recommendations in the traffic operations report, KLJ will prepare preliminary intersection layouts for State Street, N 15th Street, N 19th Street and N 26th Street to identify costs and impacts. Additional intersection options include:

- Roundabout intersection options at N 19th Street and N 26th Street.
- Two options for the frontage road intersection east of State Street will be evaluated. Right-in/right-out intersection or extending the frontage road to 15th Street.
- Two options will be considered at N 26th Street for addressing the intersection sight distance. These include lowering the profile along 43rd Avenue NE or realignment of the N 26th Street intersection.

### Typical Sections

KLJ will prepare typical sections for up to two alternatives to be studied for the alternative analysis on N 19th Street and 43rd Avenue NE.

### Cross Sections/Preliminary Earthwork Calculations

KLJ will create cross sections and perform preliminary earthwork computations to estimate excavation quantities and borrow requirements, if necessary.

### Preliminary Right of Way Limits

KLJ will identify preliminary right of way limits and quantify the areas of any permanent or temporary easements needed for each of the build alternatives. KLJ will estimate right-of-way and easement costs.

### Construction Phasing/Traffic Control

KLJ will prepare a preliminary traffic control phasing plan which will accommodate the necessary sequencing and staging of the work.

### Pedestrian/Bicycle Facilities

KLJ will coordinate with the City of Bismarck to develop the pedestrian facilities for the corridor. This will include addressing current ADA requirements on both sides of the roadway.

### Preliminary Traffic Signals

Preliminary layouts of traffic signals will be completed and used to create preliminary cost estimates at State/US Hwy 83 and N 19th Street. Preliminary layouts and cost estimates will be created for both the 3-lane section and 5 lane section roadway alternatives. The existing signal locations at State Street will be evaluated for replacement. The N 19th Street traffic signal cost estimates will include provisions to extend the interconnect from State St to N 19th Street.

### Streetscape/Landscape Architecture

Prepare landscape architecture concepts for harmonizing proposed improvements with adjacent development.

### Preliminary Structure Evaluation

KLJ will perform an on-site structure inspection of the box culvert at Hay Creek (Structure ID BISM02) to determine if any repairs are needed in addition to extending the culvert barrels for up to two roadway alternatives. KLJ will develop preliminary box culvert extension and repair details as well as cost estimates for all roadway section alternatives proposed at this location.

### Construction Cost Estimates

KLJ will prepare one preliminary construction cost estimate for each of the build alternatives. A total preliminary cost estimate for right of way and utility relocations will be included in this section.

### Team Meetings (3 Meetings Estimated)

The KLJ project team will meet with representatives from the NDDOT and City of Bismarck to discuss design and planning issues, scheduling, progress and upcoming work. There will be a maximum of 3 meetings in an estimated six-month period.

### Preliminary Utility Coordination

KLJ will identify utility conflicts and work with the utility companies to inventory and develop any relocation or replacement plans for existing utility facilities. KLJ will prepare and lead one (1) utility coordination meeting to discuss the proposed project, identify potential utility impacts and minimize those impacts, and work to develop preliminary cost estimates for utility relocation.

## 5. PUBLIC INVOLVEMENT

### Mailing List

KLJ will identify and compile a mailing list of affected, potentially affected, or interested parties, as well as governmental agencies, elected and appointed officials who will be solicited for input regarding the project. KLJ will work with the City of Bismarck and the NDDOT to update the mailing list.

### Solicitation of Views

KLJ will prepare and distribute, upon review and approval, a solicitation of views package to affected, potentially affected, or interested parties, as well as governmental agencies with a possible interest in the project's planning at the beginning of the study process. The letter will be used as a means of scoping issues pertinent to the study and to obtain information about permits, licenses, or other agency requirements needed to construct the project.

### Project Website

Communication to the public will be facilitated through the existing City of Bismarck website. KLJ will provide information to the City to be placed on the website.

### City Commission Meeting (1)

KLJ will attend one City Commission Meeting. The meeting would include the presentation of final project alternatives, public comments, and request final project decisions are made.

### Landowner Meetings (6)

KLJ will compile and provide a list of landowners adjacent to the proposed project area. KLJ will meet privately with the landowners immediately adjacent to the project to discuss issues, probable impacts and other project specifics as needed. A record of conversation will be provided to each landowner and will also be placed in the project record. It is estimated that a maximum of six (6) landowner meetings will happen with key landowners adjacent to the project.

### Direct Mail

KLJ will prepare and distribute one public meeting notice to affected or potentially affected landowners, businesses, organizations and local government officials. Direct mailings will be sent to residents in adjacent subdivisions along the corridor. The purpose of the notice is to announce the upcoming public meeting, keep interested parties apprised of developments in the study area, identify key project milestones, provide an opportunity to comment, and indicate who to contact with questions. The notice will be sent out approximately seven (7) to fourteen (14) days prior to the meeting.

### News Media

Notice of the Public Input Meeting will be advertised in the area newspaper approximately fifteen (15) days prior to each meeting. A press release will be issued approximately seven (7) days prior to each

meeting. KLJ will develop materials to post on the City of Bismarck website and will provide the materials to the City of Bismarck. Direct expense included for advertising cost.

### Public Input Meeting

KLJ will prepare for and conduct one Public Input Meeting. The purpose of the Public Input Meeting is to present to the public the results of the study to date and obtain comments on the alternatives. The Public Input Meeting will be held after the analysis of alternatives has been completed. The format for the meeting will be an open house, with the option of a virtual meeting if necessary. Preparation for the meeting will include the following: a PowerPoint presentation, visual displays, public handouts, exhibits, and plan drawings. Input from the meeting will be incorporated into the project.

## 6. ENVIRONMENTAL DOCUMENT

### Field Review Meeting

KLJ will lead a project field review with representatives from the City of Bismarck, NDDOT, and FHWA. A field review packet will be provided in advance to participants attending the field review. Preliminary project information will be discussed at the field review to confirm the scope of work and identify potential concerns and alternative solutions. A written summary will be prepared and distributed following the field review.

### Purpose & Need

KLJ will develop a purpose and need statement for the project consistent with FHWA and NDDOT guidance. The purpose and need statement will clearly and concisely articulate the reasons why the project is needed and what the project is intended to accomplish.

### Alternatives/Impact Analysis

Based on information provided from the preliminary engineering analysis and alternatives decision document, KLJ will refine and evaluate project alternatives as described in the "Purpose" of this Scope of Services. KLJ will identify reasonably foreseeable direct, indirect, and cumulative environmental impacts expected to result from the proposed project alternatives and will complete the environmental impact checklist. Measures to avoid or minimize environmental impacts will be developed and documented as part of this study. Unavoidable impacts that require mitigation will also be identified. When appropriate, mitigation measures will be documented.

### Aquatic Resource Delineation, Tree Inventory, T&E Habitat

KLJ will provide a field aquatic resource delineation to identify preliminary wetland impact issues. A field aquatic resource delineation would be completed in accordance with the US Army Corps of Engineers (USACE) 1987 Delineation Manual and NDDOT guidance. An aquatic resource delineation report will be submitted to the NDDOT, and NDDOT will submit to USACE with a request for a jurisdictional determination. A tree inventory will be completed to ensure that the project is reviewed for potential tree impacts. If this project results in the removal or destruction of trees, those trees which meet certain criteria will be counted and mitigated. A review of potential Threatened and Endangered (T&E) Habitat will be completed to ensure the project is reviewed for potential habitats. Direct expense included for Soil Scientist.

## Cultural Resources

### *Class I File Search*

A Class I Literature Review of the North Dakota State Historic Preservation Office (NDSHPO) site and manuscript files will be prepared prior to the start of any fieldwork. Data collected from this review will provide an overview of previously conducted cultural resource work within the project area, including all previously recorded site locations.

### *Mapping*

Previous site locations will be mapped prior to the beginning of fieldwork and will be used in the field to relocate and update known information regarding the sites.

### *Class III Cultural Resource Inventory*

KLJ will perform a Class III Cultural Resource Inventory of the proposed project area. The fieldwork methodology will follow the established guidelines of the NDDOT and the NDSHPO.

### *Report Writing*

KLJ will produce and submit two hardcopies and one electronic copy of the Report of Findings to the City of Bismarck, NDDOT, one hardcopy for the SHPO. This report will be completed in accordance with the established guidelines of the NDDOT and NDSHPO. Direct expense included for NDSHPO report filing costs.

## Noise Analysis

KLJ will complete a noise analysis to determine potential traffic noise impacts. The noise analysis shall include the no-build and up to two build alternatives for 43rd Avenue NE and N 19th Street with the associated options. The noise analysis will be conducted in accordance with the Procedure for Abatement of Highway Traffic Noise and Construction Noise, FHWA Highway Traffic Noise Analysis and Abatement Policy Guidance, and NDDOT Noise Policy and Guidance. KLJ will complete a noise impact analysis for current and projected future (design year) traffic and will evaluate abatement reasonableness and feasibility. Noise contours for impacts with and without abatement will be developed for residential locations. KLJ will prepare and submit a Draft and Final Noise Report.

## Draft Documented CATEX – Preparation, Distribution, Review

KLJ will prepare and distribute the Draft Documented CATEX for review to the City of Bismarck and NDDOT. KLJ will also submit an electronic version in PDF format to the City of Bismarck and NDDOT Local Government Division. The document will include a Nationwide Section 4(f) Evaluation for Public Parks, Recreation Areas, Wildlife and Waterfowl Refuges and be a compilation of the work completed in the preliminary engineering phase. Reports from the project meetings, environmental documentation, survey, roadway design, traffic operations, hydraulics and structure selection, pavement design, lighting design, and pedestrian/bicycle facilities and cost estimation will be referenced in the document.

## Revisions to the Draft Report

KLJ will compile a summary of all comments to the Draft Documented CATEX. Each comment will be individually addressed. Any revisions resulting from the comment will be summarized.

## Prepare & Submit Final Documented CATEX

Input and comments from review of the draft will be incorporated into the Final Documented CATEX. KLJ will submit one original hard copy of the Documented CATEX to the City of Bismarck. KLJ will submit an electronic version of the Final Documented CATEX in PDF format to the City of Bismarck and NDDOT Local Government Division.

## DELIVERABLES PROVIDED BY KLJ

1. Progress reports at two (2) week intervals.
2. Agendas and minutes for all project meetings.
3. Prepare assemble, distribute, present and review the Decisions Document and Draft/Final Documented CATEX.
4. Record of conversations with landowners, public, news media, and agencies.
5. Direct mail notices, news releases, exhibits, materials and reports for Public Meeting.
6. Aquatic Resource Delineation Report and Tree Count
7. Cultural Resource Survey Report
8. Geotechnical Report/Pavement Design
9. Preliminary Survey
10. Preliminary Storm Water Memo
11. Preliminary Lighting Analysis/Memo
12. Traffic Operations Analysis & Report
13. Noise Analysis

## SERVICES NOT INLCUDED IN THIS SCOPE

1. Environmental Assessment or Environmental Impact Statement
2. Public Hearing
3. Borrow/Waste Options
4. Environmental Clearance for Borrow/Waste sites
5. Updates to the Documented CATEX

| KLJ Project Name: | 43rd Avenue NE |
|---|---|
| KLJ Project Number | 200466653 |

# Project Budget

KLJ

| Task Code | Description | Senior Project Manager | Senior Engineer | Engineer | Engineer in Training II | Engineer in Training I | Associate Engineer | CAD Technician II | Environmental Planner IV | Environmental Planner III | Environmental Planner II | Archaeologist III | Archaeologist II | GIS Analyst III | Professional Land Surveyor | Crew Chief | Senior Crew Chief | Project Assistant II | DIRECT LABOR Subtotal | Subconsultant Fee | DIRECT EXPENSE[2] | Bal to: Lump Sum or Agreed Fee | TASK TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Job Classification: | $ 76.00 | $ 58.00 | $ 45.00 | $ 33.00 | $ 32.00 | $ 36.00 | $ 28.00 | $ 50.00 | $ 37.00 | $ 30.00 | $ 36.00 | $ 25.00 | $ 35.00 | $ 42.00 | $ 28.00 | $ 34.00 | $ 25.00 | | | | | |
| 1 | Project Management & Coordination | | | | | | | | | | | | | | | | | | | | | | |
| | Project Management & Coordination | 60 | | | | | | | | | | | | | | | | 24 | $ 7,440.00 | $ - | | | $ 7,440.00 |
| | Progress Reports | 8 | | | | | | | | | | | | | | | | | $ 608.00 | $ - | | | $ 608.00 |
| | Project Schedule | 8 | | | | | | | | | | | | | | | | | $ 608.00 | $ - | | | $ 608.00 |
| | | 106 | | | | | | | | | | | | | | | | 24 | $ 8,656.00 | $ - | $ - | $ - | $ 8,656.00 |
| 2 | Preliminary Survey | | | | | | | | | | | | | | | | | | | | | | |
| | Topographic Survey | | | | | | | | | | | | | | 10 | 130 | 130 | | $ 8,480.00 | $ - | | | $ 8,480.00 |
| | Cadastral Survey | | | | | | | | | | | | | | 24 | 20 | 20 | | $ 2,248.00 | $ - | | | $ 2,248.00 |
| | Boundary Survey | | | | | | | | | | | | | | 24 | 20 | 20 | | $ 2,248.00 | $ - | | | $ 2,248.00 |
| | Utility (Cross Ctl) Survey | | | | | | | | | | | | | | 10 | 20 | 20 | 5 | $ 1,785.00 | $ - | | | $ 1,785.00 |
| | CADD Editing | | | | 80 | | | | 2 | | | | | 4 | 15 | | | | $ 3,270.00 | $ - | | | $ 3,270.00 |
| | Access Notification | 1 | | | | | | | 2 | | | | | 4 | | | | 4 | $ 410.00 | $ - | | | $ 410.00 |
| | | 1 | | | 80 | | | | 4 | | | | | 8 | 83 | 190 | 190 | 9 | $ 18,447.00 | $ - | $ - | $ - | $ 18,447.00 |
| 3 | Preliminary Engineering Reports | | | | | | | | | | | | | | | | | | | | | | |
| | Traffic Study | | | | | | | | | | | | | | | | | | $ - | $ - | | | $ - |
| | Existing Conditions Assessment | 2 | | 16 | | 16 | | | | | | | | | | | | | $ 1,184.00 | $ - | $ 5,000.00 | | $ 6,184.00 |
| | Crash Analysis | 2 | | 6 | | | 16 | | | | | | | | | | | | $ 998.00 | $ - | | | $ 998.00 |
| | Traffic Forecasts | 2 | | 15 | | | | | | | | | | | | | | | $ 857.00 | $ - | | | $ 857.00 |
| | Operational Analysis | 2 | | 15 | | 40 | | | | | | | | | | | | | $ 2,107.00 | $ - | | | $ 2,107.00 |
| | Warrant Analysis | 2 | | 8 | | | 12 | | | | | | | | | | | | $ 944.00 | $ - | | | $ 944.00 |
| | Railroad Grade Crossing Analysis | 2 | | 8 | | | 12 | | | | | | | | | | | | $ 944.00 | $ - | | | $ 944.00 |
| | Alternative Assessment | 8 | | 8 | | 20 | 20 | | | | | | | | | | | | $ 2,328.00 | $ - | | | $ 2,328.00 |
| | Sensitivity Analysis | 2 | | 8 | | 20 | | | | | | | | | | | | | $ 1,152.00 | $ - | | | $ 1,152.00 |
| | Traffic Operations Report | 20 | | 30 | | 8 | 8 | | | | | | | | | | | | $ 3,414.00 | $ - | | | $ 3,414.00 |
| | Presentation of Results | 18 | | 20 | | | | | | | | | | | | | | | $ 2,708.00 | $ - | | | $ 2,708.00 |
| | Geotechnical Report | 2 | | 2 | | | | | | | | | | | | | | | $ 232.00 | $ 13,450.00 | | | $ 13,702.00 |
| | Pavement Design Report | 2 | | 16 | 40 | | | | | | | | | | | | | | $ 2,192.00 | $ - | | | $ 2,192.00 |
| | Regional Stormwater/Preliminary Storm Water Evalu | | 24 | 8 | 148 | | | | | | | | | | | | | | $ 6,636.00 | $ 17,000.00 | | | $ 23,636.00 |
| | Floodplain Modeling | | 4 | | | | | | | | | | | | | | | | $ 232.00 | $ 25,000.00 | | | $ 25,232.00 |
| | Water & Sewer Preliminary Design | | 4 | | | | | | | | | | | | | | | | $ 232.00 | $ 21,300.00 | | | $ 21,532.00 |
| | Preliminary Lighting Analysis Memo | | 16 | | | 50 | 16 | | | | | | | | | | | | $ 2,528.00 | $ - | | | $ 2,528.00 |
| | | 64 | 48 | 160 | 188 | 154 | 68 | | | | | | | | | | | | $ 28,428.00 | $ 76,750.00 | $ 5,000.00 | $ - | $ 110,188.00 |
| 4 | Preliminary Engineering | | | | | | | | | | | | | | | | | | | | | | |
| | Preliminary Horizontal Alignment | 2 | | 8 | 20 | | | | | | | | | | | | | | $ 1,172.00 | $ - | | | $ 1,172.00 |
| | Preliminary Vertical Alignment | 2 | | 32 | 40 | | | | | | | | | | | | | | $ 2,912.00 | $ - | | | $ 2,912.00 |
| | Preliminary Intersection Geometry | 4 | | 80 | 100 | | | | | | | | | | | | | | $ 7,204.00 | $ - | | | $ 7,204.00 |
| | Typical Sections | 2 | | 8 | 8 | | | | | | | | | | | | | | $ 776.00 | $ - | | | $ 776.00 |
| | Cross Sections-Preliminary Earthwork Calculations | 4 | | 40 | 100 | | | | | | | | | | | | | | $ 5,404.00 | $ - | | | $ 5,404.00 |
| | Preliminary Right of Way Limits | 2 | | 16 | 24 | | | | | | | | | | | | | | $ 1,664.00 | $ - | | | $ 1,664.00 |
| | Construction Phasing/Traffic Control | 2 | | 8 | 8 | | | | | | | | | | | | | | $ 776.00 | $ - | | | $ 776.00 |
| | Pedestrian/Bicycle Facilities | | | 16 | 16 | | | | | | | | | | | | | | $ 1,248.00 | $ - | | | $ 1,248.00 |
| | Preliminary Traffic Signals | 8 | | | | 24 | 10 | | | | | | | | | | | | $ 1,356.00 | $ - | | | $ 1,356.00 |
| | Streetscape/Landscape Architecture | | | 12 | | | | 6 | | | | | | | | | | | $ 540.00 | $ - | | | $ 540.00 |
| | Preliminary Structure Evaluation | | | 16 | 16 | | | | | | | | | | | | | | $ 1,416.00 | $ - | | | $ 1,416.00 |
| | Construction Cost Estimator | 2 | | 16 | 40 | | | | | | | | | | | | | | $ 2,192.00 | $ - | | | $ 2,192.00 |
| | Team Meetings (3) | 12 | 6 | 12 | 12 | | | | | | | | | | | | | | $ 2,196.00 | $ - | | | $ 2,196.00 |
| | Preliminary Utility Coordination | 18 | | 40 | 80 | | | | | | | | | | | | | | $ 5,808.00 | $ - | | | $ 5,808.00 |
| | | 53 | 6 | 304 | 464 | 24 | 10 | 6 | | | | | | | | | | | $ 32,664.00 | $ - | $ - | $ - | $ 34,664.00 |
| 5 | Public Involvement | | | | | | | | | | | | | | | | | | | | | | |
| | Mailing List | 2 | | | | | | | 3 | | | | | | | | | | $ 302.00 | $ - | | | $ 302.00 |
| | Solicitation of Views | 2 | | | | | | | 6 | | | | | | | | | 2 | $ 502.00 | $ - | | | $ 502.00 |
| | Project Website | | | | | | | | | | | | | | | | | 8 | $ 200.00 | $ - | | | $ 200.00 |
| | City Commission Meeting (1) | 12 | | | 24 | | | | | | | | | | | | | 20 | $ 2,204.00 | $ - | | | $ 2,204.00 |
| | Landowner Meetings (4) | 12 | | 12 | | | | | 8 | | | | | | | | | | $ 1,852.00 | $ - | | | $ 1,852.00 |
| | Direct Mail | | | | | | | | 8 | | | | | | | | | 2 | $ 450.00 | $ - | | | $ 450.00 |
| | News Media | | | | | | | | 4 | | | | | | | | | | $ 200.00 | $ - | $ 150.00 | | $ 350.00 |
| | Public Input Meeting | 16 | | | 24 | | | | 16 | | | | | | | | | 20 | $ 3,308.00 | $ - | | | $ 3,308.00 |
| | | 44 | | 12 | 48 | | | | 45 | | | | | | | | | 52 | $ 9,018.00 | $ - | $ 150.00 | $ - | $ 9,168.00 |
| 6 | Environmental Document | | | | | | | | | | | | | | | | | | | | | | |
| | Field Review Meeting | 16 | | | 8 | | | | 2 | | | | | | | | | | $ 1,580.00 | $ - | | | $ 1,580.00 |
| | Purpose & Need | 1 | | | | | | | 4 | | | | | | | | | | $ 276.00 | $ - | | | $ 276.00 |
| | Alternatives Impact Analysis | | | | | | | | 4 | | | | | | | | | | $ 200.00 | $ - | | | $ 200.00 |
| | Wetland Delineation | | | | | | | | 6 | | 40 | | | 8 | | | | | $ 1,780.00 | $ - | 800.00 | | $ 2,580.00 |
| | Cultural Resources | | | | | | | | | 130 | | 8 | 30 | 8 | | | | | $ 1,118.00 | $ - | 50.00 | | $ 1,168.00 |
| | Noise Analysis | 16 | | | | | | | | | | | | 130 | | | | | $ 9,360.00 | $ - | | | $ 9,360.00 |
| | Draft Documented CATEX | 8 | | | | | | | 48 | | | | | | | | | | $ 3,616.00 | $ - | | | $ 3,616.00 |
| | Revisions to the Draft Report | 8 | | | | | | | 24 | | | | | | | | | | $ 1,808.00 | $ - | | | $ 1,808.00 |
| | Prepare & Submit Final Documented CATEX | 49 | | | 8 | | | | 16 | | | | | | | | | | $ 1,408.00 | $ - | | | $ 1,408.00 |
| | | | | | | | | | 104 | 130 | 40 | 8 | 30 | 146 | | | | | $ 21,346.00 | $ - | $ 850.00 | $ - | $ 22,196.00 |
| | | 317 | 54 | 476 | 788 | 178 | 78 | 6 | 151 | 130 | 40 | 8 | 30 | 150 | 83 | 190 | 190 | 85 | 2954 | | | | |
| | | | | | | | | | | | | | | | | | | | $ 120,559.00 | $ 76,760.00 | $ 6,000.00 | $ - | $ 203,319.00 |

[1] To be billed at actual with an $150 maximum (Meals $35+ Lodging $115)

[2] Includes equipment, rental/subscriptions, mileage , etc

**Summary of Costs: NDDOT**

| | | | |
|---|---|---|---|
| Direct Labor | | | $ 120,559.00 |
| | Indirect Costs = | 193.73% | $ 233,558.95 |
| Subtotal | | | $ 354,117.95 |
| On bill rate | Fixed Fee = | 15.00% | $ 53,117.69 |
| Raw labor cost | OVF = | 1.11% | $ 1,338.20 |
| Direct Expenses | | | $ 6,000.00 |
| Subconsultants | | | $ 76,760.00 |
| Reimbursables | | | $ - |
| Balance to Lump Sum or Agreed Fee | | | $ - |
| Total Estimated Engineering Costs | | | $ 491,333.84 |

Export_Project Setup & Budget Form.xlsx Printed on 6/15/2020

www.ae2s.com

June 12, 2020

KLJ
Troy Ripplinger, PE
Project Manager
4585 Coleman St
Bismarck, ND 58503

**Re: Bismarck 43rd Ave NE Reconstruction HC 131**
**Phase I Work Authorization Request 1 Scope of Work and Fee Estimate**

Dear Mr. Ripplinger:

Advanced Engineering and Environmental Services, Inc. (AE2S) thanks you for the opportunity to submit this scope of services to KLJ for the Phase I environmental documentation and preliminary design services for the 43rd Ave NE Reconstruction (Project). The project will consist of reconstructing 43rd Ave NE between State Street and N 26th Street and N 19th Street between 43rd Avenue NE and 400' south of N Valley Loop/Hay Creek Court. The project will include capacity and safety improvements for vehicular, bicycle and pedestrian modes of traffic, extension of water and sewer infrastructure, storm sewer for roadway drainage, an upgraded stream crossing for Hay Creek under 43rd Avenue, and an upgraded stream crossing for the 4th Street Drainage under 19th Street.

This scope of work assumes that the Project Phase I services will be completed for the impact area shown on figures produced and provided by KLJ. AE2S's scope of work will generally consist of:

1. Project Management & Coordination
2. Preliminary Water & Sewer Design
3. Regional Stormwater Modeling
4. Floodplain Impacts and Mitigation

## Proposed Phase I Detailed Scope of Services

AE2S will perform the following tasks for Phase I in conjunction with KLJ environmental documentation and roadway preliminary design either in conjunction or in addition to the tasks outlined by KLJ.

1. **Project Management & Coordination**
    a. Background: Project management and coordination is a key component of every project to monitor project budget, scope, and schedule and coordinate with the KLJ Project Manager.
    b. AE2S Services:
        i. Internal and external team management,
        ii. Schedule and budget management,
        iii. Deliverables management,
        iv. Integration of the AE2S team with the KLJ team, City, and NDDOT, and
        v. QA/QC review of deliverable.
    c. Deliverables:
        i. Regular project updates.
    d. Assumptions:
        i. Services for Phase II will be completed under a separate work authorization request.
        ii. KLJ will provide:
            1. Overall Project schedule updates,
            2. Existing conditions survey including location and size of installed utilities and floodplain cross-sections,
            3. Roadway alternatives horizontal and vertical alignments,
            4. Overall Project Coordination and Management with the City and NDDOT,
            5. Timely notifications of scope and project changes.
        iii. AE2S Project Manager will attend up to five progress meetings during the development of the Phase I deliverables by the Project team.
        iv. Meetings will be conducted via video conference, or in Bismarck, and out of town travel is not included in this scope of work.

2. **Preliminary Water & Sewer Design**

   a. Background:

      i. 43rd Ave is a critical water distribution system corridor as this location bridges multiple pressure zones. Water distribution system upgrades that will be installed as part of the project include:

         1. 24-inch Zone 3 transmission pipe from State St east to 26th St,
         2. 12-inch Zone 2 watermain from approximately 19th St east to 26th St connection with the City's Nebraska Drive extension, and
         3. Various piping interconnections, valve installations, and removal to optimize operations and maintenance of the distribution system.

      ii. Installation of the 24-inch Zone 3 transmission pipe will require directional drilling or boring under Hay Creek and the railroad property.

      iii. AE2S has completed the water distribution master planning for this area with the Public Works Utility Operations department.

      iv. The Hay Creek sanitary sewer trunk main crosses 43rd Ave east of the railroad property. This interceptor has known capacity issues and is currently being studied for replacement or upgrade options by the Public Works Utility Operations department.

      v. The Project will need to include provisions for future expansion or upgrades to the Hay Creek sanitary sewer trunk main.

   b. AE2S Services:

      i. Preliminary designs consisting of the horizontal alignment and general sizing of proposed water and sewer modifications and extensions.

      ii. Review preliminary design with Bismarck Public Works Utility Operations Department staff for concurrence with the proposed preliminary water and sewer designs.

      iii. Coordinate the water and sewer preliminary design alignments with KLJ in conjunction with the overall project requirements and geometry.

      iv. Identify potential conflicts between the existing water and sewer system and the proposed utility extensions and roadway improvements.

Recommend modifications to the project and/or existing water and sewer utilities to mitigate the potential conflicts.

v. Prepare opinions of probable construction costs for the proposed water and sewer improvements.

c. Deliverables

i. Technical Memorandum documenting the proposed water and sewer improvements including:

1. Brief description of the proposed improvements and elements identified for final design,
2. Recommendations for size, material type, and construction considerations of the proposed water and sewer improvements,
3. Opinion of probable construction costs, and
4. Figures showing the location of the proposed improvements relative to the overall roadway improvements.

ii. Electronic version of the horizontal alignment of the proposed water and sewer improvements in a format acceptable to KLJ (shapefiles, Civil3d Land XML, Civil3d DWG, ect).

iii. Minutes of meetings with the City of Bismarck Public Works Utility Operations staff.

d. Assumptions:

i. Two meetings with the City of Bismarck Public Works Utility Operations staff

1. Meeting 1 – identify sanitary sewer improvements requirements.
2. Meeting 2 – Review recommended water and sewer improvements.

ii. Water improvements will generally be consistent with the master planned improvements.

iii. Sewer improvements will generally consist of mitigating utility conflicts and incorporating provisions for future crossing of an upgraded Hay

Creek Sanitary Sewer trunk main piping. Sizing of the trunk main will be provided by the City.

iv. Meetings will be conducted via video conference, or in Bismarck, and out of town travel is not included in this scope of work.

3. **Regional Stormwater Modeling**

a. Background:

i. Based on the City's LiDAR and storm sewer GIS database, it is clear that drainage from outside the 43rd Avenue and 19th Street right-of-way corridors will increase the necessary storm sewer sizing and inlet spacing to provide an acceptable level of flooding during minor and major storms, particularly at the proposed 43rd Avenue / 19th Street intersection and at the sag on 43rd Avenue just west of the railroad crossing.

ii. The regional drainage that enters the project area west of the railroad crossing consists primarily of inlet bypass flow reaching 19th Street from Chandler Lane and reaching 43rd Avenue from 19th Street north of 43rd.

iii. The regional drainage that enters the project area east of the railroad crossing primarily consists of street and storm sewer flow leaving The Pointe subdivision, which has known drainage issues already.

b. AE2S Services:

i. Coordination with KLJ on necessary survey of key hydraulic structures such as culverts, trunk line storm sewer, etc.

ii. Rainfall-runoff-routing analysis to determine full build-out flows entering the project corridors along 43rd Avenue and 19th Street.

iii. Summary of flows by location and flow type (street curb & gutter, ditch, and storm sewer flow).

iv. Preparation for and attending one meeting following the existing conditions analysis and findings

c. Deliverables:

i. Map showing requested survey to support regional stormwater analysis.

ii. Figure summarizing flows by location and type running into/onto the project.

d. Assumptions

i. Modeling will use InfoSWMM, which is a GIS-based platform that runs the widely used Stormwater Management Model (SWMM).

ii. Up to four hours of coordination with City staff on the full build-out land use is included in the scope.

iii. Modeling will use the current City of Bismarck stormwater management standards that AE2S developed for the City.

1. City will provide relevant stormwater management reports / designs or
2. Full build-out land uses in areas not yet developed that drain to the project corridor.

iv. Meetings will be conducted via video conference, or in Bismarck, and out of town travel is not included in this scope of work.

4. **Floodplain Modeling and Floodway Impacts**

a. Background:

i. Both 43rd Avenue and 19th Street currently overtop in the 100-year event.

ii. FEMA has delineated a Zone AE floodplain/floodway along Hay Creek and the 4th Street Drainage that intersect the project corridor.

iii. The North Dakota State Water Commission (SWC) has developed a new draft hydraulic analysis for Hay Creek and 4th Street Drainage that will be available in June 2020.

iv. There are two different roadway widening alternatives for the 43rd Avenue corridor that have a potential to cause floodway impacts on both Hay Creek (longer culvert crossing) and on the 4th Street Drainage (fill from a wider embankment along the floodplain:

1. 43rd Ave 3-Lane Section Improvements
2. 43rd Ave 5-Lane Section Improvements

v. The improved / widened Hay Creek crossing under 43rd Avenue and the improved / widened 4th Street/North Valley Drainage crossing under 19th Street will need to meet all three of these regulatory requirements:

1. FEMA floodplain/floodway standards as outlined 44 CFR 65.7;
2. State of North Dakota Stream Crossing Standards as documented in ND Century Code Chapter 24 and Administrative Code Chapter 89-14-01; and
3. City of Bismarck road crossing standards as outlined in the City's Stormwater Design Standards Manual.

b. AE2S Services:

i. Coordination with KLJ on requested survey to support floodplain impact analysis.

ii. Obtaining FEMA effective and/or SWC draft RiskMap HEC-RAS models from ND SWC for both Hay Creek and 4th Street Drainage.

iii. Based on discussions with SWC staff on which model(s) to use, modify the appropriate model to create an existing / pre-project conditions model sufficient to accurately evaluate potential impacts from the proposed project.

iv. For the Hay Creek culvert crossing under 43rd Avenue, evaluation of hydraulic design and associated floodplain/floodway impacts of up to four culvert scenarios for the 5-lane alternative recognizing that the 3-lane alternative, if selected for final design, will result in less impact to the regulatory floodway.

1. Existing culvert extension only (i.e. no floodway mitigation)
2. Existing culvert extension with supplemental culvert to mitigate for any floodway impacts
3. Complete culvert replacement that would mitigate for any floodway impacts.

v. For the 4th Street/North Valley Drainage crossing under 19th Street, evaluation of up to two culvert scenarios:

1. Circular culvert replacement that would mitigate for any floodway impacts including current overtopping near the intersection of 43rd Avenue and 19th Street.
2. Box culvert replacement that would mitigate for any floodway impacts including current overtopping near the intersection of 43rd Avenue and 19th Street.

c. For the 4th Street/North Valley Drainage floodway impacts associated with widening of 43rd Avenue, evaluation:

1. 43rd Avenue widening to five lane section to determine if floodway mitigation is required.
2. 43rd Avenue widening to three lane section to determine if floodway mitigation is required.

ii. Prepare opinion of probable construction costs for the hydraulic design (culverts and /or grading for floodway mitigation) portions of the scenarios listed above.

iii. Documentation of floodplain impact analysis for the scenarios evaluated.

iv. Preparation for and attendance at one meeting (City-KLJ-AE2S) to present task results following the preliminary evaluation of scenarios.

v. Preparation for and attending two coordination meetings with SWC staff:

1. Obtaining model(s) and obtaining information on anticipated SWC RiskMap schedule.
2. Near the conclusion of Phase I WAR 1 scope to obtain update on RiskMap process and whether the project could be incorporated into the RiskMap process or must be a separate CLOMR/LOMR.

d. Deliverables

i. Map showing requested survey to support floodplain impact analysis.

ii. Technical Memorandum documenting the floodway modeling that consists of:

1. Brief description of the predicted impacts for each of the alternatives identified,

2. Recommendations for the improvements necessary to mitigate the floodway impact for each of the alternatives identified,
3. Discussion of necessary floodplain permitting to comply with the National Flood Insurance Program
4. Opinion of probable construction costs for each of the alternatives identified, and
5. Figures showing the location of the proposed improvements relative to the overall roadway improvements.

iii. Electronic version of the alternative improvements in ESRI shapefile(s) format. It is assumed that these shapefiles will be utilized in KLJ's environmental documentation.

iv. Minutes of meetings with the State Water Commission.

e. Assumptions

i. Modeling will be completed in HEC-RAS 1D.

ii. AE2S is not responsible for coordination and services associated with obtaining land and easements for proposed improvements.

iii. A draft memorandum will be prepared for review and comment with a final memorandum prepared incorporating those comments.

iv. FEMA Conditional Letter of Map Revision (CLOMR) or other required floodway permitting will be completed concurrent with Phase II or as an amendment to this agreement.

v. Meetings will be conducted via video conference, or in Bismarck, and out of town travel is not included in this scope of work.

## Fee & Performance Schedule

**Proposed Fee:**

AE2S proposes a fee of $63,300 for services associated with Phase I WAR1 as detailed in the attached spreadsheet.

**Schedule for Deliverables:**

AE2S is committed to meeting the overall Project schedule and the following completion dates can be accelerated with input from KLJ. We can meet the following schedule assuming KLJ provides the field survey and preliminary horizontal and vertical alignment by August 24, 2020.

| | |
|---|---|
| Preliminary Water & Sewer Design | September 29, 2020 |
| Regional Stormwater Modeling | October 30, 2020 |
| Floodplain Modeling and Impacts | October 30, 2020 |

Thank you for the opportunity to assist in this project and we look forward to working with you.

Sincerely,

**AE2S**

Brent Erickson, PE
Senior Project Manager

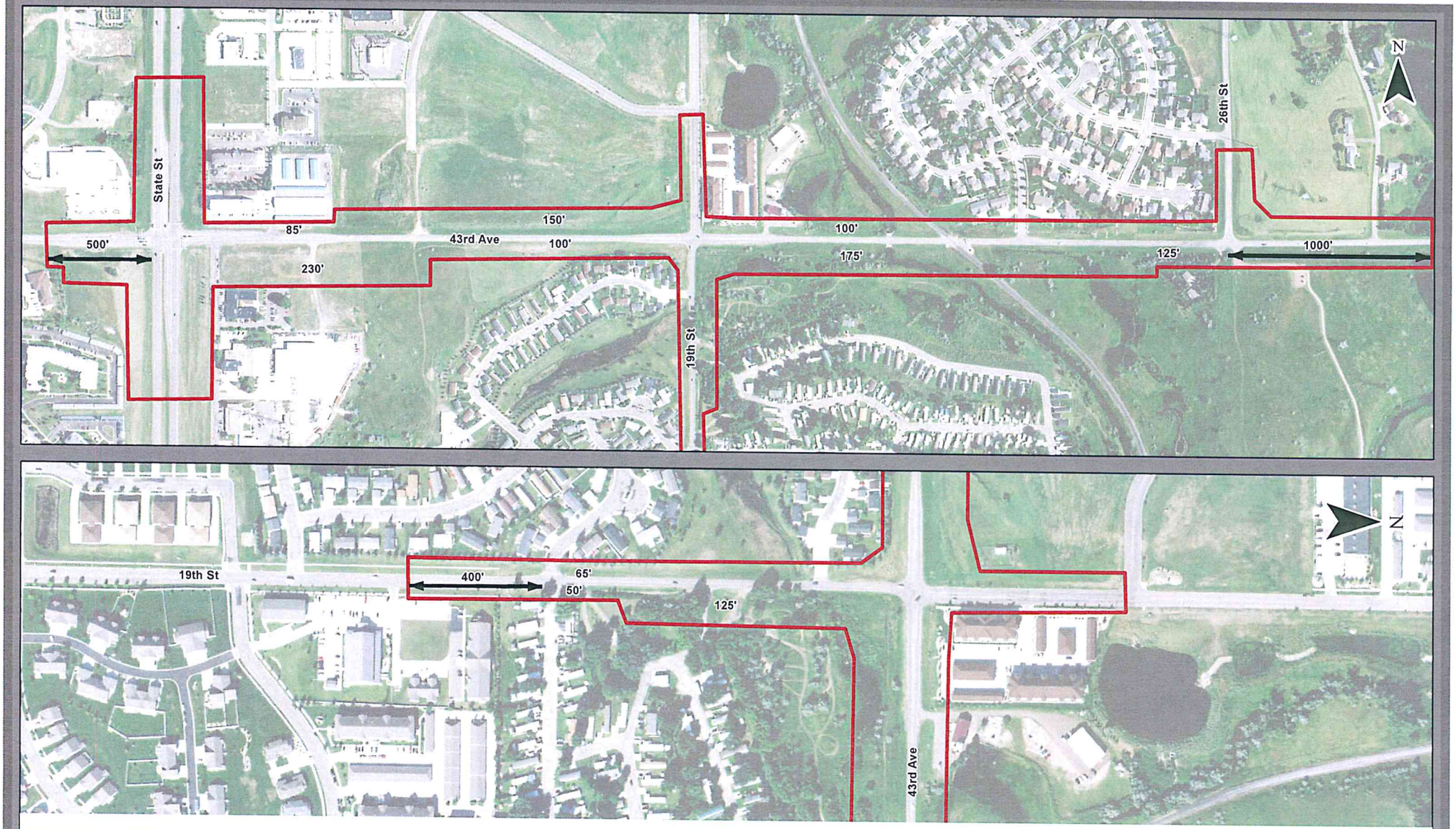
Attachments

CC: File

# AE2S 43rd Ave NE HC 131 Phase I Level of Effort

| | Principal | QA/QC | Hydraulic Eng V | Hydraulic Eng III | Civil Eng V | Civil Eng III | Civil Eng VI | GIS Spec III | Civil Tech VII | Admin | Direct Labor |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Phase 1 WAR1 - Enviromental Documentation & Preliminary Engineering** | **15** | **16** | **48** | **125** | **98** | **38** | **12** | **29** | **32** | **16** | **$ 20,399** |
| **Project Management & Coordination** | 2 | 16 | 0 | 0 | 60 | 0 | 0 | 0 | 0 | 16 | $ 4,816.00 |
| Project Setup | 1 | | | | 2 | | | | | 4 | $ 306.00 |
| Monthly Invoicing | | | | | 8 | | | | | 8 | $ 668.00 |
| General Project Coordination | 1 | | | | 40 | | | | | 4 | $ 2,396.00 |
| Progress Meetings | | | | | 10 | | | | | | $ 550.00 |
| QA | | 16 | | | | | | | | | $ 896.00 |
| **Water & Sewer Preliminary Design** | 1 | 0 | 0 | 0 | 30 | 38 | 12 | 4 | 32 | 0 | $ 5,354.28 |
| Public Works Meeting 1 | | | | | 4 | 2 | 2 | | | | $ 422.12 |
| Public Works Meeting 2 | | | | | 4 | 2 | 2 | | | | $ 422.12 |
| Water Preliminary Design | | | | | 6 | 12 | | 2 | 12 | | $ 1,330.72 |
| Sewer Preliminary Design | | | | | 8 | 16 | | 2 | 12 | | $ 1,584.96 |
| Deliverable | | | | | | | | | | | $ - |
| Technical Memorandum | | | | | 4 | 2 | | | | | $ 292.12 |
| OPCC | | | | | 4 | 4 | | | | | $ 364.24 |
| Figures | | | | | | | | | 8 | | $ 336.00 |
| QC | 1 | | | | | | 8 | | | | $ 602.00 |
| **Regional Stormwater Modeling** | 8 | 0 | 16 | 47 | 0 | 0 | 0 | 11 | 0 | 0 | $ 3,895.00 |
| Existing Conditions SWMM Analysis | | | | | | | | | | | $ - |
| Review Data Collection from KLJ | | | 3 | 2 | | | | | | | $ 262.00 |
| Land Use Coord with City | | | 4 | | | | | 4 | | | $ 368.00 |
| Data Coord with City (Record Drawings) | | | | 4 | | | | | | | $ 164.00 |
| Reviewing GIS / LiDAR Data | | | | 2 | | | | 2 | | | $ 146.00 |
| Reviewing Record Drawings | | | 2 | 6 | | | | | | | $ 366.00 |
| Watershed Delineation | | | | 8 | | | | | | | $ 328.00 |
| Hydrology Parameters | | | | 8 | | | | | | | $ 328.00 |
| Ex Conditions Hydraulic Model Network | | | | 10 | | | | | | | $ 410.00 |
| QC | 4 | | 4 | | | | | | | | $ 568.00 |
| Deliverable: Figure showing flows | | | 2 | 2 | | | | 5 | | | $ 362.00 |
| AE2S-KLJ-City Meetings (1) | | | | | | | | | | | $ - |
| Prep | 2 | | 1 | 2 | | | | | | | $ 306.00 |
| Attend | 2 | | | 2 | | | | | | | $ 246.00 |
| Deliverable: Minutes (1) | | | | 1 | | | | | | | $ 41.00 |
| **Floodplain Modeling** | 4 | 0 | 32 | 78 | 8 | 0 | 0 | 14 | 0 | 0 | $ 6,334.00 |
| Review Data Collection from KLJ | | | 1 | 2 | 2 | | | | | | $ 252.00 |
| Obtaining / Reviewing FEMA Eff or SWC Models | | | 1 | 4 | | | | | | | $ 224.00 |
| Create Base Conditions / Pre-Project Model | | | 2 | 10 | | | | | | | $ 530.00 |
| 43rd Avenue Crossing | | | | | | | | | | | $ - |
| Three Culvert options (Extension, adding, replacing) | | | 2 | 8 | | | | | | | $ 448.00 |
| Culvert extension with grading mitigation | | | 2 | 4 | | | | | | | $ 284.00 |
| 19th Street Crossing | | | | | | | | | | | $ - |
| Two culvert options (circular, box) | | | 2 | 6 | | | | | | | $ 366.00 |
| 43rd Avenue Widening Impacts on 4th Street Drainage | | | | | | | | | | | $ - |
| Two No Mitigation Scenarios (3- and 5-Lane Widening) | | | 2 | 6 | | | | | | | $ 366.00 |
| Two Mitigation Scenarios (3- and 5-Lane Widening) | | | 2 | 6 | | | | | | | $ 366.00 |
| QC | 2 | | | | | | | | | | $ 164.00 |
| Draft TM | | | | | | | | | | | $ - |
| Text | | | 4 | 8 | | | | | | | $ 568.00 |
| Figures | | | 4 | 4 | | | | 8 | | | $ 660.00 |
| Deliverable: Final TM | | | | | | | | | | | $ - |
| Text | | | 2 | 4 | 2 | | | | | | $ 394.00 |
| Figures | | | 1 | 1 | 1 | | | 4 | | | $ 284.00 |
| Deliverable: GIS Shapefiles | | | | 1 | | | | 2 | | | $ 105.00 |
| AE2S-KLJ-City Meetings (1) | | | | | | | | | | | $ - |
| Prep | | | 1 | 2 | 1 | | | | | | $ 197.00 |
| Attend | 2 | | | 2 | | | | | | | $ 246.00 |
| Deliverable: Minutes (1) | | | | 2 | | | | | | | $ 82.00 |
| AE2S-SWC Coordination Meetings | | | | | | | | | | | $ - |
| Prep | | | 2 | 4 | 2 | | | | | | $ 394.00 |
| Attend | | | 2 | 2 | | | | | | | $ 202.00 |
| Deliverable: Minutes (2) | | | 2 | 2 | | | | | | | $ 202.00 |
| | | | | | | | | | | | $ - |
| | **15** | **16** | **48** | **125** | **98** | **38** | **12** | **29** | **32** | **16** | **$ 20,399** |

| | | |
|---|---|---|
| Total of Direct Labor | | $ 20,399 |
| Allocated Overhead (2018) | 1.673 | $ 34,128 |
| Expenses | | $ 500 |
| Profit | 15% | $ 8,254 |
| Total Fee for Phase I WAR 1 | | $ 63,281 |




**Study Area Map Exhibit**

June 15th, 2020

KLJ

43rd Ave NE Reconstruction Project
State Street to N 26th Street and
N 19th Street from 43rd Avenue NE to N Valley Loop

June 15, 2020

KLJ Engineering
4585 Coleman Street
Bismarck, ND 58503

Attn: Mr. Troy Ripplinger, P.E.
P: (701) 355 8435
E: troy.ripplinger@kljeng.com

Re: Proposal for Geotechnical Engineering Services
43rd Avenue NE Reconstruction
Bismarck, North Dakota
Terracon Proposal No. PM2205053

Dear Mr. Ripplinger:

We appreciate the opportunity to submit this proposal to KLJ Engineering (KLJ) to provide Geotechnical Engineering services for the above referenced project.

| | |
|---|---|
| Exhibit A | Project Understanding |
| Exhibit B | Scope of Services |
| Exhibit C | Compensation and Project Schedule |
| Exhibit D | Site Location |
| Exhibit E | Anticipated Exploration Plan |

Our base fee to perform the Scope of Services described in this proposal is **$12,660**. See Exhibit C for more details of our fees and consideration of additional services.

Your authorization for Terracon to proceed in accordance with this proposal can be issued by initiating a work order in accordance with the Master Agreement for Consulting Services.

Sincerely,
Terracon Consultants, Inc.

Chad A. Cowley, P.E.
Department Manager

Alex L. Sprunk, P.E.
Project Engineer

# EXHIBIT A - PROJECT UNDERSTANDING

Our Scope of Services is based on our understanding of the project as described by KLJ and the expected subsurface conditions as described below. We have visited the project site to confirm the information provided. Aspects of the project, undefined or assumed, are highlighted as shown below. We request the design team verify all information prior to our initiation of field exploration activities.

## Site Location and Anticipated Conditions

| Item | Description |
|---|---|
| **Parcel Information** | The project is located on 43rd Avenue Northeast between State Street and 26th Street and on 19th Street between Skyline Boulevard and North Valley Loop in Bismarck, North Dakota.<br>Latitude: 46.8525° N, Longitude: 100.7631° W (approximate)<br>See **Exhibit D** |
| **Existing Improvements** | Asphalt-surfaced roadway with residential and commercial properties located on both sides of the roadways. |
| **Existing Topography** | Using available aerial imagery, the site appears to be gently rolling. |
| **Site Access** | We expect the site, and all exploration locations, are accessible with our track-mounted drilling equipment. |
| **Expected Subsurface Conditions** | Our experience near the vicinity of the proposed development indicates subsurface conditions consist primarily of fat clays with varying amounts of sand. |

## Planned Construction

| Item | Description |
|---|---|
| **Information Provided** | Information used to develop our project understanding was provided to us through phone and email correspondence KLJ. |
| **Project Description** | Reconstruction of approximately one mile of 43rd Avenue and one quarter mile of 19th Street. Utility upgrades in the project area. |
| **Grading** | Grade changes ranging from one to ten feet are anticipated. |

# EXHIBIT B - SCOPE OF SERVICES

Our proposed Scope of Services consists of field exploration, laboratory testing, and engineering/project delivery. These services are described in the following sections.

## Field Exploration

KLJ prescribed the following boring locations and depths:

| Number of Borings | Planned Boring Depth (feet) [1] | Planned Location [2] |
|---|---|---|
| 5 | 20 or auger refusal | Possible cut section near State Street, location of directional drilling, and culver extension |
| 8 | 10 or auger refusal | 43rd Avenue |
| 2 | 10 or auger refusal | 19th Street |

1. Below ground surface.
2. See **Exhibit E** for approximate boring locations.

**Boring Layout and Elevations:** Terracon will provide layout of the boring locations. We will also use handheld GPS equipment to locate borings with an estimated horizontal accuracy of +/-20 feet. We understand KLJ will provide elevations to our boring locations after completion. Terracon will be responsible for traffic control during the field exploration.

**Subsurface Exploration Procedures:** We will advance soil borings with a track-mounted drill rig using continuous flight augers (solid stem and/or hollow stem, as necessary, depending on soil conditions). Samples will be obtained at 2½-foot intervals in the upper 15 feet of each boring and at intervals of 5 feet thereafter. Soil sampling is typically performed using thin-wall tube and/or split-barrel sampling procedures. The split-barrel samplers are driven in accordance with the standard penetration test (SPT). The samples will be placed in appropriate containers, taken to our soil laboratory for testing, and classified by a Geotechnical Engineer. In addition, we will observe and record groundwater levels during drilling and sampling. Bulk samples of the near-surface subgrade soils will be obtained for laboratory testing purposes.

Our exploration team will prepare field boring logs as part of standard drilling operations including sampling depths, penetration distances, and other relevant sampling information. Field logs include visual classifications of materials encountered during drilling, and our interpretation of subsurface conditions between samples. Final boring logs, prepared from field logs, represent the Geotechnical Engineer's interpretation, and include modifications based on observations and laboratory tests.

**Property Disturbance:** We will backfill borings with auger cuttings upon completion. Boring B-15 may be converted to a monitoring well after completion of the boring. Pavements will be patched with cold-mix asphalt. Our services do not include repair of the site beyond backfilling our boreholes, and cold patching existing pavements. Excess auger cuttings will be dispersed in the general vicinity of the borehole. Because backfill material often settles below the surface after a period, we recommend boreholes to be periodically checked and backfilled, if necessary. We can provide this service, or grout the boreholes for additional fees, at your request.

**Monitoring Well Construction:** The monitoring well will consist of two-inch diameter Schedule 40 PVC pipe and will include a 10-foot screen section. The screen section will be sand packed to 1.5 feet above the top of the screen, with a bentonite seal extending to the ground surface. The monitoring wells will extend approximately 3 feet above the existing ground surface. We will register the monitoring well with the State of North Dakota Board of Water Well Contractors after the completion of field work.

## Safety

Terracon is not aware of environmental concerns at this project site that would create health or safety hazards associated with our exploration program; thus, our Scope considers standard OSHA Level D Personal Protection Equipment (PPE) appropriate. Our Scope of Services does not include environmental site assessment services, but identification of unusual or unnatural materials encountered while drilling will be noted on our logs and discussed in our report.

Exploration efforts require borings (and possibly excavations) into the subsurface, therefore Terracon will comply with local regulations to request a utility location through North Dakota One Call. We may consult with the owner/client regarding potential utilities, or other unmarked underground hazards. Based upon the results of this consultation, we will consider the need for alternative subsurface exploration methods, as the safety of our field crew is a priority.

Private utilities should be marked by the owner/client prior to commencement of field exploration. Terracon will not be responsible for damage to private utilities not disclosed to us. If the owner/client is unable to accurately locate private utilities, Terracon can assist the owner/client by coordinating or subcontracting with a private utility locating services. Fees associated with the additional services are not included in our current Scope of Services and will be forwarded to our client for approval prior to initiating. The detection of underground utilities is dependent upon the composition and construction of the utility line; some utilities are comprised of non-electrically conductive materials and may not be readily detected. The use of a private utility locate service would not relieve the owner of their responsibilities in identifying private underground utilities.

**Site Access:** Terracon must be granted access to the site by the property owner. By acceptance of this proposal, without information to the contrary, we consider this as authorization to access the property for conducting field exploration in accordance with the Scope of Services.

## Laboratory Testing

The project engineer will review field data and assign laboratory tests to understand the engineering properties of various soil strata. Exact types and number of tests cannot be defined until completion of field work. The anticipated laboratory testing may include the following:

- Water content
- Unit dry weight
- Atterberg limits
- Modified Proctor
- California Bearing Ratio (CBR)

For proposal purposes, we have budgeted to perform three one-point CBR tests.

Our laboratory testing program often includes examination of soil samples by an engineer. Based on the material's texture and plasticity, we will describe and classify soil samples in accordance with the Unified Soil Classification System (USCS).

## Project Delivery

Results of our field and laboratory programs will be evaluated by a professional engineer. At the completion of the evaluation, we will prepare a geotechnical exploration report.

Your project will be delivered using our ***GeoReport®*** system. Upon initiation, we provide you and your design team the necessary link and password to access the website (if not previously registered). Each project includes a calendar to track the schedule, an interactive site map, a listing of team members, access to the project documents as they are uploaded to the site, and a collaboration portal. The typical delivery process includes the following:

- Project Planning – Proposal information, schedule and anticipated exploration plan will be posted for review and verification
- Site Characterization – Findings of the site exploration
- Geotechnical Exploration Report

When utilized, our collaboration portal documents communication, eliminating the need for long email threads. This collaborative effort allows prompt evaluation and discussion of options related to the design and associated benefits and risks of each option. With the ability to inform all parties as the work progresses, decisions and consensus can be reached faster. In some cases, only minimal uploads and collaboration will be required, because options for design and construction are limited or unnecessary. This is typically the case for uncomplicated projects with no anomalies found at the site.

When services are complete, we upload a printable version of our completed geotechnical exploration report, including the professional engineer's seal and signature, which documents our services. Previous submittals, collaboration and the report are maintained in our system. This allows future reference and integration into subsequent aspects of our services as the project goes through final design and construction.

The geotechnical exploration report will provide the following:

- Boring logs with field and laboratory data
- Stratification based on visual soil classification
- Groundwater levels observed during and after the completion of drilling
- Site Location and Exploration Plans
- Subsurface exploration procedures
- Description of subsurface conditions
- Recommendations for constructing on poor subgrade soils (if encountered)
- CBR test results

## Additional Services

In addition to the services noted above, the following are often associated with geotechnical engineering services. Fees for services noted above do not include the following:

**Review of Plans and Specifications:** Our geotechnical report and associated verbal and written communications will be used by others in the design team to develop plans and specifications for construction. Review of project plans and specifications is a vital part of our geotechnical engineering services. This consists of review of project plans and specifications related to site preparation and pavement construction. Our review will include a written statement conveying our opinions relating to the plans and specifications' consistency with our geotechnical engineering recommendations.

**Observation and Testing of Pertinent Construction Materials:** Development of our geotechnical engineering recommendations and report relies on an interpretation of soil conditions. This is based on widely spaced exploration locations, and assuming construction methods will be performed in a manner sufficient to meet our expectations, and is consistent with recommendations made at the time the geotechnical engineering report is issued. We should be retained to conduct construction observations, and perform/document associated materials testing, for site preparation, foundation, and pavement construction. This allows a more comprehensive understanding of subsurface conditions and necessary documentation of construction, to confirm and/or modify (when necessary) the assumptions and recommendations made by our engineers.

# EXHIBIT C - COMPENSATION AND PROJECT SCHEDULE

## Compensation

Based upon our understanding of the site, the project as summarized in **Exhibit A**, and our planned Scope of Services outlined in **Exhibit B**, our base fee is **$12,660**.

Additional services not part of the base fee include the following:

| Task | Lump Sum Fee | Initial for Authorization |
|---|---|---|
| Monitoring well installation | $500 per well | |
| Return visits to read well | $150 per trip | |

Our Scope of Services does not include services associated with site clearing, wet ground conditions, tree or shrub clearing, or repair of/damage to existing landscape. If such services are desired by the owner/client, we should be notified so we can adjust our Scope of Services.

Unless instructed otherwise, we will submit our invoice(s) to the address shown at the beginning of this proposal. If conditions are encountered that require Scope of Services revisions and/or result in higher fees, we will contact you for approval, prior to initiating services. A supplemental proposal stating the modified Scope of Services as well as its effect on our fee will be prepared. We will not proceed without your authorization.

## Project Schedule

We developed a schedule to complete the Scope of Services based upon our existing availability and understanding of your project schedule. However, this does not account for delays in field exploration beyond our control, such as weather conditions, permit delays, or lack of permission to access the boring locations. In the event the schedule provided is inconsistent with your needs, please contact us so we may consider alternatives.

| *GeoReport* Stage | Posting Date [1, 2] |
|---|---|
| Project Planning | June 26, 2020 |
| Mobilization of Exploration Team [3, 4] | July 13, 2020 |
| Site Characterization | July 21, 2020 |
| Geotechnical Engineering (Final Report) | July 24, 2020 |

| *GeoReport* Stage | Posting Date [1, 2] |
|---|---|

1. These dates are based on receiving written notice to proceed no later than **June 24, 2020**.
2. We will maintain a current calendar of activities within our *GeoReport* website. In the event of a need to modify the schedule, the schedule will be updated to maintain a current awareness of our plans for delivery.
3. Based on availability at the time this proposal was prepared.
4. We anticipate field work will take approximately one day to complete.

## EXHIBIT D – SITE LOCATION

43rd Avenue NE Reconstruction ■ Bismarck, North Dakota
June 15, 2020 ■ Terracon Proposal No. PM2205053

Terracon

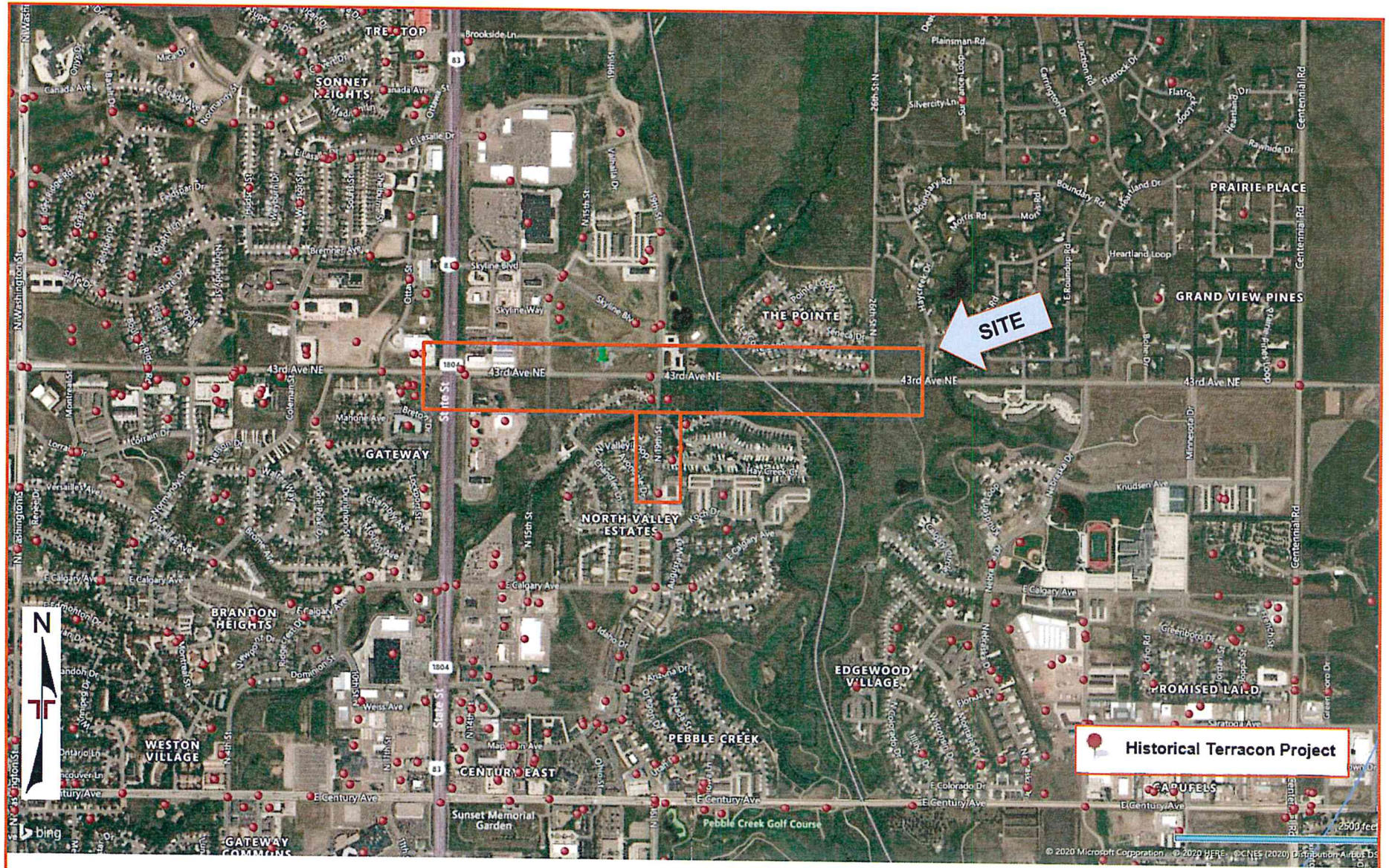



DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

MAP PROVIDED BY MICROSOFT BING MAPS

## EXHIBIT E – ANTICIPATED EXPLORATION PLAN

43rd Avenue NE Reconstruction ■ Bismarck, North Dakota
June 15, 2020 ■ Terracon Proposal No. PM2205053

Terracon

DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

MAP PROVIDED BY MICROSOFT BING MAPS

Bismarck

# Engineering Department

**DATE:** June 16, 2020

**FROM:** Gabe Schell, City Engineer

**ITEM:** Pavement Condition Data Collection

## REQUEST

Consider approval of the attached contract for pavement condition data collection with Gorrondona & Associates, Inc.

Please place this item on the 6/23/2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

The Bismarck-Mandan MPO has selected Gorrondona & Associates, Inc. to perform pavement data collection on functionally classified arterial and collector roadways within the MPO boundaries. The City of Bismarck will utilize the MPO's consultant to perform additional collection on non-functionally classified streets within the City to update the field data of the 2012 and 2016 pavement condition data collection projects. It was determined that every three years a third of the City streets should be analyzed in order to keep the pavement data management program up-to-date. This information is utilized in master planning pavement maintenance and repair projects and budgetary needs.

Funding for the City of Bismarck non-functionally classified streets is included in the 2020 CIP. This contract would be signed by the Consultant, the MPO and the City outlining the responsibilities of each. MPO's Federal oversight agencies are reviewing the contract language. The cost not to exceed financial contribution on behalf of the City would not change but there may be minor typographical changes in the final version of the contract.

## RECOMMENDED CITY COMMISSION ACTION

Approval of the contract with Gorrondona & Associates, Inc. for pavement condition data collection contingent on final approval from MPO.

## STAFF CONTACT INFORMATION

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

**Professional Services Agreement among the Bismarck-Mandan Metropolitan Planning Organization (MPO), City of Bismarck, and Gorrondona and Associates Inc. for Consulting Services for the "2020 Pavement Conditions and Analysis Report" Project**

**OWNER 1:** Bismarck-Mandan MPO; Attn: Rachel Drewlow; 221 North 5th Street; Bismarck, ND 58501
**OWNER 2:** City of Bismarck; Attn: Michael Mart, PE; 221 North 5th Street; Bismarck, ND 58501

**CONSULTANT:** Gorrondona and Assoc., Inc.; 7524 Jack Newell Blvd. South; Fort Worth, TX 76118

**PROJECT:** CONSULTANT is to provide pavement management-related services for collector and arterial roadways within the MPO (approx. 210 centerline miles) and similar services for local roads (approx. 130 centerline miles) within the City of Bismarck. This study will be in cooperation with the cities of Bismarck, Mandan, and Lincoln, the counties of Burleigh and Morton, the North Dakota Department of Transportation (NDDOT), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). The collected pavement condition data will be used by the MPO to monitor their federal performance target for pavement condition and help select preventive maintenance and reconstruction projects for the region. Collected data will be used to inform the next Metropolitan Transportation Plan update and the list of projects developed through this effort may be used, as needed, during project prioritization of the annual Transportation Improvement Plan solicitation. Furthermore, collected data and recommendations provided will help the jurisdictions to execute the rehabilitation/reconstruction of the roadways included in the study.

The CONSULTANT will prepare the deliverables for the "2020 Pavement Conditions and Analysis Report" Project described herein.

**TIMETABLE:** Estimated completion dates for the following tasks, assuming: (1) an official signed contract and notice to proceed from the OWNERS no later than **Wednesday, 1 July 2020**, (2) favorable weather conditions; and (3) the successful completion of several support tasks to be performed by the OWNERS in support of these tasks as described herein.

| Task | Description | Duration (Weeks) | Start/ End Dates (2020) | Milestones, Comments, and Assumptions |
|---|---|---|---|---|
| 1 | Project Initiation, Steering Committee Development, and Kickoff Meeting | NA | Week of 7/6 (or earlier) | • Web conference (in person, if possible)<br>• Current, accurate GIS provided prior to meeting<br>• Existing PAVER databases (Bismarck and Mandan) provided prior to meeting |
| 2 | Project-Specific Quality Management Plan (QMP) Development | NA | Within two weeks following kickoff. | Concise document supplementing *PathRunner QC/QA Planning Guide*. |
| 3 | Pavement Data Verification and PAVER Database Creation – *Phase 1* | 3 | 7/13-7/31 | ***Milestone:** Initial PAVER database complete. Several reconnaissance calls and emails exchanges with MPO TAC and participating agency technical staff to acquire and verify roadway attribute data. |
| 4A | Mobilization | NA | NA | Immediately prior to and following 4B |
| 4B | Pavement Condition Data Collection | 1 to 2 | 8/3-8/14 | ***Milestone:** Pavement data collection complete. |
| 5 | Pavement Condition Data Processing + QC/QA | 3 | 8/17-9/4 | ***Milestone:** Pavement data processing complete. |
| 6 | Pavement Data Verification – *Phase 2* | 2 | 9/7-9/18 | ***Milestone:** PAVER database complete with condition data. |
| 7 | PAVER Customization | 4 | 8/3-8/28 | ***Milestone:** PAVER system table customization complete.<br>• In parallel with data collection, processing, etc.<br>• Several calls/exchanges with MPO and participating jurisdictions required. |
| 8 | Five- to Seven-Year Pavement M&R Plan Development | 3 | 9/21-10/9 | ***Milestone:** Draft five- to seven-year programs complete.<br>• Begins following Tasks 6 and 7.<br>• Several calls/exchanges with MPO TAC and participating agency technical staff required.<br>• Collaborative effort. |
| 9A | Reporting | 2 | 9/28-10/9 | ***Milestone:** Draft report complete.<br>• Begins in parallel with Task 8<br>• Several calls/exchanges with MPO TAC and participating agency technical staff required. |
| 9B | Draft Report Review with Updates – MPO and jurisdictional staff | 2-3 | 10/12-10/30 | ***Milestone:** Draft reports reviews complete with updates made by Consultant.<br>Assumes draft report reviews by all agencies occur simultaneously. If this assumption is incorrect, schedule can easily be adjusted to sequence the reviews and still meet the end of year project completion goal. |
| 9C | Draft Report Review with Updates – *NDDOT, FHWA, and FTA* | 4 | 10/12-11/6 | |
| 9D | Final Reports | 2 | 11/9-11/20 | ***Milestone:** Final reports complete. |
| 9E | Presentation | TBD | In November and December | ***Milestone:** All reporting/presentation complete by end of December 2020. |
| 10 | Training | TBD | In November and December | Two (2) days of web-based training. |
| NA | Project Management | NA | TBD | Including monthly updates and project-related correspondence at a rate of $150/hour |

The CONSULTANT shall not be held responsible for failure to meet the aforementioned timetables in the event that the cause of delay is not the fault of the CONSULTANT.

**PAYMENT:**

**1. Payment for Basic Services.**

**OWNER 1** agrees to pay the following amounts for basic services rendered pursuant to this contract, a total amount not to exceed $82,000, subject to completion of the following tasks:

| Task(s) | Description | Est. Amount (USD) |
|---|---|---|
| 1 | Kickoff Meeting (via teleconference or in person, if possible) | -- |
| 2 | Project-Specific Quality Management Plan (QMP) Development | -- |
| 3 & 6 | Pavement Data Verification and PAVER Database Creation | $7,800 |
| 4A | Mobilization (62% of total by centerline mileage) | $4,321 |
| 4B & 5 | Pavement Condition Data Collection and Processing (210 centerline miles) | $41,186 |
| 7, 8, & 9A-D | PAVER Analysis and Reporting | $20,416 |
| 9E | Presentations: One (1) onsite visit and up to five (5) web/phone meetings | $2,977 |
| 10 | Training | $1,500 |
| NA | Project Management (including monthly updates and project-related correspondence at a rate of $150/hour and approximately four (4) hours per month) | $1,800 |
| NA | Travel expenses for up to two (2) onsite visits | $2,000 |

**OWNER 2** agrees to pay the following amounts for basic services rendered pursuant to this contract, a total amount not to exceed $45,000, subject to completion of the following tasks:

| Task(s) | Description | Est. Amount (USD) |
|---|---|---|
| 1 | Kickoff Meeting (via teleconference) | -- |
| 2 | Project-Specific Quality Management Plan (QMP) Development | -- |
| 3 & 6 | Pavement Data Verification and PAVER Database Update | $2,080 |
| 4A | Mobilization (38% of total by centerline mileage) | $2,819 |
| 4B & 5 | Pavement Condition Data Collection and Processing (130 centerline miles) | $32,431 |
| 7, 8, & 9A-D | PAVER Analysis and Reporting | $6,770 |
| NA | Project Management (including monthly updates and project-related correspondence at a rate of $150/hour and approximately two (2) hours per month) | $900 |

**2. Payment for Additional Services.** None anticipated.

2.1. The OWNERS reserve the right to enter into a supplementary agreement to have the CONSULTANT perform any additional work not currently assigned. Supplementary agreements are contingent upon approval by MPO oversite agencies and MPO TAC and Policy Boards.

**3. Times of Payments**

3.1. Times of Payments: CONSULTANT shall submit monthly statements for Basic and Additional Services rendered. For Basic Services, the statements will be based upon CONSULTANT'S estimate of the proportion of the total services actually completed at the time of billing. OWNERS shall make prompt monthly payments in response to CONSULTANT'S monthly statements. Upon conclusion of each phase of Basic Services, OWNERS shall pay such additional amount, if any, as may be necessary to bring total compensation paid on account of such phase to the following percentages of total compensation payable for all phases of Basic Services.

3.2 The OWNERS reserve the right to hold ten percent (10%) of the total contracted invoiced amounts until the OWNERS have received all of the following to its satisfaction: Contracted deliverables as described in the RFP and final contract; Completed tasks as described in the RFP and final contract; and Satisfactory final product project and/or study.

**SERVICES OF CONSULTANT:** CONSULTANT shall perform professional services as hereinafter stated:

**Task 1. Project Initiation: Steering Committee Development and Kickoff Meeting**
During the kickoff meeting, the project team – consisting of the G&AI team, the steering committee, and any other stakeholders identified by the MPO – will review and confirm:

- Project goals and objectives
- Project scope
- Additional data required from the participating jurisdictions (if not already provided)
- Project milestones and deliverables
- Project schedule
- Project team roles and responsibilities, including QC/QA procedures

In addition, a project-specific communication plan will be developed. The communication plan will identify G&AI team and agency personnel who will serve as the core project team, and the plan will ensure that information flows to and that decisions are made by the appropriate individuals. Roles and responsibilities for each team member will be clearly identified in the plan. This is anticipated to be a web-based meeting, but if reasonable flight prices are found the meeting may be done on site.

**Deliverables:**

- Steering committee roster
- Draft and final meeting agenda
- Draft and final communication plan (including public outreach and inspection notification)
- Draft and final meeting minutes

**Task 2. Project-Specific Quality Management Plan (QMP) Development**
The CONSULTANT will develop a concise QMP document supplementing the *PathRunner QC/QA Planning Guide*.

**Task 3. Pavement Data Verification and PAVER Database Creation – *Phase 1***
The G&AI team will review the existing GIS and pavement data for each jurisdiction and assess their overall accuracy. This will enable us to address any missing or erroneous data prior to creating or updating the PAVER databases.

**Deliverables:**

- PAVER database that incorporates available pavement data from each jurisdiction.
- Plan for reconciling any issues (e.g., missing attribute data) in each jurisdiction's PAVER databases.

**Task 4. Pavement Condition Data Collection**
**Objective:** Collect pavement condition data for the roadway network.

G&AI will drive the roadway network using a PathRunner™ Pavement Condition Survey Systems.
The collection effort will be performed in accordance with the QMP plan. The PathRunner™ will collect all pavement condition data, including: 1) high-resolution 2D and 3D downward images for cracking, 2) rutting and faulting measurements, 3) high resolution right-of-way images for inventory data collection, and 4) International Roughness Index (IRI) values for assessing roadway smoothness.

**Deliverables:**

- Collected imagery and viewer software on an external hard drive.

**Task 5. Pavement Condition Data Processing**
**Objective:** Determine Pavement Condition Index (PCI) values from collected data.

G&AI will extract PCI distress data from collected imagery and sensor data. This is a four-step process that employs:

- **AutoCrack software** – Detects cracking in the pavement imagery.
- **AutoClass software** – Classifies the type of cracking detected.
- **Manual image rating/review using PathView software** – Trained and experienced raters evaluate the imagery and identifying distresses that the automated crack detection and classification software did not observe or incorrectly identified.
- **QC/QA rating** – Trained and experienced raters and project engineers review data prior to import into PAVER.
- **PCI calculation** – All data are imported into PAVER and PCI values are calculated.

The QC/QA rating is the single most important step in the project. The G&AI team will employ the QMP's data interpretation processes. G&AI will then import the data into PAVER database.

**Deliverables:**

- Updated PAVER database containing all collected pavement condition data.
- Collected imagery and viewer software on an external hard drive.

**Task 6. Pavement Data Verification – *Phase 2***

**Objective:** Perform a final review the 2020 data and reassess its overall accuracy.

Potential issues with historical "Last Construction Date" values will be the primary focus of this phase of quality assurance. A final list of potential errors will be determined based on the results of the 2020 condition survey. High deterioration rates may indicate structural issues with a pavement section.

**Deliverable:** List of issues with the pavement inventory data and a plan for reconciling them in collaboration with the participating jurisdictions.

**Task 7. PAVER Customization – Deterioration Trends, Preservation Treatments, and Major M&R Practices**

**Objective:** Customize the PAVER databases to incorporate: 1) realistic pavement deterioration trends, 2) effective pavement preservation treatments, and 3) typical M&R activities for application at the appropriate time.

**Deterioration Trends:** G&AI has developed a library of deterioration trends for pavements across the United States. Based on the PCI data, input from agency staff, and our team's experience with pavement deterioration trends in the region, we will develop a suite of deterioration trends in the PAVER database that provide realistic deterioration rates for the pavements. The trends will be used in forecasting future pavement conditions.

**Preservation Treatments:** The G&AI team – in collaboration with agency staff – will customize PAVER to include pavement preservation strategies that have been shown to be effective within the region. Reviewing existing preservation practices and enhancing them, where appropriate, will result in better performance of the roadways at a lower overall cost.

**Typical Major M&R Activities:** The G&AI team will review the "Major M&R" (e.g., resurfacing and reconstruction) practices used in the region to assess their overall impact of pavement service life. We will review the impact of resurfacing on each functional classification of pavement. Most importantly, we will work with the jurisdictions to determine how many times resurfacing can be applied cost effectively to each functional classification of pavement before complete reconstruction is needed. Major M&R models will then be developed in PAVER to reflect the strategies the jurisdictions intend to implement moving forward.

**Deliverable:** Up to date pavement deterioration trends, preservation activities, M&R strategies, and unit costs in the PAVER databases.

**Task 8. Five to Seven-Year Pavement M&R Plan Development**

**Objective:** Develop a draft five- to seven-year program starting in 2021 that includes recommended pavement preservation activities, planned projects, and other major rehabilitation recommendations.

Once the PAVER system has been customized to reflect best preservation and rehabilitation practices, as described

in the previous task, using PAVER to develop practical five-year recommendations becomes a relatively straight-forward process.

The G&AI team will work collaboratively with agency staff to develop a practical program that addresses preservation and rehabilitation needs for the roadways. PAVER's analysis tools will be used to assign specific budgets to each group of pavements and initial recommendations from PAVER will be generated.

**Deliverable:** Draft five- to seven-year pavement program presented in GIS maps.

**Task 9. Reporting and Presentations**

A "2020 State of the Streets" report be developed for the MPO. These concise reports will summarize the overall findings of the project and will provide a "birds-eye" view of all data, analyses, and final recommendations.

In addition, G&AI will present the project findings and recommendations to the MPO and member jurisdictions during one (1) onsite visit and up to five (5) web/phone meetings.

**Task 10. Web-based PAVER Training**

Two-days of web-based PAVER training will be provided either at the end of the project or as partial training sessions during the project.

**GENERAL CONDITIONS:**

**Bismarck-Mandan MPO and City of Bismarck Clauses:**

**1. Termination.** If the OWNERS determine that the progress of the study is not acceptable as measured through the consultant supplied project schedule, which will be an attachment to the signed and approved contract, the OWNERS reserve the right to terminate the contract with the consultant with a 45-day written notice.

The OWNERS desire continuity of consultant staff throughout the project from the firm chosen. If the consultant replaces key staff and the OWNERS are dissatisfied with replacement staff, the firm chosen will have 30 days from written notice from the OWNERS to supply replacement key staff acceptable to the OWNERS. If the firm chosen fails to supply acceptable replacement staff within the 30-day period, the OWNERS may cancel the contract.

**2. Ownership of Work Product (OWNER 1 Project):** All work products and copyrights of the OWNER 1 portion of the contract, which result from the contract, are the exclusive property of NDDOT, with an unlimited license for use by the federal government and its assignees without charge.

**3. Ownership of Work Product (OWNER 2 Project):** All work products and copyrights of the OWNER 2 portion of the contract, which result from the contract, are the exclusive property of the City of Bismarck.

**Federal, State, and Local Clauses: See Appendix A.**

EXECUTED upon final third signature below:

**OWNER 1: Bismarck-Mandan MPO**

Signature: _____

Name: _____

Title: _____

Date: _____

**OWNER 2: City of Bismarck**

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Attest: _____

Title: _____

Date: _____

**Consultant: Gorrondona and Associates, Inc.**

Signature: _____

Name: _____

Title: _____

Date: _____

**Appendix A: Federal, State, and Local Clauses**

**Federal Clauses**

# Federal Clauses

**Fly America Requirements** – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($10,000 or less, except for construction contracts over $2,000). Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Governmentfinanced international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

**Seismic Safety** – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases ($10,000 or less, except for construction contracts over $2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

**Energy Conservation** – Applicability – All Contracts except micro-purchases ($10,000 or less, except for construction contracts over $2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

**Access to Records and Reports** – Applicability – As shown below. These requirements do not apply to micro-purchases ($10,000 or less, except for construction contracts over $2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the
contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

**Federal Changes** – Applicability – All Contracts except micro-purchases ($10,000 or less, except for construction contracts over $2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

**No Government Obligation to Third Parties** – Applicability – All contracts except micropurchases ($10,000 or less, except for construction contracts over $2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements or Related Acts** – Applicability – All contracts except micro-purchases ($10,000 or less, except for construction contracts over $2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves

the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Termination** – Applicability – All Contracts over $10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is $250,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.
If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.
Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:
1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.
If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make
an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient

determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

**Government-Wide Debarment and Suspension (Nonprocurement)** – Applicability – Contracts over $25,000 The Recipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," https:// www.sam.gov, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the
Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

**Contracts Involving Federal Privacy Act Requirements** – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases ($10,000 or less, except for construction contracts over $2,000)
The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**Civil Rights Requirements** – Applicability – All contracts except micro-purchases ($10,000 or less, except for construction contracts over $2,000)
The following requirements apply to the underlying contract:
The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit
Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating

assistance that will award prime third party contracts exceeding $250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, 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 Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or
activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

**Patent and Rights Data** - Contracts involving experimental, developmental, or research work ($10,000 or less, except for construction contracts over $2,000).
Patent Rights

A. General. The Recipient agrees that:

(1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable:

(a) Invention,

(b) Improvement, or

(c) Discovery,

(2) The Federal Government's rights arise when the patent or patentable information is:

(a) Conceived under the Project, or

(b) Reduced to practice under the Project, and

(3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to:

(a) Notify FTA immediately, and

(b) Provide a detailed report satisfactory to FTA,

B. Federal Rights. The Recipient agrees that:

(1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and

(2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

(1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and

(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.

Rights in Data and Copyrights

A. Definition of "Subject Data." means recorded information:

(1) Copyright. Whether or not copyrighted, and

(2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

B. Examples of "Subject Data." Examples of "subject data":

(1) Include, but are not limited to:
(a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but

(2) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration,

C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but

(2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

D. Federal Rights in Data and Copyrights. The Recipient agrees that:

(1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable,

(2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that:

(1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet,

(2) Other Reports. It must provide other reports pertaining to the Project that FTA may request,

(3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing,

(4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA,

(5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but

(6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

(1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and

(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:

(1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties,

2 The Federal Government's employees acting within the scope of their official duties, and

3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either:

(1) Implies a license to the Federal Government under any patent, or

(2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless:

(1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and

(2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:

(1) The Freedom of Information Act, 5 U.S.C. § 552,

(2) Another applicable Federal law requiring access to Project records,

(3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or

(4) Other applicable Federal regulations and guidance pertaining to access to Project records.

**Disadvantaged Business Enterprise (DBE)** – Applicability – Contracts over $10,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**Prompt Payment** – Applicability – All contracts except micropurchases $10,000 or less, (except for construction contracts over $2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

**Incorporation of Federal Transit Administration (FTA) Terms** – Applicability – All contracts except micro-purchases ($10,000 or less, except for construction contracts over $2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOTrequired contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

## Other Federal Requirements:

**Full and Open Competition** - In accordance with 49 U.S.C. $ 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

**Prohibition Against Exclusionary or Discriminatory Specifications** - Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

**Conformance with ITS National Architecture** - Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by
SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

**Access Requirements for Persons with Disabilities** - Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

**Notification of Federal Participation** - To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

**Interest of Members or Delegates to Congress** - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

**Ineligible Contractors and Subcontractors** - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

**Other Contract Requirements** - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

**Compliance With Federal Regulations** - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure
to so comply shall constitute a material breach of this contract.

**Real Property** - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Access to Services for Persons with Limited English Proficiency** - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

**Environmental Justice** - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. $ 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

**Environmental Protections** - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

**Geographic Information and Related Spatial Data** - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

**Geographic Preference** - All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201 ).

**Federal Single Audit Requirements** - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend $750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200,"Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and
year, name of the Federal agency, and name of the pass through entity.

**Veterans Preference** - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**Safe Operation of Motor Vehicles**

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

**Catalog of Federal Domestic Assistance (CFDA) Identification Number** - The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

**The CFDA number for the Federal Transit Administration** - Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200,"Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

**Organizational Conflicts of Interest** - The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

**State and Local Clauses**

## DISADVANTAGED BUSINESS ENTERPRISE EFFORTS

In the performance of this agreement, the contractor shall cooperate with MPO in meeting its goals with regard to the maximum utilization of disadvantaged business enterprises, and will use its best efforts to insure that such business enterprises shall have the maximum practical opportunities to compete for subcontract work under this agreement.

1. Policy

It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 applies to this Agreement.

2. DBE Obligation

The MPO and contractor agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under or pursuant to this Agreement. In this regard, the contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, creed, color, national origin, age, or sex in the award and performance of DOT-assisted contracts.

The consultant's efforts to involve DBE businesses in this project needs to be shown. If the consultant is a DBE, a statement indicating that the business is certified by the NDDOT as a DBE/MBE shall be included in the proposal. If the consultant intends to utilize a DBE to complete a portion of this work, a statement of the subcontractor's certification by the NDDOT shall be included. The percent of the total proposed cost to be completed by the DBE shall be shown. A copy of NDDOT's current certified DBE Directory can be secured at the Bismarck-Mandan MPO.

## RISK MANAGEMENT

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

CONSULTANT 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 are $250,000 per person and $1,000,000 per occurrence.

2) Workforce Safety insurance meeting all statutory limits.

3) The OWNER and the State of North Dakota, its agencies, officers, and employees (State) shall be endorsed as an additional insured on the commercial general liability and automobile liability policies.

4) Said endorsements shall contain a "Waiver of Subrogation" in favor of the OWNER and the state of North Dakota.

5) The policies and endorsements may not be canceled or modified without thirty (30) days prior written notice to the undersigned OWNER and the State Risk Management Department.

The CONSULTANT shall furnish a certificate of insurance evidencing the requirements in 1, 3, and 4, above to the OWNER prior to commencement of this agreement.

The OWNER and the State reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time. Any attorney who represents the State under this contract 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.

When a portion of the work under the Agreement is sublet, the CONSULTANT shall

obtain insurance protection (as outlined above) to provide liability coverage to protect the CONSULTANT, the OWNER and the State as a result of work undertaken by the Subcontractor. In addition, the CONSULTANT shall ensure that any and all parties performing work under the Agreement are covered by public liability insurance as outlined above. All Subcontractors performing work under the Agreement are required to maintain the same scope of insurance required of the CONSULTANT. The CONSULTANT shall be held responsible for ensuring compliance with those requirements by all Subcontractors.

CONSULTANT's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the OWNER or State. Any insurance, self-insurance or self-retention maintained by the OWNER or the State shall be excess of the CONSULTANT's insurance and shall not contribute with it. The insolvency or bankruptcy of the insured CONSULTANT shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONSULTANT from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of the CONSULTANT. This insurance may be in a 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 OWNER and the State will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the CONSULTANT in excess of the minimum requirements set forth above.

## TITLE VI ASSURANCES

The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, and 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 U.S. Department of Transportation, issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, national origin, sex, age, disability, or income status in consideration for an award.

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 shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability, or income status, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
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 shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability, or income status.
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Bismarck-Mandan MPO, Bismarck, Burleigh County or the North Dakota Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Bismarck-Mandan MPO, Bismarck, Burleigh County or the North Dakota Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Bismarck-Mandan MPO, Bismarck, Burleigh County and the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
    a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
    b. cancellation, termination, or suspension of the contract, in whole or in part.

Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the Bismarck-Mandan MPO, Bismarck, Burleigh County or the U.S. Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the Bismarck-Mandan MPO, Bismarck, Burleigh County enter into such litigation to protect the interests of the Bismarck-Mandan MPO, Bismarck, Burleigh County; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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); 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.F.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 non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, reasonable steps must be taken 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 from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Bismarck

# Engineering Department

**DATE:** June 16, 2020

**FROM:** Gabe Schell, City Engineer

**ITEM:** Sidewalk Easement – Suttle's Addition

## REQUEST

Request dedication of and acceptance of a sidewalk easement on Lots 1 & 32, Block 2 Suttle's Addition.

Please place this item on the 6/23/2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

The location of this proposed sidewalk easement is along Bismarck Expressway from 18th Street to 340' west, on Lots 1 & 32, Block 2, Suttle's Addition.

This sidewalk easement is needed to install a public sidewalk and provide additional boulevard area between the sidewalk and the curb on gutter on Bismarck Expressway. This boulevard area provides separation between the pedestrian and vehicles as well as provides an area for snow storage.

## RECOMMENDED CITY COMMISSION ACTION

Approve dedication of and acceptance of a sidewalk easement on Lots 1 & 32, Block 2, Suttle's Addition.

## STAFF CONTACT INFORMATION

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

## SIDEWALK EASEMENT

This indenture, made this 14th day of May, 2020, between Traci Properties, LLP, whose post office address is 2527 Sharps Place, Bismarck ND 58503-0969, Grantor, and the **City of Bismarck**, a municipal corporation, whose post office address is P.O. Box 5503, Bismarck, North Dakota 58506, Grantee.

1. For and in consideration of the sum of One Dollar ($1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, an exclusive sidewalk easement to construct, hereinafter described, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and of said sidewalk.

2. This Easement is, except for right of access, limited to:

Parcel No. 1

A tract of land lying in part of Lots 1 & 32, Block 2, Suttle's Addition to the City of Bismarck, Burleigh County, North Dakota, more particularly described as follows:

Commencing at the Northeast corner of Lot 1, Block 2, Suttle's Addition; thence S 00 degree 55 minutes 50 seconds W, a distance of 4.65 feet; to a point on the East line of said Lot 1, said point being the point of beginning; thence from said point of beginning S 00 degrees 55 minutes 50 seconds W, a distance of 7.00 feet; thence S 89 degrees 37 minutes 53 seconds W, a distance of 340.05 feet; thence N 00 degrees 55 minutes 50 seconds E, a distance of 9.00 feet; thence N 89 degrees 58 minutes 06 seconds E, a distance of 340.01 feet to the point of beginning.

Said tract contains 2720 SF or 0.062 Acres, more or less.

See Exhibit No. 1

3. Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this easement, restore the lands to as near

their original condition as reasonably possible and remove all debris, spoils, and equipment resulting with the construction or installation or access to the lands.

4. The term of this easement herein reserved is ninety-nine (99) years, beginning upon execution in 2020 and ending in 2119.

5. Grantor hereby reserves title to and any interest in any and all archeological and paleontological materials, whether located on or below the surface of said land.

IN WITNESS WHEREOF, this instrument is executed by the undersigned on this 14 day of May, 2020.

Grantor: Traci Properties, LLP
2527 Sharps Place
Bismarck, ND 58503-0969

By: Traci Properties LLP
by: Bill Whalen

Bill Whalen
Print Name

its Owner

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

On this 14 day of May, 2020, before me personally appeared Bill Whalen, who executed the within instrument, and acknowledged to me that they executed the same.

MARY HULM
Notary Public
State of North Dakota
My Commission Expires Aug 16, 2022

Mary Hulm
Notary Public
State of North Dakota

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

| | |
|---|---|
| _____ | Attest:_____ |
| Steve Bakken, President<br>Board of City Commissioners | Keith J. Hunke<br>City Administrator |

STATE OF NORTH DAKOTA )
) SS
COUNTY OF BURLEIGH )

On this _____ day of _____, 2020, before me personally appeared Steve Bakken, President of Board of City Commissioners, and Keith J. Hunke, City Administrator, known to me to be the persons who are described in, and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

_____
Notary Public

The legal description was prepared by Cleary Johs, PLS, Box 5503, Bismarck, North Dakota 58506-5503 or obtained from a previously recorded instrument.

# SIDEWALK EASEMENT

PART OF LOTS 1 & 32, BLOCK 2, SUTTLE'S ADDITION,
TO THE CITY OF BISMARCK,
BURLEIGH COUNTY, NORTH DAKOTA
APRIL 28, 2020

OWNERS:
TRACI PROPERTIES, LLP
EXHIBIT #1

PARCEL NO. 1

A TRACT OF LAND LYING IN PART OF LOTS 1 & 32, BLOCK 2, SUTTLE'S ADDITION TO THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 2, SUTTLE'S ADDITION; THENCE S 00°55'50" W, A DISTANCE OF 4.65 FEET; TO A POINT ON THE EAST LINE OF SAID LOT 1, SAID POINT BEING THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING S 00°55'50" W, A DISTANCE OF 7.00 FEET; THENCE S 89°37'53" W, A DISTANCE OF 340.05 FEET; THENCE N 00°55'50" E, A DISTANCE OF 9.00 FEET; THENCE N 89°58'06" E, A DISTANCE OF 340.01 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 2720 SF OR 0.062 ACRES, MORE OR LESS.

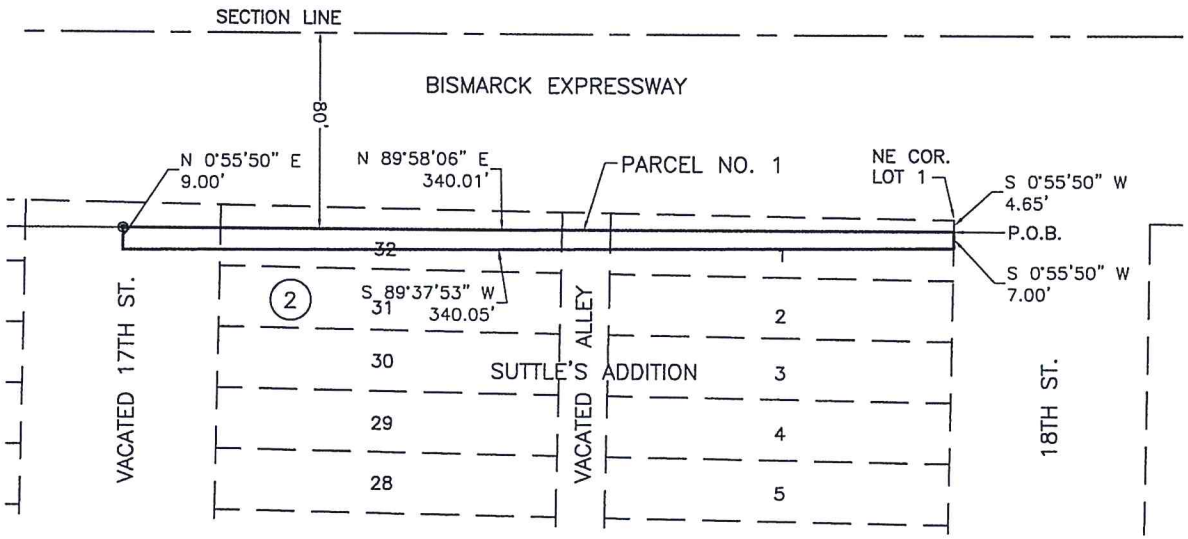
SURVEYORS CERTIFICATE

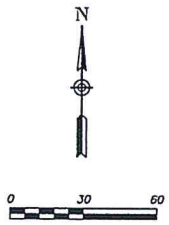
I, CLEARY JOHS, NORTH DAKOTA PROFESSIONAL LAND SURVEYOR 5288,
HEREBY CERTIFY THAT THE INFORMATION SHOWN ON THIS DOCUMENT IS TRUE AND CORRECT TO THE BEST OF MY BELIEF AND KNOWLEDGE. ANY ALTERATION OF THIS DOCUMENT WILL VOID THIS CERTIFICATION.

CLEARY JOHS
REGISTERED
LAND
SURVEYOR
LS. 5288
NORTH DAKOTA
6/10/20

Cleary Johs

CLEARY JOHS, NDPLS 5288
CITY OF BISMARCK
221 N. 5TH STREET
BISMARCK, ND 58501




Bismarck Engineering Department

**EASEMENT**

**PARCEL 1**

**BISMARCK, N.D.** **DATE: 4/28/2020**

Bismarck

# Engineering Department

**DATE:** June 15, 2020

**FROM:** Gabe Schell, City Engineer

**ITEM:** Street Improvement District No. 535

## REQUEST

Request for Resolution Receiving Bids and ordering Preparation of the Engineer's Statement for SI 535.

Request for Resolution Awarding Contract for SI 535.

Please place this item on the 6/23/2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

Street Improvement District No. 535 consisted of nine units of new roadway lighting and appurtenances throughout Bismarck (see attached maps). All street lighting improvements will be funded through special assessments except for Unit 5.

In Unit 5, a portion of the improvement will be pre-paid by the developer per Amendment 2 of the Memory First Addition Development Agreement, approved by the Board November 12, 2019. Additionally, the assessed cost for the one unannexed parcel will be held in abeyance with the assessment paid by Rural Road Fund until the parcel is annexed into the City. Costs for all other parcels in the district will be special assessed.

Letters were sent to property owners notifying them of this project. The insufficiency of protests was presented at the May 6, 2020 commission meeting.

Bids will be received on June 9, 2020. The engineer's estimate is $ 340,963.60. Fetzer Electric submitted the low bid in the amount of $340,705.90. The bid summary and project budget are attached.

<u>Unit No. 1</u>
Crest Road – 120' West of High Creek Road to 160' West of Crest Place
Crest Place – Crest Road to Cul-De-Sac

Unit No. 2
Harp Hawk Drive – 125' East of Grey Hawk Lane to Marsh Hawk Drive
Talon Road – Marsh Hawk Drive to 150' East
Prairie Hawk Drive – 135' East of Grey Hawk Lane to Marsh Hawk Drive
Marsh Hawk Drive – Harp Hawk Drive to Prairie Hawk Drive

Unit No. 3
Greenfield Lane –Washington Street to Saints Drive

Unit No. 4
Mica Drive – 110' East of Basalt Drive to Flint Drive
Jasper Drive – Mica Drive to 250' South
Flint Drive – 225' North of Mica Drive to Normandy Street
Normandy Street – 150' South of Flint Drive to 250' North of Flint Drive

Unit No. 5
57th Avenue NE – 135' East of US Highway 83 to 19th Street
19th Street – 57th Avenue NE to 50' South of Elbowoods Lane

Unit No. 6
Shiloh Drive – 670' East of 19th Street to 940' East of 19th Street

Unit No. 7
Revere Drive –Bismarck Express way to 230' West of Hancock Drive

Unit No. 8
Miriam Avenue – 420' East of Channel Drive to Channel Drive
Channel Drive – Miriam Avenue to Global Drive

Unit No. 9
Cessna Avenue – Piper Street to Airport Road
Piper Street – 190' South of Continental Avenue to Basin Avenue

Project Schedule

| | |
|---|---|
| Receipt and Opening of Bids: | June 9, 2020 |
| Award of Bid: | June 23, 2020 |
| Project Completion: | August 1, 2020 |

**RECOMMENDED CITY COMMISSION ACTION**

Resolution Receiving Bids and Ordering Preparation of the Engineer's Statement for SI 535.

Resolution Awarding Contract for SI 535 to Fetzer Electric in the amount of $340,705.90.

**STAFF CONTACT INFORMATION**

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

**BID TABULATION**
**FOR**
**STREET IMPROVEMENT DISTRICT NO. 535**

June 9, 2020

**ENGINEER'S ESTIMATE:** $340,963.60

| BIDDER | BOND | LICENSE | SIGNATURE | AMOUNT |
|---|---|---|---|---|
| Edling Electric | X | X | X | $342,797.95 |
| Fetzer Electric | X | X | X | $340,705.90 |
| Guthmiller & Son Dirtwork Inc | | | | |
| Fargo Electric | | | | |
| Denny's Electric LLC | | | | |

# PROJECT BUDGET

| Number | SI 535 | Description | 2020 Street Lighting |
|---|---|---|---|

| Scheduled Start | 6/16/2020 | Scheduled End | 11/16/2020 |
|---|---|---|---|

## Project Contracts

| Project Construction Contracts | | Amount |
|---|---|---|
| Fetzer Electric | | 340,705.90 |
| Subtotal | | 340,705.90 |
| Contingencies | 10% | 34,070.59 |
| **Total Construction Contracts** | | 374,776.49 |

| Other Contracts, Land Purchases, Etc. | Contract No. | Amount |
|---|---|---|
| Street light standards and fixtures (9 of each) - Unit 5 (Supplied by Public Works-to meet deadline in accordance with development agreement with COSTCO) | | 18,483.84 |
| Subtotal | | 18,483.84 |
| *Contingencies | 10% | |
| **Total Other Contracts** | | 18,483.84 |

| Work by Other City Departments | | Amount |
|---|---|---|
| NA | | |
| Subtotal | | - |
| *Contingencies | 10% | - |
| **Total Work by Other City Departments** | | - |

## SUMMARY

| | |
|---|---|
| **Construction Cost - No Contingencies** | **359,189.74** |
| **TOTAL CONSTRUCTION COST WITH CONTINGENCIES** | 393,260.33 |
| Engineering | 39,480.31 |
| Administration | 7,896.06 |
| Advertising and Legal | 7,398.89 |
| Interest During Construction | 11,098.33 |
| **SI 535 TOTAL PROJECT COST** | **459,133.92** |

| Project Funding | Amount |
|---|---|
| Special Assessments | 429,894.68 |
| Developer Paid | 27,841.78 |
| Held in Abeyance (Rural Road Funds) | 1,397.46 |
| **Total Funding** | 459,133.92 |

**Date** 6/15/20

# Engineering Department

**DATE:** June 16, 2020

**FROM:** Gabe Schell, City Engineer

**ITEM:** Street Improvement District SI 536

**REQUEST**

Request for Resolution Receiving Bids and ordering Preparation of the Engineer's Statement for SI 536.

Request for Resolution Awarding Contract for SI 536.

Please place this item on the 6/23/2020 City Commission meeting agenda.

**BACKGROUND INFORMATION**

Street Improvement District SI 536 consists of one unit of new asphalt roadway in Silver Ranch Addition. This will include approximately 3,095 linear feet of street improvements for new asphalt pavement, curb and gutter, ADA ramps and related items (see attached map).

Bids were received on June 16, 2020. The engineer's estimate was $572,609.60 The low bid of $ 577,237.70 was received from Northern Improvement Company.

The bid summary and project budget are attached.

Unit No. 1 (100% Petitioned)
Titanium Drive – 130' north of Gold Drive to 150' west of Silver Boulevard
Nickel Street – 130' north of Gold Drive to Titanium Drive
Cobalt Drive – 130' north of Gold Drive to Titanium Drive

Project Schedule
Receipt and Opening of Bids: June 16, 2020

| | |
|---|---|
| Contract Award: | June 23, 2020 |
| Project Completion: | August 2021 |

**RECOMMENDED CITY COMMISSION ACTION**

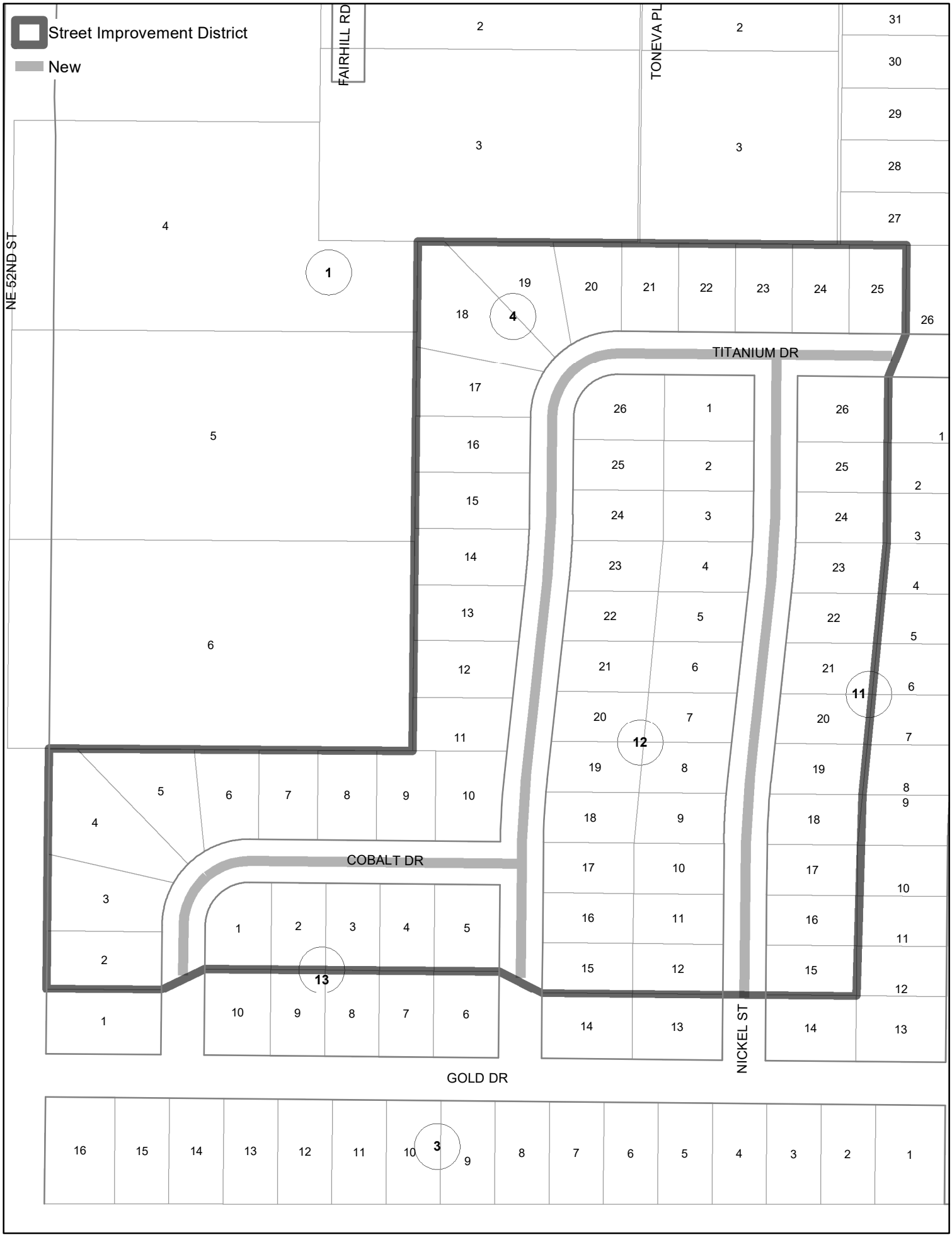
Resolution to Receive Bids and Ordering the Preparation of the Engineer's Statement for SI 536.

Resolution Awarding Contract SI 536 to Northern Improvement Company in the amount $ 577,237.70.

**STAFF CONTACT INFORMATION**

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

# SI 536 - Unit 1


Street Improvement District
New
FAIRHILL RD
TONEVA PL
NE 52ND ST
TITANIUM DR
COBALT DR
GOLD DR
NICKEL ST

**BID TABULATION**
**FOR**
**STREET IMPROVEMENT DISTRICT NO. 536**

June 16, 2020

**ENGINEER'S ESTIMATE:** $572,609.60

| BIDDER | BOND | LICENSE | SIGNATURE | AMOUNT |
|---|---|---|---|---|
| Northern Improvement Company | X | X | X | $577,237.70 |
| Strata Corporation | X | X | X | $614,279.12 |
| | | | | |
| | | | | |

# PROJECT BUDGET

| Number | SI 536 | Description | Street Improvement District SI 536 |
|---|---|---|---|

| Scheduled Start | 7/1/2020 | Scheduled End | 8/1/2021 |
|---|---|---|---|

## Project Contracts

| Project Construction Contracts | | | Amount |
|---|---|---|---|
| Northern Improvement Company | | | 577,237.70 |
| Subtotal | | | 577,237.70 |
| Contingencies | | 10% | 57,723.77 |
| | **Total Construction Contracts** | | 634,961.47 |

| Other Contracts, Land Purchases, Etc. | Contract No. | | Amount |
|---|---|---|---|
| Subtotal | | | - |
| *Contingencies | | 10% | - |
| | **Total Other Contracts** | | - |

| Work by Other City Departments | | | Amount |
|---|---|---|---|
| Signs | | | 700.00 |
| Subtotal | | | 700.00 |
| *Contingencies | | 10% | 70.00 |
| | **Total Work by Other City Departments** | | 770.00 |

## SUMMARY

| | | | |
|---|---|---|---|
| **Construction Cost - No Contingencies** | | | **577,937.70** |
| **TOTAL CONSTRUCTION COST WITH CONTINGENCIES** | | | 635,731.47 |
| Engineering | 10% | | 63,573.15 |
| Administration | 4% | | 25,429.26 |
| Advertising and Legal | 2% | | 12,714.63 |
| Interest During Construction | 3% | | 19,071.94 |
| **SI 536 TOTAL PROJECT COST** | | | **756,520.45** |

| Project Funding | | Amount |
|---|---|---|
| Special Assessments | | 756,520.45 |
| | **Total Funding** | 756,520.45 |

| Date | 6/16/2020 |
|---|---|

# Engineering Department

**DATE:** June 16, 2020

**FROM:** Gabe Schell, City Engineer

**ITEM:** Street Improvement District SI 537

**REQUEST**

Request for Resolution Receiving Bids and ordering Preparation of the Engineer's Statement for SI 537.

Request for Resolution Awarding Contract for SI 537.

Please place this item on the 6/23/2020 City Commission meeting agenda.

**BACKGROUND INFORMATION**

Street Improvement District SI 537 consists of one unit of new asphalt roadway in Cottonwood Parkview Addition. This will include approximately 3,095 linear feet of street improvements for new asphalt pavement, curb and gutter, ADA ramps and related items (see attached map).

Bids were received on June 16, 2020. The engineer's estimate was $255,012.20. The low bid of $ 297,915.30 was received from Northern Improvement Company. This is 16.8% over the engineer's estimate.

The bid summary and project budget are attached.
Unit No. 1 (88.9% Petitioned)
Kamrose Drive – 130' east of Peach Tree Drive to 190' west of Peach Tree Drive
Peach Tree Drive – 115' north of Lennox Drive to 110' north of Kamrose Drive

Project Schedule

| | |
|---|---|
| Receipt and Opening of Bids: | June 16, 2020 |
| Contract Award: | June 23, 2020 |

Project Completion: August 2021

## RECOMMENDED CITY COMMISSION ACTION

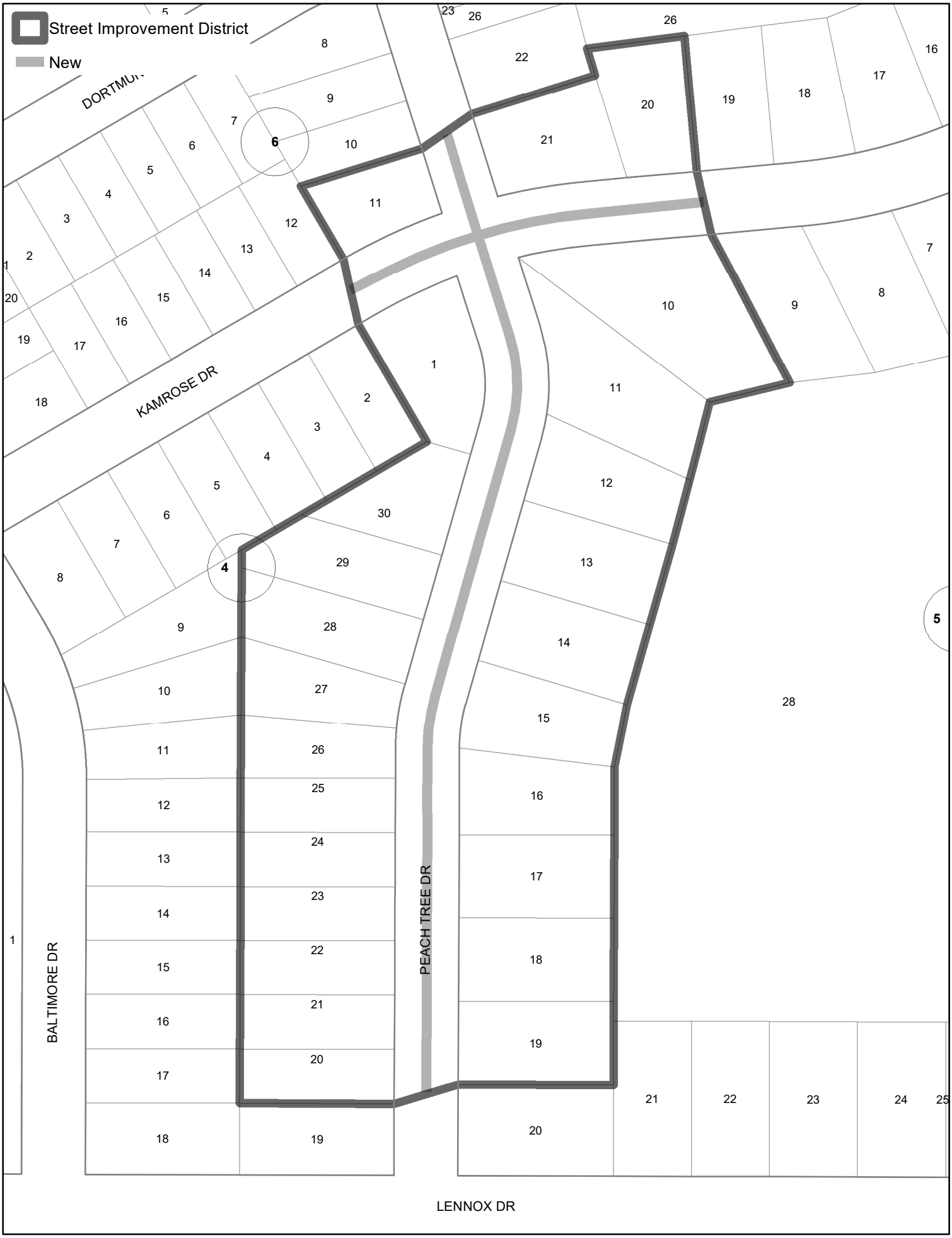
Resolution to Receive Bids and Ordering the Preparation of the Engineer's Statement for SI 537.

Resolution Awarding Contract SI 537 to Northern Improvement Company in the amount $ 297,915.30.

## STAFF CONTACT INFORMATION

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

# SI 537 - Unit 1


Street Improvement District
New
DORTMUN
KAMROSE DR
BALTIMORE DR
PEACH TREE DR
LENNOX DR
4
5
6

**BID TABULATION**
**FOR**
**STREET IMPROVEMENT DISTRICT NO. 537**

June 16, 2020

**ENGINEER'S ESTIMATE:** $255,012.20

| BIDDER | BOND | LICENSE | SIGNATURE | AMOUNT |
|---|---|---|---|---|
| Northern Improvement Company | X | X | X | $297,915.30 |
| Strata Corporation | X | X | X | $367,459.25 |
| | | | | |
| | | | | |

# PROJECT BUDGET

| Number | SI 537 | Description | Street Improvement District SI 537 |
|---|---|---|---|

| Scheduled Start | 7/1/2020 | Scheduled End | 8/1/2021 |
|---|---|---|---|

## Project Contracts

| Project Construction Contracts | | | Amount |
|---|---|---|---|
| Northern Improvement Company | | | 297,915.30 |
| Subtotal | | | 297,915.30 |
| Contingencies | | 10% | 29,791.53 |
| | **Total Construction Contracts** | | 327,706.83 |

| Other Contracts, Land Purchases, Etc. | Contract No. | | Amount |
|---|---|---|---|
| Subtotal | | | - |
| *Contingencies | | 10% | - |
| | **Total Other Contracts** | | - |

| Work by Other City Departments | | | Amount |
|---|---|---|---|
| Signs | | | 200.00 |
| Subtotal | | | 200.00 |
| *Contingencies | | 10% | 20.00 |
| | **Total Work by Other City Departments** | | 220.00 |

## SUMMARY

| | | |
|---|---|---|
| **Construction Cost - No Contingencies** | | **298,115.30** |
| **TOTAL CONSTRUCTION COST WITH CONTINGENCIES** | | 327,926.83 |
| Engineering | 10% | 32,792.68 |
| Administration | 4% | 13,117.07 |
| Advertising and Legal | 2% | 6,558.54 |
| Interest During Construction | 3% | 9,837.80 |
| **SI 537 TOTAL PROJECT COST** | | **390,232.93** |

| Project Funding | | Amount |
|---|---|---|
| Special Assessments | | 390,232.93 |
| | **Total Funding** | 390,232.93 |

**Date** 6/16/2020

Bismarck

# Engineering Department

**DATE:** June 15, 2020

**FROM:** Gabe Schell, City Engineer

**ITEM:** Street Improvement District No. 538

**REQUEST**

Request for Resolution Receiving Bids and ordering Preparation of the Engineer's Statement for SI 538.

Request for Resolution Awarding Contract for SI 538.

Please place this item on the 6/23/2020 City Commission meeting agenda.

**BACKGROUND INFORMATION**

Street Improvement District No. 538 consists of one unit of new asphalt roadway in Boulder Ridge 7th Addition. Unit 1 includes approximately 2,590 LF of roadway improvements for new asphalt pavement, curb and gutter, storm sewer, ADA ramps and related items.

Bids were received on June 15, 2020. The engineer's estimate was $793,565.70. The low bid of $ 797,967.50 was received from Northern Improvement Company.

The bid summary and project budget are attached.

Unit No. 1 (100% Petitioned)

Calvert Drive – 295' northwest of Normandy Drive to 57th Avenue
Shale Drive – Calvert Drive to Flint Drive
Marble Drive – Calvert Drive to 289' west
Flint Drive – 262' northwest of Mica Drive to 75' northwest of Shale Drive

Project Schedule

| | |
|---|---|
| Receipt and Opening of Bids: | June 15, 2020 |
| Award of Bid: | June 23, 2020 |
| Project Completion: | August 1, 2021 |

## RECOMMENDED CITY COMMISSION ACTION

Resolution to Receive Bids and Ordering the Preparation of the Engineer's Statement for SI 538.

Resolution Awarding Contract SI 538 to Northern Improvement Company in the amount of $797,967.50.

## STAFF CONTACT INFORMATION

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

**BID TABULATION**
**FOR**
**STREET IMPROVEMENT DISTRICT NO. 538**

June 15, 2020

**ENGINEER'S ESTIMATE:** $793,565.70

| BIDDER | BOND | LICENSE | ADDENDUM | SIGNATURE | AMOUNT |
|---|---|---|---|---|---|
| Strata Corporation | X | X | X | X | $850,635.26 |
| Northern Improvement Company | X | X | X | X | $797,967.50 |

# PROJECT BUDGET

| Number | SI 538 | Description | Street Improvement District SI 538 |
|---|---|---|---|

| Scheduled Start | 7/1/2020 | Scheduled End | 8/1/2021 |
|---|---|---|---|

## Project Contracts

| Project Construction Contracts | | | Amount |
|---|---|---|---|
| Northern Improvement Company | | | 797,967.50 |
| | Subtotal | | 797,967.50 |
| | Contingencies | 10% | 79,796.75 |
| | **Total Construction Contracts** | | 877,764.25 |

| Other Contracts, Land Purchases, Etc. | Contract No. | | Amount |
|---|---|---|---|
| | Subtotal | | - |
| | *Contingencies | 10% | - |
| | **Total Other Contracts** | | - |

| Work by Other City Departments | | | Amount |
|---|---|---|---|
| Signs* | | | 500.00 |
| | Subtotal | | 500.00 |
| | *Contingencies | 10% | 50.00 |
| | **Total Work by Other City Departments** | | 550.00 |

## SUMMARY

| | | |
|---|---|---|
| **Construction Cost - No Contingencies** | | **798,467.50** |
| **TOTAL CONSTRUCTION COST WITH CONTINGENCIES** | | 878,314.25 |
| Engineering | 10% | 87,831.43 |
| Administration | 2% | 17,566.29 |
| Advertising and Legal | 2% | 17,566.29 |
| Interest During Construction | 3% | 26,349.43 |
| **SI 538 TOTAL PROJECT COST** | | **1,027,627.67** |

| Project Funding | Amount |
|---|---|
| Special Assessments | 1,027,627.67 |
| **Total Funding** | 1,027,627.67 |

**Date** 6/15/2020

Bismarck

# Engineering Department

**DATE:** June 15, 2020

**FROM:** Gabe Schell, City Engineer

**ITEM:** Street Improvement District No. 540

## REQUEST

Request for Resolution Approving Plans and Specifications for SI 540.

Request for Resolution Directing the Advertisement of Bids and Receive Bids.

Please place this item on the 6/23/2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

Street Improvement District No. 540 consists of 1 unit of new asphalt roadway in Sonnet Heights Subdivision connecting Yukon Drive to 57th Avenue. Unit 1 includes approximately 425 LF of street improvements with new asphalt pavement, curb and gutter and related items (see attached map).

The street improvement district was petitioned by the adjoining landowners.

Unit No. 1 (100% Petitioned)

Yukon Drive – 57th Avenue to 425' south of 57th Avenue

Project Schedule

| | |
|---|---|
| Receipt and Opening of Bids: | July 20, 2020 |
| Award of Bid: | July 28, 2020 |
| Project Completion: | August 1, 2021 |

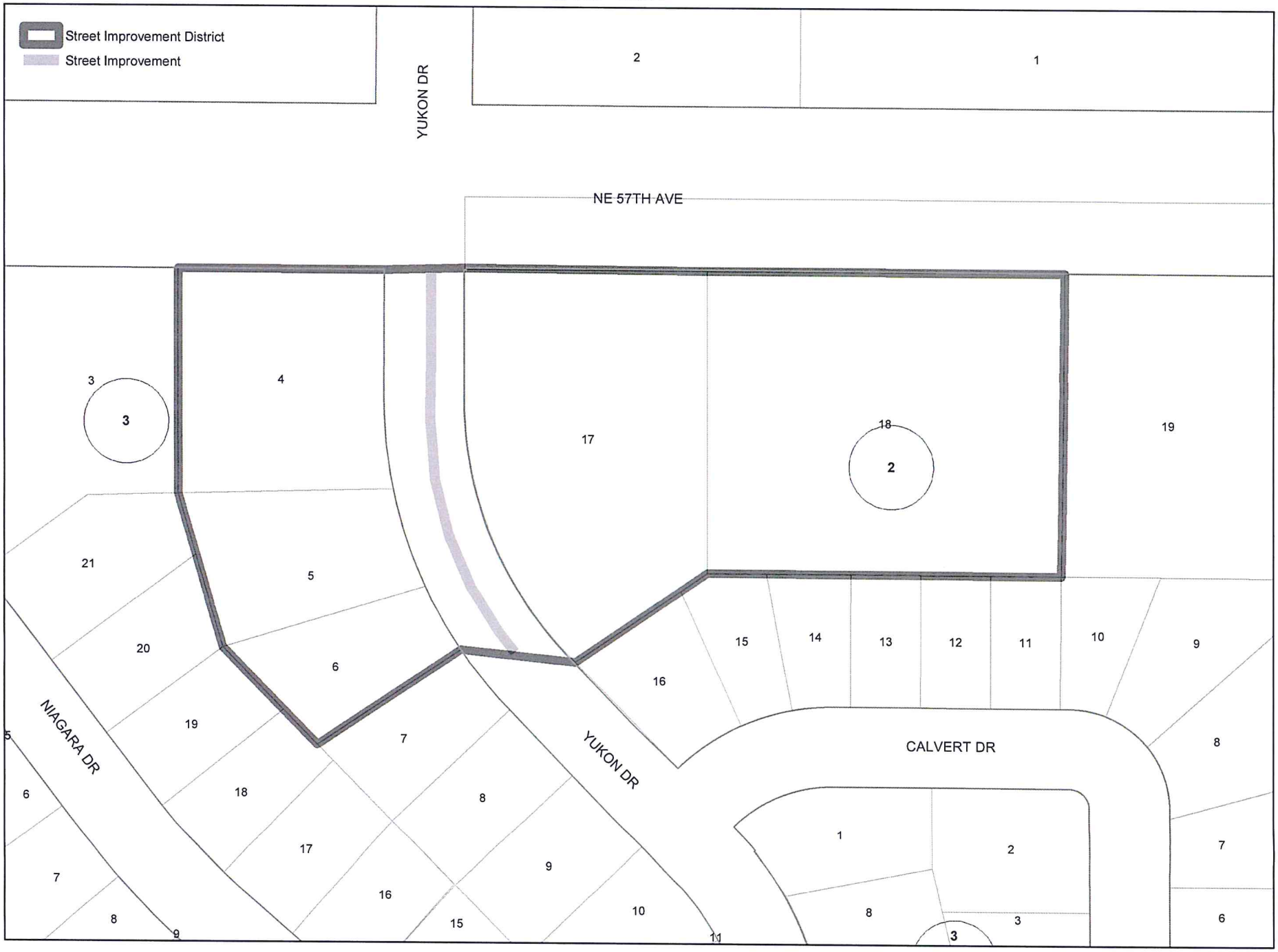
## RECOMMENDED CITY COMMISSION ACTION

Consider request for Resolution Approving Plans and Specifications and Resolution Directing the Advertisement of Bids and Receive Bids for SI 540.

## STAFF CONTACT INFORMATION

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

# SI 540 - Unit 1


Street Improvement District
Street Improvement
YUKON DR
NE 57TH AVE
NIAGARA DR
YUKON DR
CALVERT DR

Bismarck

# Engineering Department

**DATE:** June 16, 2020

**FROM:** Gabe Schell, City Engineer

**ITEM:** Utility Easement – Municipal 3rd Addition

## REQUEST

Request dedication of a utility easement on Lot 1, Block 1, Municipal 3rd Addition.

Please place this item on the 6/23/2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

Capital Electric Cooperative Inc., approached the City with their intention to bury their overhead power lines running along the north side of Burleigh Avenue along the south frontage of the wastewater treatment plant located within Lot 1, Block 1 Municipal 3rd Addition. Capital Electric Cooperative Inc., requested the granting of an easement within the City's property and outside of the public right of way to protect their infrastructure.

The easement and exhibit are enclosed.

## RECOMMENDED CITY COMMISSION ACTION

Approve dedication of utility easement on Lot 1, Block 1, Municipal 3rd Addition.

## STAFF CONTACT INFORMATION

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

# UTILITY EASEMENT

Know all men by these presents, that **City of Bismarck** (Grantor), a municipal corporation, whose post office address is PO Box 5503, Bismarck, ND 58506, being the owner of the property described herein, does hereby grant a utility easement described herein, to **Montana-Dakota Utilities Co.,** a division of MDU Resources Group, Inc., a Delaware Corporation, **Qwest Corporation**, a Colorado Corporation, **Comcast Midcontinent, LLC and Midcontinent Communications Investor, LLC D/B/A Midcontinent Communications**, a South Dakota General Partnership, **Capital Electric Cooperative Inc.**, a North Dakota corporation, and any other utility franchised under Bismarck Ordinances hereinafter referred to collectively and each individually as "Grantee," (Grantee) to construct, operate, inspect, maintain, repair, replace and remove such equipment and facilities as necessary to provide utility services including, but not limited to, gas, electric, telephone, cable TV, or other utility services franchised by Grantor. Grantor acknowledges the facilities installed by the Grantee shall remain property of the Grantee.

Grantor hereby grants to each of the Grantees, jointly and severally, their successors and assigns, the right of reasonable ingress and egress at all reasonable times over and across the lands of the Grantor, to and from said easement to construct, operate, maintain, repair, replace, and remove such equipment, appurtenances, and facilities. The Grantee shall be responsible for any and all damages arising from the construction and maintenance of their facilities or their use of the easement. Grantee agrees that any and all damages that may result to crops, fences, buildings and improvements on said property caused by the construction and maintenance of said utility easements will be paid for by the responsible Grantee.

1. This Easement is, except for the right of access, limited to:

<u>Parcel No. 1</u>

A TRACT OF LAND BEING 10 FEET WIDE AND A PART OF LOT 1, BLOCK 1, MUNICIPAL 3RD ADDITION OF SECTION 17, TOWNSHIP 138 NORTH, RANGE 80

WEST OF THE 5TH PRINCIPAL MERIDIAN OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA, THE SOUTH LINE OF SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 1, MUNICIPAL 3RD ADDITION OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA; THENCE ALONG THE SOUTH BOUNDARY LINE OF SAID LOT 1 THE FOLLOWING THREE (3) COURSES; THENCE NORTH 89°35'24" WEST FOR 2432.32 FEET TO THE P.C. (POINT OF CURVATURE) OF A CURVE TO THE RIGHT HAVING A RADIUS OF 925.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT (THE CHORD OF WHICH BEARS NORTH 79°12'54" WEST, 333.17 FEET) AN ARC LENGTH OF 334.99 FEET TO THE P.T. (POINT OF TANGENCY) OF SAID CURVE TO THE RIGHT; THENCE NORTH 68°50'24" WEST FOR 178.51 FEET TO THE P.C. OF A CURVE TO THE LEFT HAVING A RADIUS OF 725.00 FEET; THENCE ALONG SAID CURVE TO THE LEFT (THE CHORD OF WHICH BEARS NORTH 81°25'15" WEST, 315.83 FEET) AN ARC LENGTH OF 318.39 FEET TO THE POINT OF TERMINATION WHICH IS APPROXIMATELY 150 FEET EAST OF AN EXISTING APPROACH SURVEYED ON JUNE 11, 2020.

See Exhibit “A”.

2. Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this easement, restore the lands to as near their original condition as reasonably possible and remove all debris, spoils, and equipment resulting from or used in connection with the construction or installation or access to the lands.

3. The term of this easement herein reserved is ninety-nine (99) years, beginning upon execution in 2020 and ending in 2119.

4. Grantor hereby reserves title to and any interest in any and all archeological and paleontological materials, whether located on or below the surface of said land.

5. Grantee also agrees that if at any time during the period of this easement, Grantor lawfully elects to alter or change the existing grade of the property, the Grantee, on written notice, shall remove, relay, and relocate its underground facilities and related appurtenances, if Grantee deems such work necessary. Grantor shall endeavor to provide the Grantee with 30 days’ written notice of such intent to alter or change the existing grade when feasible.

IN WITNESS WHEREOF, this instrument is executed by the undersigned on this _____ day of _____, 2020.

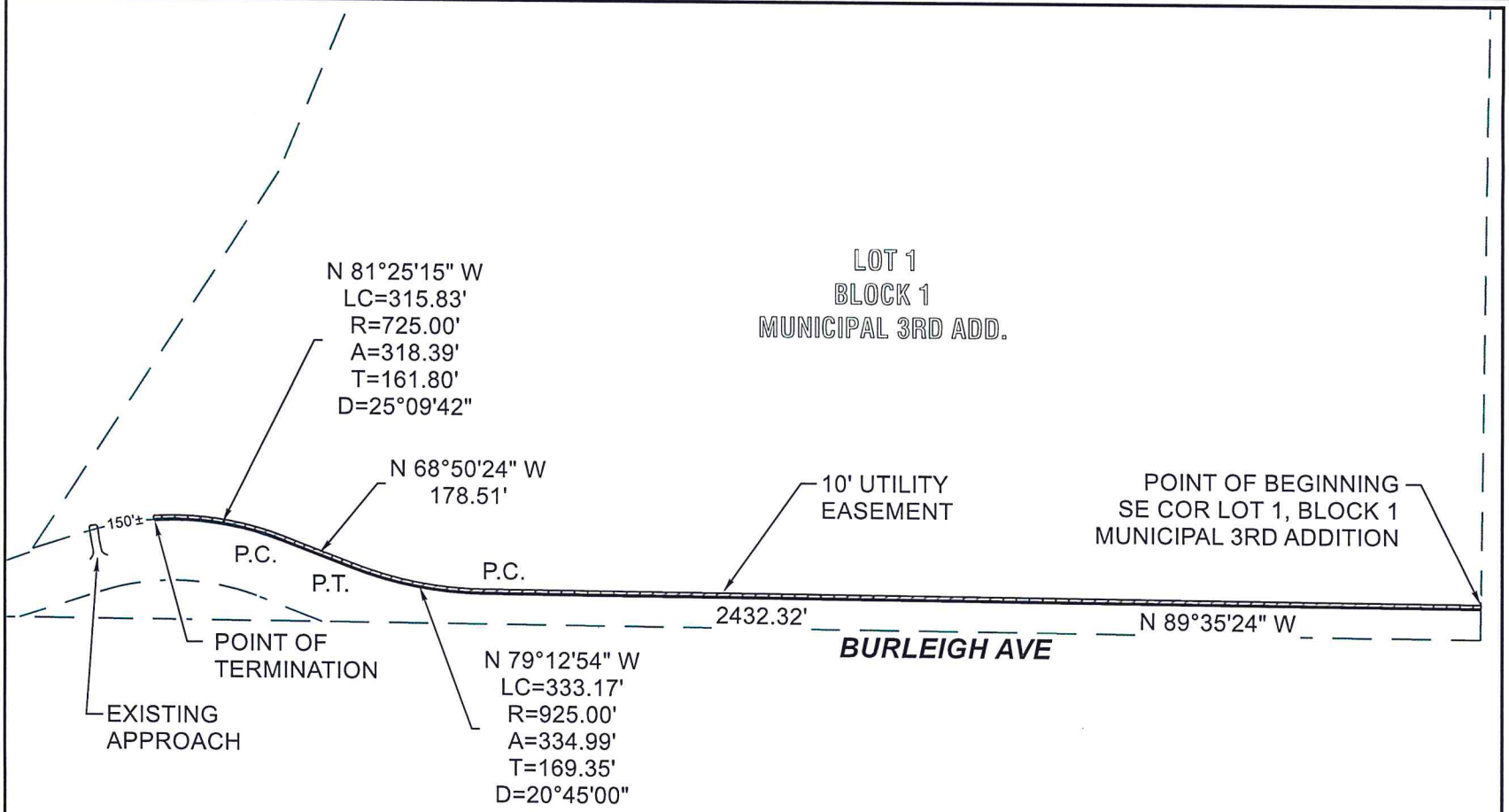
| | |
|---|---|
| _____ | Attest: _____ |
| Steve Bakken | Keith J. Hunke |
| President, Board City Commissioners | City Administrator |

STATE OF NORTH DAKOTA )
) SS
COUNTY OF BURLEIGH )

On this _____ day of _____, 2020, 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.

_____
Notary Public

The legal description was prepared by Andra Marquardt, LS#4623,or obtained from a previously recorded instrument.




**TOMAN ENGINEERING**
**COMPANY**
501 1st Street NW, Mandan, ND 58554
Phone: 701-663-6483 * Fax: 701-663-0923

**EXHIBIT "A"**
**LOT 1, BLOCK 1, MUNICIPAL 3RD ADDITION**
**BISMARCK, ND**

0 400'

Bismarck

# Finance Department

**DATE:** June 16, 2020

**FROM:** Dmitriy Chernyak, Finance Director DC by aj

**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
Property Owner – Kyle & Wendy Wheeler
Property Address – 619 W Interstate Ave (0555-001-001)

Please place this item on the 06/232020 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 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.** 0555-001-001

**Name** KYLE & WENDY WHEELER

**Telephone No.**

**Address** 619 W INTERSTATE AVE BISMARCK, ND 58503-1034

**Legal description of the property involved in this application:**

LOT 1, BLOCK 1, WASHINGTON HEIGHTS ADDITION

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

Land $ 52,000

Improvements $ 235,000

Total $ 287,000 (1)

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

Land $ 52,000

Improvements $ 235,000

Total Adj. $ 152,000 (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) 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? ____ (yes/no) Estimated value: $____

2. Has the property been offered for sale on the open market? ____ (yes/no). If yes, how long? ____

   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 applied 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 6/3/2020

24775
(2-2016)

## 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 Kyle & Wendy Wheeler

County Auditor's File No. 20-129

Date Application Was Filed With The County Auditor 6/16/20

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

Allan Vietmeier
by B Cage

# Finance Department

**DATE:** June 16, 2020

**FROM:** Andrew Milas, IT/GIS Manager

**ITEM:** Consider request and approval to upgrade the existing Mitel VOIP phone system for the City of Bismarck.

## REQUEST

Upgrade of current Mitel VOIP phone system and corresponding equipment for the City of Bismarck.

Please place this item on the 6/23/2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

The current VOIP phone system for the City of Bismarck has reached its end of life. The Mitel system software and some hardware are no longer supported by Mitel and could imposes a security threat to the City of Bismarck. All devices and its corresponding software need to be upgraded to ensure we can apply security patches and protect our network and infrastructure.

## RECOMMENDED CITY COMMISSION ACTION

Approve upgrade of existing Mitel VOIP phone system and equipment, in the amount of $73,370 (approved budgeted amount 86,547), as well as the annual maintenance cost of $19,710, from High Point Networks (State Contract #022). This would allow us to keep the City of Bismarck's infrastructure secure and bring all systems up to date.

## STAFF CONTACT INFORMATION

Andrew Milas | IT/GIS Manager, 355-1635 or amilas@bismarcknd.gov

# PROPOSAL

**PROPOSAL NAME:** Maintenace & Support Agreement

**PROPOSAL DATE:** June 03, 2020

**PREPARED FOR:**

City of Bismarck
Drew Milas

221 N 5th Street
Bismarck, ND 58506

amilas@bismarcknd.gov

**PREPARED BY:**

Jason Herner
High Point Networks, LLC.

Direct/Mobile/Fax: 701-214-5914

jason@highpointnetworks.com

# Maintenace & Support Agreement

## Quote Information:

Quote #: 096534
Version: 1
Delivery Date: 06/03/2020
Expiration Date: 07/03/2020

## Prepared for:

**City of Bismarck**
Attn: Drew Milas
221 N 5th Street
Bismarck, ND 58506

## Prepared by:

**High Point Networks, LLC**
Jason Herner
Direct: 701-214-5914
jason@highpointnetworks.com

## Maintenace

| Qty | Item | Description | Price | Ext. Price |
|---|---|---|---|---|
| 1 | HPN-MITEL-PLAT | HPN Mitel Platinum Support 1 Yr (7/1/20 - 6/30/21) | $19,710.00 | $19,710.00 |

Subtotal: $19,710.00

## Quote Summary

| Description | Amount |
|---|---|
| Maintenace | $19,710.00 |

Total: $19,710.00

For questions related to your quotation, please contact us using the information above. By signing below, the undersigned accepts High Point Networks Master Service Agreement and represents that he or she is authorized to execute the agreement on behalf of the customer. Acceptance of the quote online is considered acceptance of an offer and binding. All quotes are subject to shipping costs that may not be listed on the quote. Prices quoted are valid for 30 days from Quotation Date. Limitation of Liability for Consequential Damages. High Point Networks, LLC shall not be liable for any indirect, incidental, consequential, exemplary, or punitive damages of any kind or nature. All projects exceeding 10 hours of service will require a 50% down payment of the total project due upon acceptance of the quotation and the remainder due within 30 days of completion. Payment for all other orders are due in 30 days subject to credit approval. Credit card usage as a form of payment may be accepted on pre-approval basis and may be subject to a convenience fee. "Optional" items on the above quote are not included in the total pricing at the bottom of the quote. This offer to sell the listed products is subject to product availability and High Point Networks standard terms and condition and prices are subject to change without notice. Please consult your Account Representative prior to placing an order for timely, updated pricing. High Point Networks reserves the right to adjust pricing based on any error or omission.
Note: Once product is ordered and shipped there is NO right of return and may be subject to a restocking fee. Product cannot be returned if ordered in error. Product cannot be returned if next generation product has been released.

Signature _____ Date _____

This Maintenance and Support Service Agreement is governed by the terms and conditions outlined in the HIGH POINT NETWORKS, LLC Master Agreement for Services.

## SCOPE OF SERVICE

The purpose of this agreement is to provide repair and technical support services on customer communication system(s) via remote and/or on-site technical support. Service includes and is limited to: Mitel®-branded phone system(s), voice mail, servers, voice switches, and other designated hardware and software. In all cases, software and hardware must be at manufacturer-supported levels.

It will be the responsibility of the customer to request service(s) required from HIGH POINT NETWORKS. HIGH POINT NETWORKS reserves the right to schedule the technician deemed appropriate to the situation as reported by the customer. HIGH POINT NETWORKS will work with the customer's schedule to find the best time to perform each requested task. The customer realizes that HIGH POINT NETWORKS not responsible for any data loss. HIGH POINT NETWORKS will perform a current backup prior to doing any service work on the customer's system.

## HIGH POINT NETWORKS OBLIGATIONS

A. HIGH POINT NETWORKS will provide support for any product covered by this agreement. Such support will consist of responding to trouble calls as reasonably required to make the product perform as described in the manufacture's current product specifications. Customer will be contracted to the PLATINUM Support Service Agreement.

B. HIGH POINT NETWORKS will, in accordance with the selected service agreement, repair or replace any product or component that fails during the term of Customer's support agreement, provided that Customer contacts the HIGH POINT NETWORKS technical support center to report the failure and complies with HIGH POINT NETWORKS's service agreement policies.

C. HIGH POINT NETWORKS requires remote diagnostics in an effort to resolve the reported issue. If remote access is not an available option, HIGH POINT NETWORKS may have to come onsite to diagnose the issue. In that case travel charges will apply.

D. HIGH POINT NETWORKS specifically disclaims any and all support or repair obligation with respect to any feature or design that is not supported by the manufacturer.

### Technical Support

All Technical Support is handled by High Point Networks Certified Mitel Engineers. High Point Networks Engineers are available via phone, email and our web portal 24 hours a day, 7 days a week. Major system issues are responded to within 4 hours (typically quicker). Minor issues are responded to by end of business day. In all support cases, software & hardware must be at manufacturer-supported levels.

### Hardware Replacement

Advanced hardware replacement is vital to minimizing the customer's business-crippling downtime. In the unlikely event a High Point Network's customer experiences a hardware failure, our on-line request for a Mitel controller is immediately logged and shipped for next-business-day delivery to the address we designate.

### Software Upgrades

Software updates and upgrades keep customers on the leading edge of technology. When new software is released, the detailed notes explaining the new features help customers & High Point Networks determine when to install the upgrade. Software files and documentation will be downloaded from the Mitel web site and distributed to customers under the terms of this support agreement.

**Annual Benefit Review**
Your Account Manager will discuss with you:

- A Review of expected benefits and ensure realization
- A Review of employee usage and schedule any needed training
- Discuss new initiatives and objectives to implement new technology
- Audit local and long-distance charges and make recommendations if desired

Our Engineering Staff and your Account Manager will discuss with you:

- Annual System Audit (covers all system enhancements and application developments)

**Technology Updates**

- Software Upgrades (to current versions). This is a part of Mitel Partner Support which is included as a part of this support plan depending on the manufacturer of Customer's system. This is performed one time per year.
- Excludes upgrades to Server O/S and upgrades to server hardware that may be required to run new software versions according to manufacturer specifications. Waiver of all labor charges for software upgrades
- Patches to correct Software Problems or to provide Performance Enhancement
- Regarding all systems operating on Microsoft platforms, only factory approved certified service updates and security patches shall be installed. If new updates are installed by the customer, it will be billable to correct the situation.

| PLATINUM SUPPORT COVERAGE DETAILS | | |
|---|---|---|
| **ITEM** | **COVERED** | **TIME & MATERIALS** |
| Availability of Software Releases & Upgrades | ■ | |
| Installation of Software Releases & Upgrades (1per year) | ■ | |
| Warranty Coverage on Mitel Controllers | ■ | |
| Next Business Day (best efforts) Replacement of Mitel Controllers | ■ | |
| Installation of Replacement Controllers | ■ | |
| Free Ground Shipping of Replacement Phones Under Warranty | ■ | |
| Technical Support on System Hardware and Software Problems (diagnosis / resolution) | ■ | |
| Onsite Support | ■ | |
| Remote Support | ■ | |
| Programing of Moves, Adds or Configuration Changes/Assistance | ■ | |
| Online Computer Based Training | ■ | |
| Backups (only on certain models) | ■ | |
| DHCP Configurations (when configured on Mitel system) | ■ | |
| Preventative Maintenance – Quarterly Visits (includes back up and archiving of system databases) | ■ | |
| Cleaning and Inspection of Purchased Switch Room Equipment | ■ | |

| PLATINUM SUPPORT COVERAGE DETAILS | | |
|---|---|---|
| **ITEM** | **COVERED** | **TIME & MATERIALS** |
| Diagnostic Time | ■ | |
| Resolution of Telco Issues | | ■ |
| Resolution of Network Issues | | ■ |
| Resolution of Third Party Product Issues | | ■ |
| Cabling | | ■ |

*If replacement parts are not in stock, every effort will be made to get mission critical parts shipped overnight.*

| CURRENT RATES & OTHER INFORMATION *(effective Jan 1, 2019, subject to change annually)* | |
|---|---|
| **DELIVERABLES** | **PLATINUM WAIVED CHARGES** |
| Time & Material Billing Minimums / Increments | ½ hr. min. / ½ hr. increments |
| Standard Hourly Rate (M-F, 8am-5pm, excluding holidays) | $175 |
| After-Hours Rate | $262.50 |
| Weekends & Holidays | $350 |
| **TRAVEL CHARGE PER CALL (if onsite support is required)** | $110 / hr. |

# PROPOSAL

**PROPOSAL NAME:** Mitel System Update

**PROPOSAL DATE:** June 03, 2020

**PREPARED FOR:**

City of Bismarck
Drew Milas

Attn: Andrew Milas
Bismarck, ND 58506

amilas@bismarcknd.gov

**PREPARED BY:**

Jason Herner
High Point Networks, LLC.

Direct/Mobile/Fax: 701-214-5914

jason@highpointnetworks.com

HIGH POINT NETWORKS

# Mitel System Update

Quote Information:

Quote #: 096498
Version: 1
Delivery Date: 06/03/2020
Expiration Date: 07/02/2020

## Summary

**Completion Date**: TBD

**P.O.C(s):** Drew Milas

**Site Address**: Bismarck, ND

**Scope of Work**

The objectives of this project are:

- 1) Replace existing ESNA voicemail platform with Mitel MiCollab voicemail platform

2) Collapse all phone sets to a single virtual MiVoice Business system currently running in City Hall

   a. Phones will be resilient to MiVoice Business 3300 controllers system currently running at the Police Department or City Hall

   b. Un-need Mitel 3300 controllers will be decommissioned

   c. Digital phone sets will be replaced with IP phone sets

   d. MiVoice Business Reporter will be implement for call accounting and reporting for up to 700 extensions.

3) Bring all systems up to current supported version of Mitel software

4) Implement Mitel Busines Reporter software for Call accounting

**Project Approach**

*Phase 1 – Replace voicemail platform (note: user greetings and existing voicemail messaged will not be migrated; however, a single connection to the ESNA platform will be maintained to retrieve messages from that system with IT assistance)*

**HPN Responsibilities**

- Perform the following activities remotely
  1. Discovery Activities
     A. Document end-user voicemail information (this *may* be able to be downloaded from current system)
     B. Document voicemail-to-email information
     C. Document up to 25 'main number' incoming call flows for departments
  2. Installation / Configuration Activities
     A. Install Mitel MiCollab server in customer VMware environment
     B. Perform all licensing and registration activities
     C. Configure for connection to MiVoice Business systems
     D. Enroll end-users
        1. Voicemail box
        2. MiCollab desktop and/or browser-based client
     E. Configure system for desktop client deployment or assist customer with deployment using .MSI file.
     F. Configure connection to O365 email system
     G. Configure up to 25 'main number' incoming call flows for departments
        1. Includes both day / night options
  3. Cutover Activities
     A. Migrate all MiVoice Business systems' connections from ESNA to Mitel MiCollab
     B. Configure single connection to ESNA for after-cut use to access to voicemails stored on that system
  4. Training Activities
     A. Provide web-based end-user training on MiCollab desktop client
     B. Provide customized end-user instructions on setting up their new voicemail box
     C. Provide quick reference guide on NuPoint voicemail system

**Client Responsibilities**

- Provide all discovery information
- If existing user information can be downloaded from ESNA system, scrub the downloaded list for accuracy
- Provide VMware environment
- Provide remote access
- Re-record all auto attendance announcements and provide to HPN
- Conduct end-user acceptance testing on all main number call flows
- Re-record all end-user voicemail greetings
- Deploy MiCollab desktop client application

*Phase 2 – Collapse to a single MiVoice Business System*

**HPN Responsibilities**

- Perform the following activities remotely
  1. Implement virtual MiVoice Business system on customer virtual environment.
  2. Implement virtual MiVoice Business Reporter on customer virtual environment
  3. Implement Virtual MiVoice Business Call recording Software with 50 station licenses
  4. Wastewater site
     A. Migrate 10 IP phones / 10 IP licenses to City Hall with resiliency to Police Department
     B. 3300 controller can then be decommissioned
  5. Airport site
     A. Migrate 27 IP phones / 33 IP licenses to City Hall with resiliency to Police Department
     B. 3300 controller can then be decommissioned
  6. Water Treatment site
     A. Migrate 2 IP phones / 2 IP licenses to City Hall with resiliency to Police Department
     B. Convert 16 digital phones to IP Phones running on City Hall with resiliency to Police Department
     C. 3300 controller can then be decommissioned
  7. Landfill site
     A. Convert 14 digital phones to IP Phones running on City Hall with resiliency to Police Department
  8. Public Works site
     A. Migrate 21 IP user licenses to City Hall for future use (Note: there are no users programmed at this site)
  9. Civic Center site
     A. Migrate 25 IP phones / 25 user licenses to City Hall with resiliency to Police Department
     B. Site will utilize 10 2-port ATA's for all analog services
  10. Combine Communications site
     A. Migrate 32 IP phones / 32 user licenses to City Hall with resiliency to Police Department
     Note: controller cannot be decommissioned as it is used to connect to site's 9-1-1 system
  11. Library
     A. Convert 41 digital phones to IP Phones running on City Hall with resiliency to Police Department (quantity was estimated.
     B. 3300 controller can then be decommissioned

**Client Responsibilities**

- Provide virtualization environment
- Provide Windows Server license for MiVoice Business Reporter deployment
- Update DHCP scopes as needed
- Place any new IP phone sets and perform registration steps in conjunction with HPN system programming
- Physically remove any decommissioned 3300 controllers

*Phase 3* – Bring all systems up to current supported version of Mitel software. The systems are:

- City Hall
- Police Department
- Combine Communications Center (HPN plans to 're-purpose' 3300 controller from Wastewater site for this location)

**HPN Responsibilities**

- Perform the following activities remotely
  1. Run the Mitel Upgrade Analyzer on each affected system
  2. Review results and correct any issues discovered during analysis
- Perform the following activities onsite
  1. Install any additional hardware components needed for the upgrade

2. Move T1 card from Combined Communications Center to 'repurposed' Wastewater system
3. Upgrade to customer-agreed to version of MiVoice Business System

**Client Responsibilities**

- Physically remove any decommissioned 3300 controllers

**Project Exclusions:**

- Any other work requested outside of this Scope of Work
- Cabling services are not included in this project. If cabling is required, an additional quote will need to be approved.
- PC updates or patches for MiCollab desktop client.
- All IP phones ship with a desktop bracket, wall brackets do NOT come standard, if additional brackets are needed, they will be billed separately
- Paging bell / PA System
- Legacy system disposal
- Legacy system wiring disposal
- All IP phones include 7-foot patch cord, if longer patch cables required, additional patch cable will be invoiced

- **Change Control:**
- In the event that it becomes necessary to alter the scope of work, High Point Networks will initiate contact with the company's point of contact to work out the details associated with impacts to schedules, deliverables and/or financial commitments. No changes to the scope of work will occur without prior written authorization.

**All Projects exceeding 10 hours of service will require a 50% down payment of the total project due upon acceptance of the quotation and the remainder due within 30 days of completion.**

HIGH POINT NETWORKS

# Mitel System Update

Quote Information:

Quote #: 096498
Version: 1
Delivery Date: 06/03/2020
Expiration Date: 07/02/2020

## Main system

| Qty | Item | Description | Price | Ext. Price |
|---|---|---|---|---|
| Hardware | | | | |
| 1 | 52002581 | 3300 MXe III Expansion Kit | $1,442.00 | $1,442.00 |
| 2 | 50005084 | MXe AC POWER SUPPLY | $309.00 | $618.00 |
| 4 | 50006271 | PWR CRD C13 10A 125V - NA | $15.00 | $60.00 |
| 2 | 50006731 | 3300 MXe III w/ 1GB RAM Controller | $2,295.00 | $4,590.00 |
| 2 | 50006431 | MXe III Raid Sub-System | $1,065.00 | $2,130.00 |
| 2 | 50006965 | 3300 MXEIII SATA SSD 2PK | $440.00 | $880.00 |
| 1 | 50006727 | 3300 MXe III 1GB RAM Module Upgrade | $185.00 | $185.00 |
| 10 | 51304959 | TA7102 Terminal Adapter | $134.00 | $1,340.00 |
| Software License | | | | |
| 1 | 54005330 | Enterprise License Group | $1,500.00 | $1,500.00 |
| 1 | 54005748 | MiVoice Business Virtual for Enterprise | $923.00 | $923.00 |
| 1 | 54005381 | MiCClient Licnse - Federation Adv Server | $0.00 | $0.00 |
| 1 | 54005380 | MiCClient License - Peering Adv Server | $0.00 | $0.00 |
| 3 | 54000297 | MCD Mailbox license | $31.00 | $93.00 |
| 20 | 54002701 | MiVoice Business License - Analog Ext | $46.00 | $920.00 |
| 5 | 54004762 | MiCollabNPUM Mailbox CallDir 3300 Userx1 | $25.00 | $125.00 |
| 34 | 54004975 | MiVoice Bus License - Enterprise User | $108.00 | $3,672.00 |
| 1 | 54005442 | MiCollab Virtual Appliance | $614.00 | $614.00 |
| 2 | 54005610 | MiCollab NPUM MiVBus Mailbox Licensesx10 | $216.00 | $432.00 |
| 26 | 54006539 | UCCv4 Entry User for Enterprise x1 | $139.00 | $3,614.00 |
| 617 | 54006553 | UCCv4 Basic to Entry for Enterprise | $34.00 | $20,978.00 |
| 1 | 54006798 | MiVoice Business Reporter Starter Pack | $2,099.00 | $2,099.00 |
| 13 | 54006799 | MiVoice Business Reporter Extension x50 | $185.00 | $2,405.00 |

Subtotal: $48,620.00

# Mitel System Update

Quote Information:

Quote #: 096498
Version: 1
Delivery Date: 06/03/2020
Expiration Date: 07/02/2020

## HPN Service Bundle

| Qty | Item | Description | Price | Ext. Price |
|---|---|---|---|---|
| 1 | PROSERVE-PKG | High Point Networks Professional Services defined in the pdf online or above in this document | $24,750.00 | $24,750.00 |

Subtotal: $24,750.00

# Mitel System Update

## Quote Information:

Quote #: 096498
Version: 1
Delivery Date: 06/03/2020
Expiration Date: 07/02/2020

## Prepared for:

**City of Bismarck**
Attn: Drew Milas
Attn: Andrew Milas 221 N 5th Street
Bismarck, ND 58506

## Prepared by:

**High Point Networks, LLC**
Jason Herner
Direct: 701-214-5914
jason@highpointnetworks.com

## Quote Summary

| Description | Amount |
|---|---|
| Main system | $48,620.00 |
| HPN Service Bundle | $24,750.00 |

Total: $73,370.00

For questions related to your quotation, please contact us using the information above. By signing below, the undersigned accepts High Point Networks Master Service Agreement and represents that he or she is authorized to execute the agreement on behalf of the customer. Acceptance of the quote online is considered acceptance of an offer and binding. All quotes are subject to shipping costs that may not be listed on the quote. Prices quoted are valid for 30 days from Quotation Date. Limitation of Liability for Consequential Damages. High Point Networks, LLC shall not be liable for any indirect, incidental, consequential, exemplary, or punitive damages of any kind or nature. All projects exceeding 10 hours of service will require a 50% down payment of the total project due upon acceptance of the quotation and the remainder due within 30 days of completion. Payment for all other orders are due in 30 days subject to credit approval. Credit card usage as a form of payment may be accepted on pre-approval basis and may be subject to a convenience fee. "Optional" items on the above quote are not included in the total pricing at the bottom of the quote. Note: Once product is ordered and shipped there is NO right of return and may be subject to a restocking fee. Product cannot be returned if ordered in error. Product cannot be returned if next generation product has been released.

Signature

Date

# Finance Department

**DATE:** June 18, 2020

**FROM:** Andrew Milas, IT/GIS Manager

**ITEM:** Consider request and approval for tech upgrade in the Tom Baker room.

## REQUEST

Upgrade of the current system and corresponding equipment relating to video presentation, phone usage and web conference integration

Please place this item on the 6/23/2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

The current system for the Tom Baker room limits video to extremely low quality and is unable to integrate needed changes to increase viewing visibility and distance, VOIP phone usage, and online collaboration. Once in place, it will aid in delivery of public meetings and other practices used by various entities.

## RECOMMENDED CITY COMMISSION ACTION

Approve upgrade of existing Tom Baker room system and equipment, in the amount of $22,295 from Tricorne Audio.

## STAFF CONTACT INFORMATION

Andrew Milas | IT/GIS Manager, 355-1635 or amilas@bismarcknd.gov

**Tricorne Audio, Inc.**
417 Main Avenue, Suite 118
Fargo, ND 58103

Voice: 701-239-4623
Fax: 701-239-0115

# QUOTATION

Quote Number: M3676
Quote Date: Jun 17, 2020
Page: 1

| Quoted To: |
|---|
| CITY OF BISMARCK<br>221 N. 5TH STREET<br>PO BOX 5503<br>BISMARCK, ND 58506<br>USA |

| Customer ID | Good Thru | Payment Terms | Sales Rep |
|---|---|---|---|
| CITY OF BISMARCK | 7/17/20 | SEE BELOW | Anderson, Dallas R |

| Quantity | Item | Description | Unit Price | Amount |
|---|---|---|---|---|
| | | TOM BAKER MEETING ROOM AV UPGRADES<br>SALE AND INSTALLATION OF:<br>BASE SYSTEM PER ORIGINAL PROPOSAL | | |
| 1.00 | EXTRON 60-1271-13 | DTP HDMI 230 Rx | 317.25 | 317.25 |
| 1.00 | EXTRON 60-1271-12 | HDMI-RS232-AUDIO Tx BALUN | 336.15 | 336.15 |
| 1.00 | EXTRON 60-1481-01 | HDMI DIST AMP 4 OUT | 668.25 | 668.25 |
| 1.00 | EXTRON 60-1615-01 | IN 1808 | 3,928.50 | 3,928.50 |
| 1.00 | EXTRON 60-1417-01 | IPCP PRO 350 | 1,424.25 | 1,424.25 |
| 1.00 | EXTRON 60-1562-02 | TLP PRO 725T | 1,277.10 | 1,277.10 |
| 1.00 | EXTRON 60-1508-02 | SHARELINK 200 N (NO WAP) | 929.50 | 929.50 |
| 2.00 | LIBR E2-HDSEM-M-06 | CABLE, HDMI, 20FT | 41.51 | 83.02 |
| 2.00 | EXTRON 26-726-50 | HD PRO P/50 | 281.25 | 562.50 |
| 3.00 | LIBR M2-HDSEM-M-06F | 6' REDU PROF HDMI PATCH CABLE | 7.05 | 21.15 |
| 1.00 | BIAMP FORTE AVB VT | 12X8 DSP W/AVB,AEC,VOIP,POTS | 2,798.60 | 2,798.60 |
| 1.00 | RDL TX-J2 | RCA TO LINE TRANSFORMERS | 70.14 | 70.14 |
| 1.00 | MISC | OWNER PROVIDED-EXISTING EQUIPMENT PER ONE-LINE DIAGRAM | | |
| 1.00 | MISC | CABLE, INTERCONNECT AND SHOP SUPPLIES | 153.59 | 153.59 |
| 1.00 | LABOR INSTALL | DESIGN, INSTALLATION, PROGRAMMING, TRAINING<br>********** | 6,120.00 | 6,120.00 |

| | |
|---|---|
| Subtotal | Continued |
| Sales Tax | Continued |
| Freight | Continued |
| **TOTAL** | **Continued** |

**Tricorne Audio, Inc.**
417 Main Avenue, Suite 118
Fargo, ND 58103

Voice: 701-239-4623
Fax: 701-239-0115

# QUOTATION

Quote Number: M3676
Quote Date: Jun 17, 2020
Page: 2

| Quoted To: |
|---|
| CITY OF BISMARCK<br>221 N. 5TH STREET<br>PO BOX 5503<br>BISMARCK, ND 58506<br>USA |

| Customer ID | Good Thru | Payment Terms | Sales Rep |
|---|---|---|---|
| CITY OF BISMARCK | 7/17/20 | SEE BELOW | Anderson, Dallas R |

| Quantity | Item | Description | Unit Price | Amount |
|---|---|---|---|---|
| 1.00 | OWNER PROVIDED ELEC | OWNER SHALL PROVIDE ALL 120VAC AND CONDUIT WORK AS REQUIRED.<br>-NO ADDITIONAL WORK REQUIRED FOR THIS QUOTE | | |
| | TERMS: | EQUIPMENT TO BE INVOICED UPON RECEIPT, BALANCE TO BE INVOICED UPON COMPLETION | | |
| | DATE: | | | |

| | |
|---|---|
| Subtotal | 18,690.00 |
| Sales Tax | |
| Freight | 120.00 |
| **TOTAL** | **18,810.00** |

**Tricorne Audio, Inc.**
417 Main Avenue, Suite 118
Fargo, ND 58103

Voice: 701-239-4623
Fax: 701-239-0115

# QUOTATION

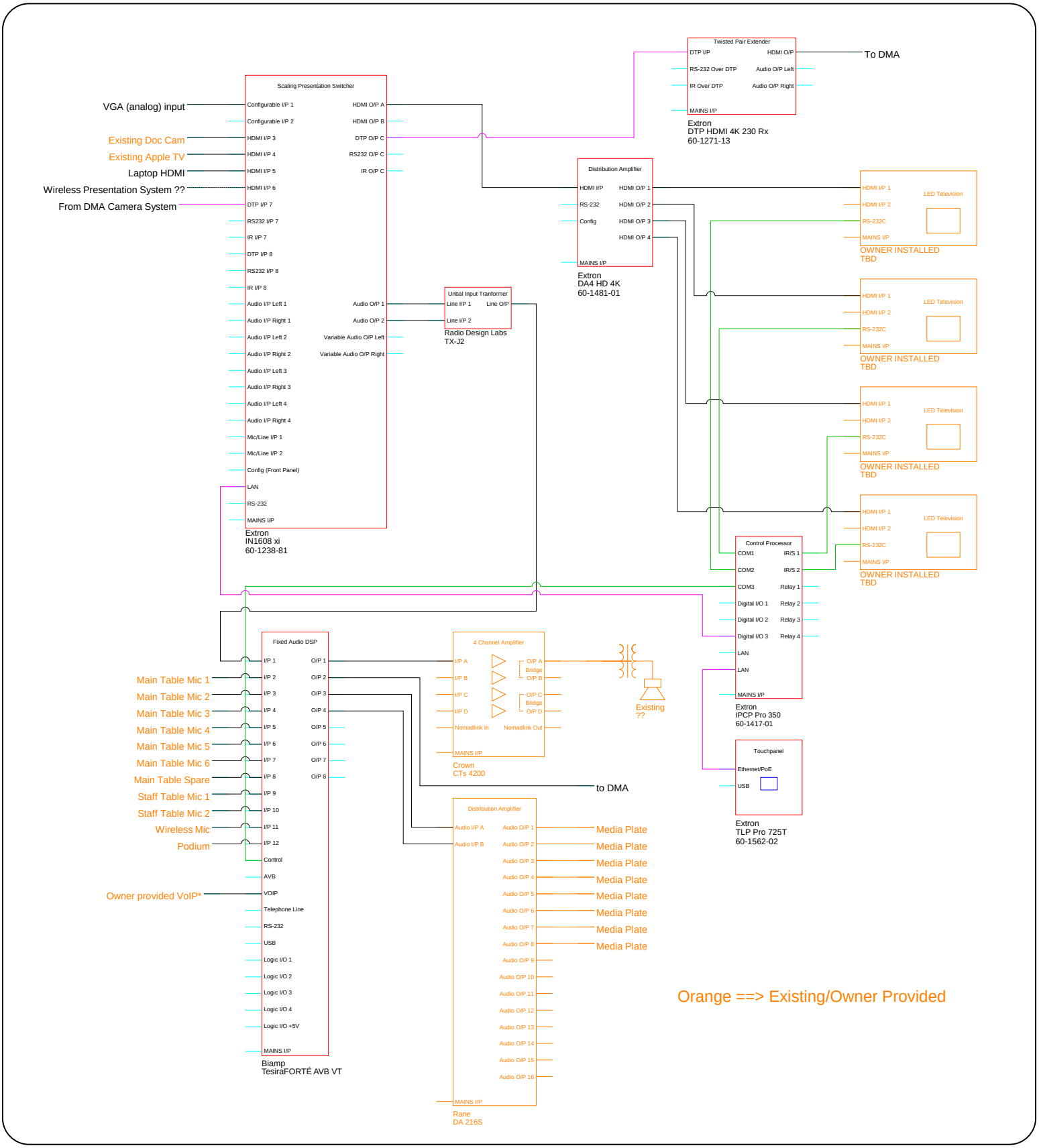
Quote Number: M3679
Quote Date: Jun 17, 2020
Page: 1

| Quoted To: |
|---|
| CITY OF BISMARCK<br>221 N. 5TH STREET<br>PO BOX 5503<br>BISMARCK, ND 58506<br>USA |

| Customer ID | Good Thru | Payment Terms | Sales Rep |
|---|---|---|---|
| CITY OF BISMARCK | 7/17/20 | SEE BELOW | Anderson, Dallas R |

| Quantity | Item | Description | Unit Price | Amount |
|---|---|---|---|---|
| | | SALE AND INSTALLATION OF: | | |
| | | OPTION #3 - SINGLE SOFT CODEC | | |
| | | INTERFACE UPGRADE | | |
| 1.00 | EXTRON 60-1271-13 | DTP HDMI 230 Rx | 317.25 | 317.25 |
| 1.00 | EXTRON 60-1480-01 | HDMI DIST AMP 2 OUT | 379.50 | 379.50 |
| 1.00 | EXTRON 60-190-01 | RACK SHELF FOR 9.5" DEEP EQ | 87.75 | 87.75 |
| 1.00 | EPIPHAN AV.io HD | HDMI,DVI,VGA IN TO USB3 USB2 | 395.00 | 395.00 |
| 1.00 | BIAMP EX-UBT | PoE AVB/USB EXTNDR W/BLUETOOTH | 490.00 | 490.00 |
| 1.00 | BIAMP CONNECT TC-5 | CONNECT TC-5 | 840.00 | 840.00 |
| 1.00 | LIBR E-USB3AB-15 | 15' USB 3.0 A-B CABLE | 7.79 | 7.79 |
| 1.00 | LABOR INSTALL | INSTALLATION, PROGRAMING AND | 915.00 | 915.00 |
| | | TRAINING | | |
| | | ---------- | | |
| | TERMS: | AMOUNT TO BE ADDED TO BASE | | |
| | | PROPOSAL | | |

| | |
|---|---|
| Subtotal | 3,432.29 |
| Sales Tax | |
| Freight | 52.71 |
| **TOTAL** | **3,485.00** |




| Rev | Date | Notes |
|---|---|---|
| | | |

Client:

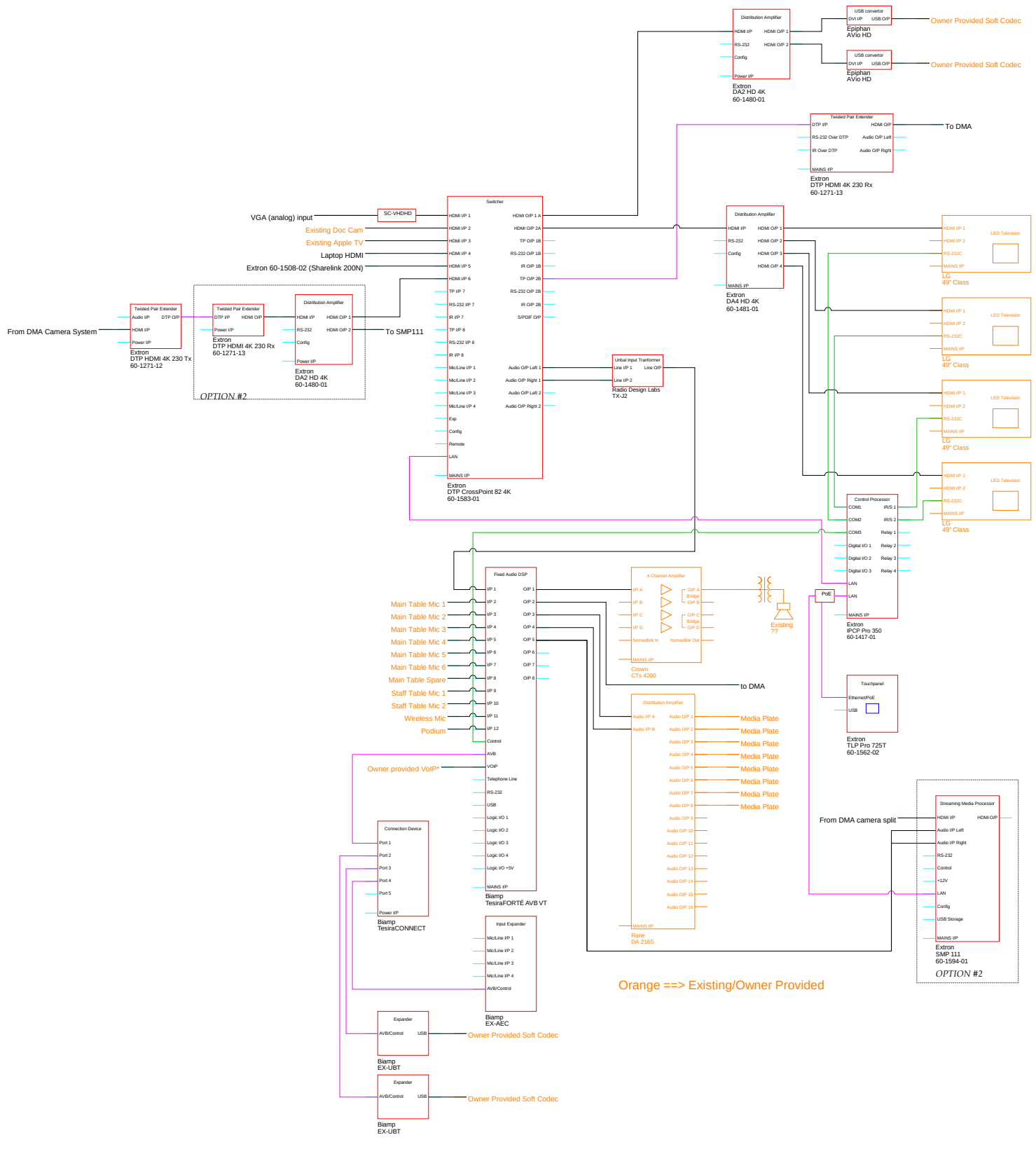
Title: **City of Bismarck**
**Tom Baker Room**

| Drawn By: | Scale: | Date: |
|---|---|---|
| DRA | NTS | 6-17-2019 |

Issued For: Proposal Base Bid

Drawing No: OL-1 Rev:

**Tricorne Audio, Inc.**
Bismarck and Fargo, ND
www.tricorneaudio.com
800-932-1163




| Rev | Date | Notes |
|---|---|---|
| | | |

Client:

Title: **City of Bismarck**
**Tom Baker Room**

| Drawn By: | Scale: | Date: |
|---|---|---|
| DRA | NTS | 6/17/2020 |

Issued For: Proposal w/Options 1 and 2

Drawing No: OL-2 Rev:

**Tricorne Audio, Inc.**
Bismarck and Fargo, ND
www.tricorneaudio.com
800-932-1163

# Fire Department

**DATE:** June 19, 2020

**FROM:** Gary Stockert

**ITEM:** EMPG Supplemental Grant – permission to apply

## REQUEST

Bismarck Emergency Management is requesting permission to apply for the Emergency Management Performance - Supplemental grant made available by the ND Department of Emergency Services. The funding is provided via the CARES ACT. The EMPG Supplemental, like the annual EMPG grant, has a 50/50 match requirement. Grant funds, if grant application is successful, would provide funding assistance for the Audio Visual Equipment for the new Emergency Operations Center (EOC).

Please place this item on the 6/23/2020 City Commission meeting agenda as an addendum.

## BACKGROUND INFORMATION

On Friday June 19, ND Department of Emergency Services provided notice via e-mail of additional grant funding availability based on anticipated grant applications anticipated on a state-wide basis (reduced number of applications). Based on communications from ND DES, EOC equipment such as Audio Visual is a viable project request. Total funds available to local jurisdictions on a statewide basis is only $221,951.00. The intent is to seek grant funds that provide potential for reimbursement (up to 50%) of local funds approved (budgeted for) to purchase/install AV equipment for the EOC as we continue to negotiate options and costs based on the AVI bid proposal as discussed during the May 29, 2020 Special Commission Meeting.

## RECOMMENDED CITY COMMISSION ACTION

Allow Bismarck Emergency Management to apply for the EMPG Supplemental grant. The grant application deadline is June 30, 2020.

## STAFF CONTACT INFORMATION

Gary Stockert | City Emergency Manager, 222-6727 or gstockert@bismarcknd.gov

# FISCAL YEAR (FY) 2020 EMEGENCY MANGEMENT PERFORMANCE GANT PROGRAM COVID-19 SUPPLEMENTAL (EMPG-S) NOTICE OF FUNDING OPPORTUNITY FOR NORTH DAKOTA COUNTY/TRIBAL EMERGENCY MANAGEMENT

## Program Description

**Assistance Listings Number:** 97.042

**Appropriated Authority for Program:** *Coronavirus Aid, Relief, and Economic Security (CARES) Act*, Div. B (Pub. L. No. 116-136)

**Announcement Type:** Formula

**Program Objective:** The Fiscal Year (FY) 2020 Emergency Management Performance Grant Program – COVID-19 Supplemental (EMPG-S) assists tribal and local governments with their public health and emergency management activities supporting prevention of, preparation for, and response to the ongoing Coronavirus Disease 2019 (COVID-19) public health emergency.

**Program Priorities:** Priorities under this funding opportunity will address the State's response to the COVID-19 public health emergency.

- Creating/Updating Continuity of Operations and Continuity of Government Planning
- Updating Emergency Operations Plans
- Data Service Access Device (portable devices capable of producing a Wi-Fi hotspot) to support COVID-19 related work-from-home requirements
- Training activities to enhance the capabilities of local emergency management personnel assigned to support the COVID-19 public health emergency

## FY 2020 EMPG-S Allocations

| Jurisdiction | Allocation | Jurisdiction | Allocation |
|---|---|---|---|
| Adams | $ 2,954.00 | Morton | $ 6,690.00 |
| Barnes* | $ - | Mountrail | $ 5,678.00 |
| Benson | $ 3,665.00 | Nelson | $ 4,035.00 |
| Billings* | $ - | Oliver | $ 1,828.00 |
| Bottineau | $ 2,899.00 | Pembina | $ 3,738.00 |
| Bowman | $ 3,526.00 | Pierce | $ 2,964.00 |
| Burke | $ 4,607.00 | Ramsey | $ 5,562.00 |
| Burleigh/Bismarck** | $ 18,663.00 | Ransom | $ 4,296.00 |
| Cass/Fargo** | $ 23,915.00 | Renville | $ 2,997.00 |
| Cavalier | $ 4,981.00 | Richland | $ 6,436.00 |
| Dickey* | $ - | Rolette | $ 4,360.00 |
| Divide* | $ - | Sargent | $ 2,748.00 |
| Dunn | $ 4,474.00 | Sheridan | $ 1,956.00 |

| Jurisdiction | Allocation | Jurisdiction | Allocation |
|---|---|---|---|
| Eddy | $ 2,000.00 | Sioux* | $ - |
| Emmons | $ 2,975.00 | Slope* | $ - |
| Foster | $ 3,389.00 | Spirit Lake* | $ - |
| Golden Valley | $ 2,494.00 | Standing Rock* | $ - |
| Grand Forks | $ 10,436.00 | Stark | $ 6,784.00 |
| Grant* | $ - | Steele | $ 3,576.00 |
| Griggs* | $ - | Stutsman | $ 6,266.00 |
| Hettinger | $ 2,938.00 | Three Affiliated | $ 3,083.00 |
| Kidder | $ 2,440.00 | Towner | $ 4,156.00 |
| LaMoure | $ 4,030.00 | Traill* | $ - |
| Logan | $ 2,572.00 | Turtle Mountain* | $ - |
| McHenry | $ 2,244.00 | Walsh | $ 5,380.00 |
| McIntosh | $ 2,583.00 | Ward | $ 9,566.00 |
| McKenzie* | $ - | Wells | $ 4,815.00 |
| McLean | $ 3,908.00 | Williams | $ 10,035.00 |
| Mercer | $ 3,309.00 | | |
| **Total** | | | **$ 221,951.00** |

* Not an FY 2019 EMPG Participant

** Split between County/City

**Period of Performance Start Date:** July 1, 2020

**Period of Performance End Date:** September 30, 2021

**Funding Instrument Type:** Grant

## Eligibility Information

**Eligible Applicants:** Tribal/County Emergency Management FY 2019 EMPG participants are eligible to apply for FY 2020 EMPG-S funds.

**Emergency Management Assistance Compact (EMAC):** All assets supported in part or entirely with FY 2020 EMG-S funding must, where appliable, be readily deployable to support emergency or disaster operations per existing EMAC agreements.

**National Incident Management System (NIMS) Implementation:** Recipients must ensure and maintain adoption and implementation of NIMS.

**Cost Share:** FY 2020 EMPG-S program has a cost-share requirement. Eligible EMPG-S program recipients shall agree to make available **non**-Federal funds to carry out an EMPG-S award in amount not less than 50 percent of the total project cost. Example: Total Project Cost = $4,000; Federal share is 50 percent or $2,000, Recipient share is 50 percent or $2,000.

## Application and Submission Information

**Application Start Date:** June 1, 2020

**Application Submission Deadline:** June 30, 2020 at 5 p.m. CDT

All applications must be received by the established deadline. The **grants.des.nd.gov** has a date stamp that indicates when an application is submitted. DES will generally not review applications that are received after the deadline or consider them for funding.

**Anticipated Award Date:** July 1, 2020

**Agreeing to Terms and Conditions of the Award:** By accepting an award under this funding opportunity, recipients agree to comply with the requirements of this NOFO, the DHS issued NOFO, NDDES Fiscal and Program Policy, and the terms and conditions of the award, should they receive an award.

**Content and Form of Application Submission:** NDDES requires applicants to submit their applications online through **grants.des.nd.gov**.

- Application Form (grants.des.nd.gov)
- Certification Regarding Lobbying (FEMA Form 20-16C)
- EHP Screening Form (if applicable)

Applicants must in the justification section of the form explain in detail how their proposed project supports prevention of, preparation for, and response to the ongoing Coronavirus Disease 2019 (COVID-19) public health emergency

**Environmental Planning and Historic Preservation (EHP) Compliance:** Recipients proposing projects that have the potential to impact the environment, including, but not limited to, modification of existing buildings, structures, and facilities, must participate in the DHS/FEMA EHP review process.

**Funding Restrictions:** EMPG-S recipients may **only** fund activities and projects that are for the purposes of preventing, preparing for, and responding to the coronavirus and are allowable with the rules prescribed by this NOFO. Funds under this award shall **not** be used for activities unrelated to coronavirus prevention, preparedness, or response.

**Allowable Costs:** Costs charged to this award must be consistent with the Cost Principles for Federal Awards located at 2 C.F.R. Part 200, Subpart E.

**Unallowable Costs:**

- Exercise costs **are not allowed** under this program.
- Hiring of public safety personnel fulfilling traditional public safety duties is **not an allowable cost** under this program.
- International travel is **not an allowable cost** under this program.
- Radios (all types)
- Other Unallowable Equipment under program rules
- Activities and projects unrelated to the completion and implementation of the EMPS-S

- Anything unrelated to COVID-19 planning, prevention, response

## Application Review Information

NDDES will review the applications for programmatic adherence and financial integrity. The results of the review may require recipients to revise their submissions.

## Award Administration Information

**Notice of Award:** Applicants will be notified of award approval through **grants.des.nd.gov**. The "award date" for the FY 2020 EMPG-S Program will be the date that NDDES approves the award. The awardees should follow the directions in the notifications to confirm acceptance of the award. Recipients must accept their awards no later than 10 days from the award date.

**Before accepting the award, the AOR should carefully read the award package for instructions on administering the grant award and the terms and conditions associated with responsibilities under federal awards. Recipients must accept all conditions in this NOFO as well as any special terms and conditions in the Notice of Award to receive an award under this program**.
**Reporting:** Recipients are required to submit financial and programmatic reports as a condition of award acceptance. Funds drawdown may be withheld if these reports are delinquent.

- Financial Reporting Requirements: Obligations and expenditures should be reported on the quarterly program performance report in **grants.des.nd.gov**. Requests for reimbursement must be submitted through **grants.des.nd.gov**, but there is not a requirement to request reimbursement quarterly.
- Program Performance Reporting Requirements: Quarterly Performance Reports are due quarterly using the form in **grants.des.nd.gov**. The following reporting periods and due dates apply for the PPR:

| Reporting Period | Report due Date |
|---|---|
| July 1 – September 30, 2020 | October 15, 2020 |
| October 1 – December 30, 2020 | January 15, 2020 |
| January 1 – March 31, 2021 | April 15, 2020 |
| April 1 – June 30, 2021 | July 15, 2020 |
| July 1 – September 30, 2021 | October 15, 2021 |

- Closeout Reporting Requirements: Upon issuance of final reimbursement request, NDDES will notify the sub-recipient to submit the Closeout form in **grants.des.nd.gov** along with other required documents to closeout out the grant.

| | |
|---|---|
| **From:** | Johnson, Neil A. |
| **To:** | Adams County Emergency Management; Pearson, Dean A.; Karla Germann - Bowman/slope County (KMGermann@bowmancountynd.gov); Senger, Mary H.; Gary Stockert; Brew, Denise M.; cody.mattson; Joel Rostberg (joel.rostberg@mortonnd.org); Reed, Carmen A.; Keohane, Rachel; Kruger, Tracy J.; Fahlsing, Bill A.; Sherry Baltzell; Shawna Davenport (sdavenport@starkcountynd.gov) |
| **Subject:** | EMPG - S |
| **Date:** | Friday, June 19, 2020 9:13:20 AM |
| **Attachments:** | image001.png |

---

It sound like there are counties across the state that will not be applying for the EMPG-S (Supplemental) funding which means additional funds may be available to redistribute to those counties that are applying. You are encouraged to over apply in your initial application if you have additional needs and have access to extra match money.


## Neil Johnson

*SW Regional Response Coordinator*

701.328.8130 • 701.425.5056 (m) • neiljohnson@nd.gov • www.des.nd.gov

Bismarck

# Police Department

**DATE:** June 15, 2020

**FROM:** Jason Stugelmeyer, Deputy Chief of Police

**ITEM:** Request authorization to accept donations

## REQUEST

Requesting the Commission's approval to accept donations received by the department during the COVID19 pandemic.

Please place this item on the June 23, 2020 City Commission meeting agenda (consent agenda).

## BACKGROUND INFORMATION

The police department has received an outpouring of support during the COVID-19 pandemic from both local businesses and citizens. Items donated include; coffee, food items, protective masks and hand sanitizer. The police department would like to thank the following businesses and individuals for their gracious donations; Coffee Break, Dean's Foods, Starbucks Coffee, Josh Long, Kathy Brown, Little Ceasars, Auntie Annes, Bew Pub, Heaven Helpers Soup Kitchen, Dr. Gordy Leingang, Dan's Supervalue, Kobe's, Norm' Eatery, Axon International, Alexus Bosch, Bob and Linda Weigel, Bearscat, James Bender – ResiliantsoulCo, Hallie Cherwinski, Bain Insurance Agency, Troy Bartsch – Subway, Image Makers Salon, and Salvation Army.

## RECOMMENDED CITY COMMISSION ACTION

Approval to accept donations.

## STAFF CONTACT INFORMATION

Jason Stugelmeyer | Deputy Chief of Police, 223-1212 or jstugelmeyer@bismarcknd.gov

Bismarck

# Police Department

**DATE:** June 15, 2020

**FROM:** Jason Stugelmeyer, Deputy Chief of Police

**ITEM:** Request authorization for sole source purchase

## REQUEST

Requesting the Commission's approval to purchase PortaCount machine.

Please place this item on the June 23, 2020 City Commission meeting agenda (consent agenda).

## BACKGROUND INFORMATION

The equipment requested to purchase sole source method is a PortaCount machine that tests aerosol-based particles to enable proper fit testing of our chemical, biological, radiological, nuclear and explosive C50 protective masks and filters. In addition, it will test N95 masks to ensure proper fitment. We researched the current machines that can test the listed protective equipment and learned that the PortaCount machine is the only machine that can test aerosols based on particle counting. The PortaCount is the only machine that can test N95 masks using this methodology. TSI is the seller of this machine for our territory, therefore we can only purchase through TSI Inc. See attached quote and sole source letter.

If approved, this purchase will be made with a COVID19 Justice Assistance Grant that has already been approved at the city and federal level.

## RECOMMENDED CITY COMMISSION ACTION

Approval to purchase PortaCount 8048 and accessories from TSI Inc.

## STAFF CONTACT INFORMATION

Jason Stugelmeyer | Deputy Chief of Police, 223-1212 or jstugelmeyer@bismarcknd.gov

TSI INCORPORATED

500 Cardigan Road, Shoreview, MN 55126 USA
tel 651 490 2811 + toll free 800 874 2811 + fax 651 490 3824 + web www.tsi.com

May 4, 2020

To whom it may concern:

TSI Incorporated is the manufacturer of and the sole source of the following instruments:

PortaCount Models 8030, 8038, 8040, and 8048
DustTrak Models 8530, 8531, and 8532
DustTrak DRX Models 8533 and 8534
Q-Trak Model 7575
SidePak Personal Aerosol Monitor Model AM520
P-Trak Ultrafine Particle Counter Model 8525

The patented aerosol based particle counting technology of TSI instrumentation is unique to TSI and unavailable from any other source worldwide. TSI participates in GSA contract pricing and in all other instances maintains constant pricing levels, so that unit prices are equivalent for every end user. The states of Minnesota, North and South Dakota, Iowa, Nebraska, and Wisconsin constitute direct sales territory for TSI and any selling of TSI Health & Safety portfolio products, and services for such products, into such represents unauthorized violation of distribution agreements set forth by TSI.

TSI warrants the equipment, under normal use and service as described in the operator's manual, shall be free from defects in workmanship and material for twenty-four (24) months, or the length of time specified in the operator's manual, from the date of shipment to the customer. This warranty period is inclusive of any statutory warranty. TSI recommends annual recalibration and cleaning for this equipment.

Best Regards,

Paul Kulich
Technical Sales Specialist
TSI, Incorporated
Cell: 651-734-8920
Paul.Kulich@tsi.com

500 Cardigan Road
Shoreview, MN 55126
USA
EIN 41-0843524

Tel:(800)680-1220
Fax:(651)490-3824
Web:www.TSI.com
Email:answers@TSI.com



# Quotation

**Quote Contact**
Cody Trom
**Tel:** (701)355-1935
**Email:** ctrom@bismarcknd.gov

**Bill-To-Party**
Bismarck Police Dept
700 S 9th St
Bismarck ND 58504-5821

**Ship-To-Party**
Bismarck Police Dept
700 S 9th St
Bismarck ND 58504-5821

**Make PO Out To:**
**TSI Inc.**

| | |
|---|---|
| **Quotation Number** | 20172378 |
| **Quotation Date** | 05/04/2020 |
| **Customer No** | 5673701 |
| **Cust. Ref.** | |
| **Incoterms** | 2010 CPT: Prepay & Add Consignee's Premises |
| **Payment Term** | SUBJECT TO CREDIT APPROVAL |
| **Valid To** | 06/03/2020 |
| **Currency** | USD |
| **Method of Payment** | PO, Visa, Amex, Mastercard |

Reference Quote number when submitting PO

| Item | Material/Description | Quantity | Unit Price | Amount |
|---|---|---|---|---|
| 1 | 8048-T<br>PortaCount Model 8048-T; w/ Tablet<br>PortaCount Model 8048 includes: Carry Case; AC Adapter with Universal Plug Set; 8026 Particle Generator (115 VAC); Alcohol Cartridge; Alcohol Fill Capsule, Storage Cap; (2) Zero Check Filters; 3/16" and 1/4" Hose Adapters; (2) Spare Alcohol Wicks; (100) Sampling Probes; (100) Lock Washers; Probe Insertion Tool; Neck Strap; USB Cable; 8016 Alcohol Supply containing (16) 30ml Bottles of Reagent Grade Isopropyl Alcohol; FitPro Ultra Fit Test Software; 2-Year Warranty (or 5 years if B2B5 option is purchased).<br><br>ALSO INCLUDES OPTIONAL Microsoft Surface Go Tablet Bundle - FitPro Ultra Software is pre-loaded onto the tablet, the tablet can also be used with an included WiFi adapter to display exercise animation prompts for employees on the tablet while the fit test is controlled on a computer.<br><br>If the tablet bundle options is not desired, add this part number to PO instead: 8048, $13,250.00 EA | 1.00 EA | 13,400.00 | 13,400.00 |
| 2 | B2B5-8048<br>QG B2B Warranty, 5-Yr, PortaCount 8048<br>QG B2B WARRANTY, 5-YR, PORTACOUNT 8048 | 1.00 EA | 4,680.00 | 4,680.00 |
| 3 | 8025-N95R<br>Fit Test Probe Refill Kit for 8025-N95<br>Refill Kit for 8025-N95 Sampling Probe Kit<br>For fit testing disposable filtering-facepiece respirators.<br>Includes: 500 Probes, 500 Push Nuts (no tools). | 1.00 EA | 145.00 | 145.00 |
| 4 | 8025-AVON<br>Fit Test Adapter -AVON<br>Fit Test Adapter for AVON gas masks with drink tube including FM12, S10, MF10. Includes disposable components for 200 fit tests including Adapter, Case, (200) Drink Tube Extensions, P100 Filter, Instructions. | 1.00 EA | 165.00 | 165.00 |
| 5 | 8025-20<br>Fit Test Adapter Kit - Scott Full-face<br>Fit Test Adapter for Scott masks including AV-2000, AV-3000, Scott-O-Vista, 65. Includes disposable components for 200 fit tests including | 1.00 EA | 220.00 | 220.00 |

500 Cardigan Road
Shoreview, MN 55126
USA
EIN 41-0843524

Tel:(800)680-1220
Fax:(651)490-3824
Web:www.TSI.com
Email:answers@TSI.com



# Quotation

**Bill-To-Party**
Bismarck Police Dept

**Quotation Number** 20172378
**Quotation Date** 05/04/2020

| Item | Material/Description | Quantity | Unit Price | Amount |
|---|---|---|---|---|
| | Adapter, Case, (200) Clips, (200) Suction Cups, (50-ft) Tubing, (1)P100 Filter, Instructions. | | | |
| | | | **Sub Total** | 18,610.00 |
| | | | **Total Amount** | 18,610.00 |

These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.

*This Quotation is subject to the warranties, disclaimers and all other terms and conditions set forth by TSI Inc. and incorporated by reference and to no others. Seller reserves the right to change prices effective on any new orders, provided Seller notifies in writing those with currently valid Quotations prior to any order being placed. This quotation shall become an agreement binding upon the Buyer and Seller when accepted by the Buyer and subsequently accepted by an authorized representative of the Seller at the Seller's home office and thereupon shall constitute the entire agreement between the parties.*

*Paul Kulich*
TSI Incorporated

Date 05/04/2020

*TSI Terms and Conditions apply and are incorporated by reference. See http://www.tsi.com/tc.pdf*
*For payment terms, complete credit application at http://www.tsi.com/credit-app/*

Bismarck

# Public Works Service Operations Department

**DATE:** June 10, 2020

**FROM:** Jeff Heintz, Service Operations Director

**ITEM:** Permission to Award Contract for the 2020 Furnishing Street Maintenance Materials

## REQUEST

Request permission to award the contract for 2020 furnishing street maintenance materials.

Please place this item on the 6/10/2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

The bids were opened on June 8, 2020. Five bids were received for three different contracts. The bid tabulation is included for your review. Recommendation is to award Part 1 – Deicing Sand to Knife River for $99,500.00; Part 2 – Rock Salt to H&H Trucking for $225,400.00; and Part 3 – Class 5 Aggregate Base to Knife River for $8,625.00. Funds for this purchase are included in the 2020 Roads and Streets budget.

## RECOMMENDED CITY COMMISSION ACTION

Award the 2020 furnishing street maintenance materials as follows: Part 1 – Deicing Sand to Knife River for $99,500.00; Part 2 – Rock Salt to H&H Trucking for $225,400.00; and Part 3 – Class 5 Aggregate Base to Knife River for $8,625.00.

## STAFF CONTACT INFORMATION

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

FURNISHING STREET MAINTENANCE MATERIALS
BID OPENING JUNE 8, 2020 4:00 P.M.

| | | | Vendor | Guthmiller & Son Dirtworks, Inc. | | H&H Trucking | | Knife River | | Northern Improvement Company | | NSC Minerals Ltd. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Item No. | Description | Unit | Quantity | Unit Price | Total | Unit Price | Total | Unit Price | Total | | | Unit Price | Total |
| Part 1 | Deicing Sand | Ton | 5,000 | $19.94 | $ 99,700.00 | | | $ 19.90 | $ 99,500.00 | $ 20.29 | $ 101,450.00 | | |
| Part 2 | Rock Salt | Ton | 2,500 | | | $ 90.16 | $ 225,400.00 | | | | | $90.05 Plus $1.12 USD/ton for SK Carbon tax | $ 227,925.00 |
| | | | | | | | | | | | | | |
| Part 3 | Class 5 Aggregate Base (302-4.1) | Ton | 500 | $ 23.23 | $ 11,615.00 | | | $ 17.25 | $ 8,625.00 | | | | |

Includes Delivery

A separate contract will be awarded for each part.

# PUBLIC WORKS – SERVICE OPERATIONS

**DATE:** June 10, 2020

**FROM:** Jeff Heintz, Director of Service Operations

**ITEM:** Award bid for traffic signal video detection systems

## REQUEST

Award of bid for traffic signal video detection systems.

Please place this item on the June 23, 2020 City Commission meeting.

## BACKGROUND INFORMATION

The Public Works Service Operations Department received bids at 4:00 p.m. on Monday, June 8, 2020 for the traffic signal video detection systems. One bid was received. Recommendation is to award the bid to Traffic Control Corporation for $54,890.00. The bid tab is attached.

## RECOMMENDED CITY COMMISSION ACTION

Award the bid for traffic signal video detection systems in the amount of $54,890.00 to Traffic Control Corporation.

## STAFF CONTACT INFORMATION

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

# CITY OF BISMARCK
## 221 North 5th Street
## Bismarck ND 58501
## TRAFFIC SIGNAL VIDEO DETECTION SYSTEMS - BID TABULATION
## Monday, June 8, 2020

**Bids Received - 3:00 p.m.**
**Bids Opened – 4:00 p.m.**

| VENDOR | Traffic Control Corporation |
|---|---|
| MEETS SPECIFICATIONS | Yes |
| Special Provision 1<br>E Bis Expy & Burlington Ave | $8,675.00 |
| Special Provision 2<br>Tyler Pkwy & Burnt Boat Dr | $26,765.00 |
| Special Provision 3<br>N 6th St & E Blvd Ave | $19,450.00 |
| Total | $54,890.00 |

# Human Resources Department

**DATE:** May 28, 2020

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

**ITEM:** Overview of Condrey Study

## REQUEST

Commissioner Guy has asked that the Board of City Commissioners receive an overview of the 2015 Condrey Study and hear recommendations from the group

Please place this item on the 6/23/2020 City Commission meeting agenda.

## BACKGROUND INFORMATION

Condrey & Associates completed a Compensation Study for the City of Bismarck in 2015. The group presented a compensation plan and instructions on how to maintain the plan which was implemented in the Fall of 2015. Because there will be new members on the Commission and many of the Commissioners present at that time have moved on it is significant to provide an overview of the compensation structure to new commissioners. Condrey & Associates will participate remotely providing a presentation on the compensation plan and any recommendations that they may have for maintaining the structure.

## RECOMMENDED CITY COMMISSION ACTION

The Human Resource Department recommends accepting the Condrey overview of our compensation plan and any recommendations.

## STAFF CONTACT INFORMATION

Robert McConnell | Human Resources Director, 355-1330 or
rmcconnell@bismarcknd.gov

# Condrey & Associates Compensation & Classification Project

| | |
|---|---|
| **Sept. 23rd** | **Bismarck Board of City Commissioners approved compensation and Classification contract with Condrey & Associates to:**<br>**-Review and revise the current personnel classification system and pay plan for all fulltime city employees**<br>**-Produce an updated description of each job (all positions) and produce a classification system based on the job content analysis**<br>**-Collect salary data and produce a recommended pay plan based on job analysis, job evaluation, and survey data;** |
| **November 4th & 5th** | **Initial Meeting with Steve Condrey**<br>Steve Condrey conducted on-site presentations with all employees providing an overview of the classification process and explain the Position Descriptions Questionnaires (PDQs). |
| **December 1st** | **PDQ's were sent to Condrey & Associates for classification** |
| **Jan 20th-28th** | ***Position Descriptions Questionnaires (PDQs) Review with Employees**<br>PDQs were completed by each employee describing their positions.<br>Condrey & Associates sent a team of 7 subject matter expert consultants to conduct desk reviews with staff to review their assigned duties and PDQs. Seventy percent of all staff met with consultants during this visit in preparation for classification of their position. |
| **March** | **Condrey Completes Salary Survey of Benchmark jobs.**<br>Survey included comparable cities and 17 local sources |
| **March 31st** | **Payroll Data Submitted to Condrey & Associates for Processing** |
| **April 8th** | **Preliminary Report & Salary Scales received from Condrey & Associates** |
| **April 9th & 10th** | ***Condrey & Associates 1st Review of Position Classifications with Dept. Directors**<br>Mark Knowles from Condrey & Associates met with Department Directors for a 1ST review of position classifications. Department Directors provided (1st) feedback on the draft of classifications of their workforce |
| **April 27th** | ***Received 2nd Revised Report & Salary Ranges from Condrey & Associates**<br>Department Directors provided further feedback to Condrey & Associates<br>(2nd feedback) |
| **May 2nd** | **Salary Data refreshed and sent to Condrey & Associates** |
| **May 5th** | **Received 3rd Revised Report & Salary Ranges from Condrey & Associates** |
| **May 14th** | ***Dept. Director Met to discuss Condrey & Associates revised Report & Salary Ranges** |
| **May 21st** | **Dept. Directors provided 3rd feedback to Condrey & Associates on Classification & Salary Ranges** |
| **May 26th** | **May 26th Proposed Presentation Date to Commission rescheduled for July 14th**<br>Presentation was rescheduled due to discussion points from department directors regarding classifications and salary ranges. A June date was attempted but scheduling became difficult for the City of Bismarck & Condrey & Associates. July 14th was the earliest date that worked for all parties. Awaiting final revised report & salary ranges from Condrey & Associates |
| **July 8th** | **Received Final Reports from Condrey & Associates** |

| | |
|---|---|
| **July 14th** | **Condrey & Associates presented a final plan to Board of City Commissioners Commissioners accepted the report and sent it to the Budget Committee for recommendations.** |
| July 16th | Final Copies of job descriptions were sent to departments. |
| Week of July 20th | Department Directors will meet with Human Resource Office to discuss the final report along with implementation options. |
| Aug 2015 | We expect that the Budget Committee will bring recommendations to the Commission in August with Budget |
| August 10th | *Informal Appeal to Condrey & Associates |
| August 11th | Budget Committee recommendations to the Board of City Commissioners |
| Oct. 1st | *Formal Appeal Process Opened |
| 1/21/2016 | Condrey reviews Appeal Requests |
| 1/26/2016 | Received Appeal Response from Condrey & Associates |

# Talking points

**Nature of the Plan**

The Comp & Class Plan was built from the ground up, the old plan was scrapped

No correlation to the old plan

Job Titles and Grades are new as well

**Classifications**

Each individual job was classified from the PDQ that was presented to Condrey & Associates staff

There are no longer broad or general classifications across all the departments i.e. Mechanics, Office assistants …

Some job titles are new and better fits for individual positions

**Equity Increases**

In order to help with compression, (new hires entering the workforce at similar pay of other workers) equity increases are assigned to move employees across the pay range based on their longevity with the City of Bismarck.

Equity Code:
< 1 year = A = 0 increase
1-3 years = B = 2% increase
4-6 years = C = 4% increase
7+ years = D = 6% increase

**Implementation Date** **Effective 9/13/2015** **You will see in your 10/9/2015 Paycheck**

**Employees at the maximum of their pay range**

Past plan did not compensate employees beyond the top of scale

New plan will provide compensation to capped employees

Each capped employee will receive a one-time payment equal to the average increase made to all other staff. The payment will not affect the employee's base salary but rather given like a bonus and paid in a lump sum at the beginning of the year it will not be considered in the pension factoring.

**2016 Cost of Living Increase** **3% Effective** 12/20/2015 **You will see in your 1/15/2016 Check**

**Appeal Process** **3 months following implementation using original PDQ's**

Employee would submit a request for appeal stating why they feel their classification should be appealed to their supervisor on the form provided

Each level of supervision up to director level will review the appeal and indorse either agreement or disagreement with the action

Regardless of the endorsement, all appeals will be submitted to Condrey & Associates for consideration

Condrey & Associates will submit the appealed classification to a panel of 3 evaluators from their staff.

The appeals evaluators will review and reach a consensus on the position which could be to:

Leave the grade unchanged

Raise the grade

Lower the grade

Condrey & Associate evaluator's decision is final

# PROPOSAL FOR AN UPDATE OF THE

# CLASSIFICATION AND COMPENSATION

# PLAN FOR THE CITY OF

# BISMARCK, NORTH DAKOTA

**June 5, 2020**

**Condrey and Associates, Inc.**
**PO Box 7907**
**Athens, Georgia 30604-7907**
**(706) 380-7107 (phone)**
**(586) 816-4067 (fax)**
**steve@condrey-consulting.com**
**www.condrey-consulting.com**

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# PROFILE OF PROPOSER

Condrey and Associates, Inc. is a human resource management consulting firm providing personnel-related technical assistance to local and state government organizations. All work performed for the City of Bismarck project will be conducted on site and at the firm's offices in Athens, Georgia.

The two principals associated with the project, Dr. Steve Condrey and Ms. Jan Hansford, have collaborated on over 500 similar projects for state and local governments. Consultants for this project will be chosen from among consultants with specific subject matter knowledge in local government, public safety, public utilities, public health, and public works administration: Dr. Rex Facer, Associate Professor in the Romney Institute of Public Management at Brigham Young University and a skilled human resources consultant, Mr. Mark Knowles, an independent consultant experienced in financial administration and information technology, Gene Mays, former Chief Deputy of the Athens-Clarke County, Georgia, Sheriff's Department and a skilled law enforcement consultant, Mr. James Hansford, a skilled classification consultant and former Executive Director of the Georgia Firefighter Standards and Training Commission, Mr. Mike Mahathirath, a skilled consultant specializing in IT, Finance and Staffing Analyses, Dr. Mark Foster, an industrial psychologist with extensive experience in law enforcement administration, Dr. James M. Austin, Jr., an industrial psychologist and President of Austin Consulting, Inc., Mr. Brian Burke, a certified Real Estate Appraiser and Firefighter, and Dr. Greg Reece, a skilled technical writer and consultant.

# REPRESENTATIVE CLIENT CONTACTS

Listed below are five representative references. Additional professional references are available upon request.

Mr. Jim Neubauer
City Administrator
City of Mandan
205 Second Avenue NW
Mandan, ND 58554
Phone 701-667-3210

We completed a comprehensive classification and compensation study for the City of Mandan in 2008 (approximately 150 employees). We are currently in the process of completing an update of their system.

Ms. Heather Doke, PHR
Human Resources Director
City of Sheridan
55 Grinnell Plaza
Sheridan, WY 82801
(307) 675-4220
hdoke@sheridanwy.net

We completed a comprehensive classification and compensation study for the City of Sheridan in 2005 (approximately 200 employees). We completed updates of their system in 2013 and 2018.

Ms. Laurie Gronlund
Human Resources Director
City of Pierre
222 E. Dakota
Pierre, South Dakota 57501
(605) 773-7406
laurie.gronlund@ci.pierre.sd.us

We originally developed a classification and compensation plan for the City of Pierre in 2000. We completed updates of the City's classification and compensation system in 2005 and 2017. Pierre has recommended us to numerous other jurisdictions.

Ms. Kristen Reeder, IPMA-SCP, PHR
Human Resources Director
City of Auburn
144 Tichenor Avenue
Auburn, AL 36830
(334) 501-7245
kreeder@auburnalabama.org

We completed a classification and compensation study for the City of Auburn in 2004 (approximately 450 employees). We completed updates of their plan in 2009 and 2017. Auburn has recommended us to numerous other jurisdictions.

Mr. Steve North
Assistant City Manager
City of Lawrenceville
70 S. Clayton Street
Lawrenceville, GA 30046
(770) 963-2414
steve.north@lawrencevillegaweb.org

We completed a comprehensive classification and compensation study for the City of Lawrenceville in 2017 (approximately 300 employees). We completed an update of Lawrenceville's personnel system in 2020.

SELECTED CLIENTS

**Alabama**
Alabama Department of Postsecondary Education
Alabama Department of Corrections
Alabama Department of Human Resources Head Start
Anniston Water Works and Sewer Board
City of Anniston
City of Auburn
Curry Water Authority
City of Dothan
Dothan-Houston County Intellectual Disabilities Board
City of Eufaula
Eufaula Water & Sewer Board
Etowah County
Town of Falkville
City of Gadsden
City of Jasper
Jasper Water Works and Sewer Board
Lee County
City of Madison
City of Mobile
Mobile County
Mobile County Personnel Board
Mobile Area Water and Sewer Board
Mobile Housing Authority
North Central Alabama Regional Council of Governments (NARCOG)
City of Opelika
City of Prattville
City of Rainbow City
City of Tallahassee
City of Tuscaloosa
Selma Waterworks and Sewer Board
Walker County

**Alaska**
Matanuska-Susitna Borough

**Arkansas**
City of Jonesboro
City of North Little Rock

**Connecticut**
Town of Waterford

**Florida**
City of Miami Beach
St. Johns County
St. Johns County Property Appraiser
St. Johns County Clerk of Courts

**Georgia**
City of Acworth
Ben Hill County
Brunswick-Glynn County Joint Water and Sewer Commission
City of Canton
City of Cartersville
Columbus Consolidated Government
Cook County
Coweta County Water and Sewerage Authority
City of Forest Park
City of Hinesville
City of Holly Springs
City of Lawrenceville
City of Suwanee
Lowndes County
Morgan County
Paulding County
City of Peachtree City
Pickens County
City of Statesboro
Tift County
Troup County
City of Tybee Island
United Methodist Church, North Georgia Conference
City of Valdosta
City of Watkinsville

**Kentucky**
Bowling Green Municipal Utilities
DESA International, Inc., Bowling Green
City of Morganfield

**Illinois**
Village of Forsyth
City of Moline

**Iowa**
Dallas County
Muscatine Power and Water
City of Pella

**Maine**
City of Scarborough

**Maryland**
City of Takoma Park

**Missouri**
City of Cape Girardeau
City of Gladstone
City of Jefferson City
City of Lake Saint Louis
City of O'Fallon
City of Sedalia

**Nevada**
Carson City School District
City of Boulder City

**New Hampshire**
Local Government Center
City of Concord
Town of Hanover
Manchester Employees' Contributory Retirement System

**New Mexico**
Bloomfield School District
Deming Public School System
Santa Fe Community College
San Juan College

**New York**
Madison County Government
Onondaga County Government
Orange County Government

**North Carolina**
Braswell Memorial Library, Rocky Mount
Cape Fear Public Utility Authority
Town of Chapel Hill
City of Hickory
City of Laurinburg
Lenoir County
City of Lincolnton
Lincoln County Government
North Carolina League of Municipalities
Orange County Government

**North Carolina, Continued**
City of Rocky Mount
Rutherford County Government
City of Wilson

**North Dakota**
City of Bismarck
City of Mandan
Mandan Parks District

**Oklahoma**
City of Broken Arrow
Northeastern State University

**South Carolina**
Town of Fort Mill
City of Goose Creek
Jasper County Government
McCormick County
Saluda County

**South Dakota**
City of Aberdeen
City of Pierre
Minnehaha County
Pennington County
City of Madison
City of Mitchell
City of Rapid City
City of Spearfish

**Tennessee**
City of Hendersonville

**Texas**
City of Big Spring
City of Beaumont
City of Forney
City of Galveston
City of Rockport
City of Seabrook
Galveston County Government
Galveston County Health District
Harris County Housing Authority
Oller Engineering, Inc., Lubbock
Texas Municipal League Intergovernmental Risk Pool

**Texas (Continued)**
Webb County Government

**Vermont**
Town of Hartford
Town of Norwich

**Virginia**
The Children's Center
City of Franklin
Franklin Development and Housing Authority
Powhatan County
Town of Rocky Mount
Town of Vinton

**Washington**
City of Moses Lake

**Wyoming**
City of Casper
City of Cody
City of Evanston
Evanston Parks & Recreation District
City of Gillette
City of Green River
City of Laramie
City of Rock Springs
City of Sheridan
Sheridan County Government
Sheridan Recreation District

# SUMMARY OF PROPOSER'S QUALIFICATIONS

Stephen E. Condrey, Ph.D. Steve Condrey, President of Condrey and Associates, has over thirty years of professional experience in human resource management and has consulted nationally and internationally with over 800 organizations concerning personnel-related issues. He is the immediate past Editor-in-Chief of the *Review of Public Personnel Administration* and is the co-editor of *Public Administration in Post-Communist Countries* (CRC Press, 2013), editor of the *Handbook of Human Resource Management in Government*, Jossey-Bass, (1998, 2005 and 2010), and *Radical Reform of the Civil Service*, Lexington Press, 2001. He is the 1998 recipient of the University of Georgia's Walter Barnard Hill Award for Distinguished Achievement in Public Service and Outreach and was named Hill Fellow by the University of Georgia in 2004 (the University of Georgia's highest public service faculty honor). He holds the IPMA-SCP designation from the International Public Management Association for Human Resources. Steve retired from the Carl Vinson Institute of Government, University of Georgia in 2010. He was appointed by President Obama as Chairman of the Federal Salary Council in 2010 and served in this capacity until 2017. Dr. Condrey was elected as a Fellow to the National Academy of Public Administration in 2012 and was President of the American Society for Public Administration for 2013-2014.

Ms. Jan Hansford. Jan Hansford, Vice President of Condrey and Associates, is a Principal Human Resource Management Consultant with the Vinson Institute and recently retired as Human Resources Director of Athens-Clarke County, Georgia, a consolidated government of over 1600 employees. With over 30 years of related experience, both as a practitioner and as a consultant, Jan specializes in administrative classification issues, *Fair Labor Standards Act* compliance, and payroll restructuring and administration. She is also well-versed in communicating complex classification and compensation issues in a clear and understandable fashion and will assist in communicating study results to department heads, elected officials, and employees. Ms. Hansford has assisted in managing over 400 personnel-related projects. Jan holds the IPMA-SCP designation from the International Public Management Association for Human Resources.

Mr. Mark Knowles. Mark Knowles, Principal Consultant with Condrey and Associates, is the founder of GovDirections.com – a leading online procurement monitoring system. Mark has prior experience with the Georgia Municipal Association, where he provided technical assistance to local governments. Mark has assisted with organizational management issues related to technology in several communities including the cities of Rapid City, South Dakota, and Auburn, Alabama. Mark has experience in performance benchmarking and assisted in the design and implementation of systems in communities such as Lowndes County and Dawson County, Georgia. Mark has over twenty years of classification and compensation experience and has assisted managing projects in over 200 jurisdictions across the United States.

Mr. Gene Mays. Gene Mays, Senior Consultant with Condrey and Associates, has over twenty-five years of law enforcement experience as a Patrol Officer, Corporal, Juvenile Officer, Detective, Sergeant, Internal Affairs Officer, and Captain with the Athens-Clarke County Police Department. He recently retired as Chief Deputy of the Clarke County, Georgia Sheriff Department. In addition to directly-related law enforcement experience, Gene is a skilled law

enforcement consultant, having consulted with numerous jurisdictions concerning personnel-related issues (classification and compensation, job analysis, and assessment centers). Gene coordinated the law enforcement interviews with the City of Anniston, Alabama, Orange County, North Carolina, Jefferson City, Missouri, North Little Rock and Jonesboro, Arkansas, Galveston County, Texas, Wilson, North Carolina, Auburn, Alabama, Cape Girardeau, Missouri, Sheridan, Wyoming, Gladstone, Missouri and Jasper, Alabama projects.

Mr. James E. Hansford. Jim Hansford, Principal Consultant with Condrey and Associates, has over thirty-five years of experience as a Firefighter, Lieutenant, Captain, Chief of Training and Fire Chief of a consolidated government fire department. He recently retired as the Executive Director of the State of Georgia Firefighter Standards and Training Council, where he administered the certification program for all fire departments in the State of Georgia. Jimmy is a member of the International Association of Fire Chiefs, Georgia Association of Fire Chiefs, and the Georgia Firefighters Association. Mr. Hansford is a skilled consultant, having assisted with over 100 personnel-related projects in various jurisdictions.

Mr. Mike Mahathirath. Mike Mahathirath, Senior Consultant with Condrey and Associates, is co-founder of GovDirections – the leading online procurement monitoring service. Mike has prior experience with the Georgia Municipal Association and the Georgia Department of Community Affairs. Mike managed one of the largest lease-purchase pools in the United States and implementation of a statewide uniform chart of accounts for Georgia Local Governments. Mike has over twelve years of experience working with local governments throughout the United States.

Mr. Ellis Cadenhead. Ellis Cadenhead, Senior Consultant with Condrey and Associates, recently retired as Executive Director of the Coweta County (Georgia) Water Authority. Ellis previously served as Executive Director of Electric Cities of Georgia and Assistant General Manager of Newnan Utilities (Georgia), a full-service utilities commission. Ellis is active in various state and national professional organizations. He assisted with the Galveston, Texas, North Little Rock, Arkansas, Bowling Green Municipal Utilities (Kentucky), Wilson, North Carolina and Muscatine Power and Water (Iowa) projects. Ellis was the founder of the Georgia Public Web, as well as numerous telecommunications innovations while with Newnan Utilities.

Dr. Rex Facer. Rex L. Facer II, Senior Consultant with Condrey and Associates, is an Associate Professor in the Romney Institute of Public Management in the Marriott School at Brigham Young University where he teaches in the Master of Public Administration program. President Obama appointed Facer to the Federal Salary Council in 2010. Facer previously served on NASPAA's Commission on Peer Review and Accreditation, including a term as chair. The commission is the accrediting body for master's degree programs in public administration. Professor Facer regularly lectures and consults nationally and internationally on human resource management and local public finance issues. His published research has appeared in leading peer-reviewed journals. His current research focuses on public sector compensation practices, alternative work schedules, and local government finance. Rex coordinates all performance appraisal design and training as well as all salary equity analyses for Condrey and Associates, Inc.

Dr. James M. Austin, Jr. Jim Austin, Senior Consultant with Condrey and Associates, is President of Austin Consulting, Incorporated. Dr. Austin has extensive experience in conducting job analysis, assessment center preparation/administration, policy development, training, and position classification activities in a variety of public and private sector organizations including Home Depot.

Dr. Mark Foster. Mark Foster, Senior Consultant with Condrey and Associates, is an industrial psychologist with over 20 years of experience in law enforcement personnel selection and promotion administration. Mark has coordinated the promotional process for the Georgia State Patrol for the past twelve years, and the Georgia Bureau of Investigation for the past eight years. Additionally, he has consulted nationally with numerous other law enforcement agencies and with Fortune 500 corporations such as Georgia Pacific and Federal Express.

Dr. Cathy Reese. Cathy Reese, Senior Consultant with Condrey and Associates, is Assistant Professor of Public Administration at Arkansas State University where she teaches courses in budgeting, financial administration, and human resource management. Cathy has over 15 years of experience in conducting classification and compensation studies and most recently worked on the North Little Rock and Jonesboro, Arkansas, projects.

Mr. Brian Burke. Brian Burke, Senior Consultant with Condrey and Associates, is a certified Real Estate Appraiser and Fire Officer. Brian has consulted with over 30 organizations, and currently works for a local government.

Ms. Linda Seagraves. Linda Seagraves, Principal Consultant with Condrey and Associates, is a Personnel Specialist with the Vinson Institute of Government. Ms. Seagraves specializes in payroll restructuring and is skilled in calculating project implementation costs so that accurate budget projections are provided to the client. Ms. Seagraves has consulted with over 500 organizations.

Dr. Greg Reece. Greg Reece, Principal Consultant with Condrey and Associates, is a skilled technical writer, author and consultant. He holds graduate degrees from Vanderbilt University (M.Div.) and Claremont Graduate University (Ph.D). He teaches courses in Ethics at the University of Alabama, Birmingham.

## SUMMARY OF CONSULTANT RESPONSIBILITIES AND ASSIGNMENTS

**Steve Condrey** will serve as project director and will coordinate all direct contacts with the client in conjunction with **Jan Hansford**. Jan will also coordinate the classification interview schedule, personally interview top administrative personnel (department heads), be responsible for constructing the overall classification plan, direct the salary survey, calculate project implementation costs, review the proposed classification plan with appropriate City officials, and be available on an as-needed basis for follow-up technical assistance and training during the first year of project implementation.

**Linda Seagraves** will coordinate salary data collection activities as part of this project and will calculate the costs of various project implementation plans.

The City of Bismarck staff support required for the project will be minimal. We request that one person be appointed to serve as our principal contact for the purpose of communicating project plans and schedules and gathering current payroll information.

## SUMMARY OF THE PROPOSED FEE STRUCTURE

Condrey and Associates will provide the services outlined in the enclosed draft contract for the **fixed cost** of $32,500. This fee includes one year of follow-up technical assistance at no additional charge to the jurisdiction.

MEMORANDUM OF AGREEMENT

This agreement is made and entered into this ____ day of _____ 2020, by and between the City of Bismarck, party of the first part, hereinafter called the COOPERATOR and Condrey and Associates, Inc., party of the second part, hereinafter called the CONSULTANT. All obligations under this agreement will be performed by Condrey and Associates, Inc.

**WITNESSETH**, inasmuch as the COOPERATOR is desirous of setting up a cooperative service with Condrey and Associates and inasmuch as the CONSULTANT is willing to undertake and conduct such a cooperative service, the purpose of this agreement is to establish the terms and conditions under which such a cooperative service will be accomplished pursuant to the conditions herein set forth.

The CONSULTANT is an independent contractor. Furthermore, the parties hereto agree that any information gathered from the COOPERATOR or its employees, and the documents prepared therefrom, shall be the property of the COOPERATOR. They shall remain confidential and shall not be used by CONSULTANT other than in its duties and responsibilities hereunder.

**NOW, THEREFORE**, in consideration of the following mutual promises, covenants, and conditions, it is agreed as follows:

## Section I

Condrey and Associates will:

a. Carry on the cooperative service onsite and in the offices of Condrey and Associates substantially as set forth in the attached outline marked "Appendix A" and made a part of this agreement.

b. Preserve all of its records bearing upon the amounts payable under this agreement, and further agrees that any specifically authorized representative of the COOPERATOR shall, until the expiration of one year after final payment under this agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of Condrey and Associates involving transactions related to this agreement.

**Section II**

COOPERATOR will pay Condrey and Associates a fixed fee of $32,500. This amount will be paid in two (2) equal installments, within twenty (20) days of receipt of billing. The invoices should be directed to Mr. Robert McConnell, Human Resources Director, City of Bismarck, 221 N. 5th Street, Bismarck, ND 58506-5503; telephone number (701) 355-1330. The billings shall occur on August 15, 2020 and November 1, 2020.

**Section III**

The term of this agreement shall be from August 1, 2020 through November 30, 2020. However, it may be terminated by either party by written notice of such intent submitted 30 days in advance. In the event of such termination, the COOPERATOR will pay Condrey and Associates a prorated portion of the upcoming installment consistent with the revised termination date. Condrey and Associates will continue to work on the project until the revised termination date and will provide to the COOPERATOR interim findings and summary notes that reflect the status of the project at the time of revised termination.

**Section IV**

This agreement may be modified at any time by mutual consent of the parties hereto. Any modification hereto shall be in writing and signed by both parties.

**Section V**

Neither party to this agreement will discriminate against any person, employee or applicant for employment because of race, creed, color, religion, sex, national origin, ancestry, age, veteran status, or disability.

**IN WITNESS WHEREOF**, this agreement is entered into on the date first above written.

FOR CONDREY AND ASSOCIATES:

_____
Stephen E. Condrey
President

Date:_____

_____
Jan H. Hansford
Vice President

Date:_____

FOR THE CITY OF BISMARCK:

_____

Date:_____

Corporate Seal

# APPENDIX A

## Contract for Technical Assistance to the City of Bismarck: Proposal for Reviewing and Updating the City's Compensation and Classification System

The administration of the City of Bismarck has determined the need for a review and updating of the job classification system and pay plan for its employees covered under its personnel system.

### Objectives

Condrey and Associates proposes the following schedule of activities to accomplish three objectives:

1. Review and revise the current personnel classification system and pay plan for all employees covered under this agreement;

2. Collect salary data and produce a recommended pay plan based on job analysis, job evaluation, and survey data; and

3. Train designated personnel in each step of classification and pay plan development to help insure the implementation and maintenance of the system.

### Phase I – Developing a Work Plan and Schedule of Activities

1.1 Condrey and Associates, in cooperation with appropriate officials, will generate a work plan of activities and target dates for completion.

1.2 During this phase all the documents detailing the current personnel policies and procedures, job classification system and pay plan will be made available to Condrey and Associates for review and analysis.

### Phase II – Job Analysis Survey

2.1 Condrey and Associates staff will interview city department heads concerning employee duties and responsibilities.

2.2 Condrey and Associates will review specifically identified positions and make recommendations for placement on the current plan and assist with a general audit to determine if any other positions warrant review.

2.3 Condrey and Associates staff will make recommendations for revision of the position classification system based on 2.1 and 2.2 above.

**Phase III -- Job Evaluation**

3.1 Condrey and Associates staff will furnish a job evaluation format of established procedures for ranking jobs and measuring differences in job content.

3.2 Condrey and Associates staff and appropriate city officials will select a format best suited for measuring different levels of knowledge, skills, and abilities required to perform the jobs to be evaluated.

**Phase IV -- Developing a Compensation Structure**

Condrey and Associates will:

4.1 Condrey and Associates will conduct a salary survey of organizations specifically for this project. The survey will include up to 25 organizations and 40 benchmark positions.

4.2 Condrey and Associates will collect, review, and format published salary data covering relevant public and private organizations.

4.3 Condrey and Associates will analyze and format the survey data for use in establishing competitive pay levels.

4.4 After the survey data is compiled, Condrey and Associates will review all data generated to this point with appropriate officials to determine what additional information needs to be considered before moving to the next phase.

**Phase V – Developing a Pay Plan**

Condrey and Associates will:

5.1 Establish recommended pay grades based on the job evaluation results (Phase III) and the wage survey (Phase IV).

5.2 Establish pay steps or ranges in each grade and present the complete recommended pay plan to appropriate officials for review. At this point the plan will reflect the data from Phases III and IV as well as cost-of-living data and the jurisdiction's financial condition and compensation policy.

**Phase VI – Implementing and Administering the Program**

Condrey and Associates will:

6.1 Recommend a series of career ladders and lattices as appropriate.

6.2 Determine the proper FLSA designation of each position.

6.3 Present alternative plans to ameliorate salary compression.

6.4 Be available to provide a reasonable level of ongoing technical assistance necessary to maintain the program.

**Cost and Duration**

The cost to Condrey and Associates to provide the services specified in this proposal will be a **fixed fee** of $32,500. Considering the scope of the project, we anticipate a four (4) month work plan beginning August 1, 2020, with final reports submitted on or before November 30, 2020. Follow-up technical assistance will be provided through November 30, 2021 at no additional cost to the City (with the exception of travel-related costs). Formal involvement would terminate November 30, 2020.

City of Bismarck
Schedule of Activities

| DATE | ACTIVITY |
|---|---|
| August 2020 | o Conduct project orientation for human resources staff and department heads<br>o Distribute current job descriptions for department head review<br>o Revised job descriptions returned to Condrey and Associates |
| September 2020 | o Conduct department head interviews<br>o Conduct salary survey |
| October 2020 | o Continue salary survey |
| November 2020 | o Develop preliminary cost estimate<br>o Present preliminary classification and pay report<br>o Publish final report |
| December 2020 - November 2021 | o Provide follow-up technical assistance in pay plan implementation. |

Project Directors: Dr. Stephen E. Condrey, President
Ms. Jan Hansford, Vice President
Condrey and Associates, Inc.
PO Box 7907
Athens, GA 30604-7907
(706) 380-7107 (Phone)
(586) 816-4067 (FAX)
steve@condrey-consulting.com
jan@condrey-consulting.com
www.condrey-consulting.com

CONDREY & ASSOCIATES, INC.

A Human Resources Consulting Company

June 5, 2020

Mr. Robert McConnell
Human Resources Director
City of Bismarck
221 N. 5th Street,
Bismarck, ND 58506-5503

Dear Mr. McConnell:

I have enclosed a proposal to conduct an update of the classification and compensation plan for the City of Bismarck. If selected, we plan to begin work on the project August 1, 2020, with a preliminary report submitted for review in November 2020 and a final report submitted on or before November 30, 2020. The enclosed proposal outlines a thorough study for the City.

If selected for this project, we will interview department heads concerning employee job duties and responsibilities. You will note from the enclosed proposal, in the department head interview process we utilize a variety of skilled consultants with specific subject matter knowledge of local government administration, public safety, public utilities, public finance, public works and information technology. This process leads to a valid and expertly prepared compensation plan that is accepted by the City's employees.

Condrey and Associates has been serving clients nationwide for more than 21 years and has never been involved in any litigation. I strongly encourage you to check the references we have listed in our proposal packet. I believe you will find that we work very hard to deliver a thoroughly documented and competitive personnel system that meets the needs of management and employees alike.

This offer of services is valid until December 31, 2020. We will be happy to revise the enclosed memorandum of agreement to meet appropriate legal requirements as deemed necessary by the City of Bismarck or to enter into an appropriate contract initiated by the City.

We are looking forward to providing high quality human resource management consulting services to the City of Bismarck. I believe you will find our firm to be highly competent and responsive to the needs of your jurisdiction. Please contact me at (706) 380-7107 if I may provide further information.

Sincerely,

Steve Condrey

Steve Condrey, Ph.D.
President

706.540.2099 706.380.7107 PO Box 7907 Athens, GA 30604-7907 www.condrey-consulting.com

# A Classification and Compensation Study for the City of Bismarck, North Dakota

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**Condrey and Associates, Inc.**
**P.O. Box 7907**
**Athens, Georgia 30604-7907**
**(706) 380-7107 (phone)**
**www.condrey-consulting.com**

# SCHEDULE OF ACTIVITIES

| DATE | ACTIVITY |
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| August 2020 | o Conduct project orientation for human resources staff and department heads<br>o Distribute current job descriptions for department head review<br>o Revised job descriptions returned to Condrey and Associates |
| September 2020 | o Conduct department head interviews<br>o Conduct salary survey |
| October 2020 | o Continue salary survey |
| November 2020 | o Develop preliminary cost estimate<br>o Present preliminary classification and pay report<br>o Publish final report |
| December 2020 - November 2021 | o Provide follow-up technical assistance in pay plan implementation. |

**FAIR LABOR STANDARDS ACT**
**FAIR LABOR STANDARDS ACT QUESTIONNAIRE**

**This questionnaire is to be completed by the employee, reviewed by the employee's supervisor, and Department Director, signed and dated by each.**

POSITION TITLE: _____ DEPARTMENT _____

| | | CIRCLE ONE | |
|---|---|---|---|
| 1. | Are you paid at least $684 per week? | YES | NO |
| 2. | Are you paid on a salary basis? (A salaried position is one which regularly receives a pre-determined amount constituting all or part of an employee's compensation each pay period on a weekly or less frequent basis. This amount is not subject to reduction because of variations in the quality or quantity of the work performed.) | YES | NO |
| | Is your pay period a week or longer? | YES | NO |
| 3. | Do your exempt functions occupy more than 50% of your work hours? (Examples of exempt functions are selecting and training employees, directing work, supervising employees, disciplining employees, allocating work among employees, and formulating policies.) | YES | NO |

Explain your response
_____
_____

Are the exempt functions of your job (supervising, managing, formulating policies, Etc.) more important to the employer's operations than the non-exempt duties performed by you? YES NO

Explain your response below:
_____
_____

Are you relatively free from supervision? YES NO

# *Salary Survey*

- Custom Salary Survey with 25 potential organizations
  - Response Rate Averages Over 75%

# *Project Leaders*

Steve Condrey

Jan Hansford

Mark Knowles

# *Subject Matter Experts*

Steve Condrey
Jan Hansford
Mark Knowles
Gene Mays
Jim Hansford

Our Subject Matter Experts have an average of over 25 years of professional experience.

Linda Seagraves

# Pay Plan Considerations

- Pay Philosophy
- Internal versus External Equity
- Updates are necessary to maintain market position

# *Annual Adjustments*

| Employment Cost Index | | Bismarck Actual Adjustment |
|---|---|---|
| 2017 | 2.6 | 0 |
| 2018 | 2.2 | 0 |
| 2019 | 3.0 | 1.7 |
| 2020 | 2.8 | 2.5 |

# *Reasons to Select*

- High quality, state-of-the-art product
- Experienced, knowledgeable staff
- Only experienced classification analysts will conduct the classification interviews to ensure an internally equitable classification plan
- We will involve the City of Bismarck and employees in developing the new personnel system – no surprises
- We are committed to seeing the new classification plan implemented and will provide technical assistance after the project is completed
- No hidden costs – there are no additional charges for conducting classification appeals; also, all Condrey and Associates deliverables, such as job evaluation manuals, become the property of the City of Bismarck

**Condrey and Associates, Inc.**

**P.O. Box 7907**

**Athens, Georgia 30604-7907**

**(706) 380-7107 (phone)**

**www.condrey-consulting.com**

# ADMINISTRATION

**DATE:** June 16, 2020

**FROM:** Keith J. Hunke, City Administrator

**ITEM:** Vision Fund Committee – Cloverdale Foods Company

## REQUEST

Consider request from the Vision Fund Committee regarding a Bank of North Dakota PACE program interest rate buy down for Cloverdale Foods Company.

Please place this item on the June 23, 2020 City Commission meeting.

## BACKGROUND INFORMATION

Cloverdale Foods Company has requested a Bank of North Dakota PACE program interest rate buydown. The Vision Fund Committee reviewed the Cloverdale Foods Company application at its June 11, 2020 meeting. Cloverdale Foods Company is experiencing significant growth and needs a large office/plant/warehouse expansion to accommodate that growth. The Vision Fund Committee considered and supported the application as a full application recommending structuring the funding of the PACE interest buy down as a loan. The Lewis & Clark Development Group will provide the loan servicing administration required for this request. Cloverdale Foods Company will pay a one-time fee of $1500.00 to Lewis & Clark Development Group. A loan interest charge of 0% during a 5 year buy down period and a 5-year repayment period were also recommended. The Vision Fund Committee approved moving the request to the City Commission for consideration and final approval. The amount requested from the Vision Fund is $133,503.40. Nathan Schneider, ChamberEDC Vice-President will be available to answer questions the Board may have regarding this request.

## RECOMMENDED CITY COMMISSION ACTION

Consider approval of request from the Vision Fund Committee to consider a Bank of North Dakota PACE program interest rate buy down for Cloverdale Foods Company, structured as a loan in the amount of $133,503.40.

## STAFF CONTACT INFORMATION

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

# BISMARCK VISION FUND APPLICATION - FORM 2

Please complete and return to the Bismarck Mandan Chamber EDC
1640 Burnt Boat Drive, Bismarck, North Dakota 58503.

Applications will be reviewed by the Bismarck Vision Fund Committee.
Please allow 3 - 4 weeks for consideration.

## GENERAL CONTACT INFORMATION

Business Name: Cloverdale Foods Company

Business Address: 3015 34th Street NW

City: Mandan State: ND Zip Code: 58554

Project Address: Same as Business Address

City: State: Zip Code:

Contact: Miranda Bergquist

Business Phone Number: 701-663-9511 Cell Number: 701-471-5372

Federal Tax ID Number: 45-0124010

E-Mail: mirandab@cloverdalefoods.com

## COMPANY INFORMATION

Has the company or any of the principals ever been involved in bankruptcy? ☐ Yes ☑ No

Plant/Facilities/Office Locations: 1 location and office location in Houston

| Current Employees | Full-Time: 384 | Avg. Salary: $48,000 | Part-Time: 11 | Avg. Salary: $20,000 |
|---|---|---|---|---|

Briefly outline employee benefits provided:

Health, Vision, Dental, 401k, Life Insurance, PTO, Holiday Pay, Supplemental Insurances

## PRIMARY BANK ACCOUNT:

Name: First International Bank Address: 1601 N 12th Street, Bismarck, ND 58501

Telephone: 701-751-8500 Contact Person: Brad Thompson

## COMPANY ATTORNEY:

Name: Vogel Law Firm Address: 200 N 3rd St, Ste 201, Bismarck, ND 58501

Telephone: 701-258-7899 Contact Person: Kris-Ann Norby

## COMPANY BUSINESS/MARKETING CONSULTANT:

Company Name: Address:

Telephone: Contact Person: Leigh Milander - VP of Marketing - Cloverdale Employee

**NOTE:**

Individual(s)/firms listed in F, G, H, above, may be contacted unless you specifically request otherwise.

# BISMARCK VISION FUND APPLICATION - FORM 2

Please complete and return to the Bismarck Mandan Chamber EDC
1640 Burnt Boat Drive, Bismarck, North Dakota 58503.

Applications will be reviewed by the Bismarck Vision Fund Committee.
Please allow 3 - 4 weeks for consideration.

**List of Required Attachments:**

A. A completed Vision Fund Form 3 (Project financing breakdown).

B. A completed Vision Fund Form 4 (Current and projected employment).

C. A completed business plan to include two (2) years pro forma financial statements. (Only for New Business Ventures)

D. If applying for a PACE or Flex PACE buy down, an amortization schedule from the Bank of North Dakota.

**For any direct loans, other than PACE or Flex PACE buy down funding, from the Bismarck Vision Fund the following may be required:**

1. Financial statements for the past three (3) fiscal years, including: balance sheets, income statements, statements of changes in financial position, and notes to financial statements.
2. Most recent interim financial statements (balance sheets, income statements, if available).
3. Federal tax returns filed by the business for the previous three years.
4. Pro forma balance sheet, income statement, and cash flow statement for the 24 months following the loan closing that shows the financial position of the business, including the proposed financing.
5. Signed personal financial statements dated as of the date of the application for any person who owns 20% or more interest in the business. In addition, include data privacy forms signed by each individual submitting personal financial statements. (Information Release form attached)
6. Any other information, including a key person insurance policy which may be available to secure the loans, which would assist us in processing your application as efficiently as possible.
7. Information concerning any pending or threatened litigation or administrative proceeding or any outstanding administration orders, judgment, or injunctions.

**BISMARCK VISION FUND APPLICATION - FORM 3**

Please complete and return to the Bismarck Mandan Chamber EDC
1640 Burnt Boat Drive, Bismarck, North Dakota 58503.

Applications will be reviewed by the Bismarck Vision Fund Committee.
Please allow 3 - 4 weeks for consideration.

## SOURCES

| USES | Bismarck Vision Fund Amount | % | Bank Amount | % | Equity Amount | % | Other Amount | % | Total Amount |
|---|---|---|---|---|---|---|---|---|---|
| Land Acquisition | | | | | | | | | 0 |
| Acquisition of/or improvements to building | | | 8,468,378 | | 1,952,132 | | 5,407,405 | | 15,827,915 |
| Acquisition of machinery or equipment ☐ new ☐ used | | | 1,000,000 | | | | 500,000 | | 1,500,000 |
| Inventory Purchased | | | | | | | | | 0 |
| Other | 133,503.40 | | 500,000 (BND) | | | | 133,503.40 | | 767,007 |
| TOTALS: | 133,503.40 | | 9,968,378 | | 1,952,132 | | 6,040,908 | | 18,094,922 |

Please describe any Sources and/or Uses listed above as Other

Other Acquisitions of Improvements to building - $5.4M SBA 504 - $398,158 of this amount is contingency
Other Acquisition of equipment - $500,000 CDBG Block Grant for new racking in the warehouse addition/remodel
Other - PACE Buy Down Funding through the BND - Mandan Growth Fund doing the other 50% of the Community Portion.

Please enclose copies of bids you have received which support the cost assumptions and commitment letters from banks or other institutions which support the itemization.

# BISMARCK VISION FUND APPLICATION - FORM 4

Please complete and return to the Bismarck Mandan Chamber EDC
1640 Burnt Boat Drive, Bismarck, North Dakota 58503.

Applications will be reviewed by the Bismarck Vision Fund Committee.
Please allow 3 - 4 weeks for consideration.

## CURRENT AND PROJECTED EMPLOYMENT

| Type of Employment | Existing Jobs as of Application Date: | | Employment Projections 1st Year | | Employment Projections 2nd Year | | Employment Projections 3rd Year | | Current Average Wage/Salary | Average Starting Wage/Salary (only for projected new employees) |
|---|---|---|---|---|---|---|---|---|---|---|
| | FT: | PT: | FT: | PT: | FT: | PT: | FT: | PT: | | |
| Professional | 50 | 1 | 51 | 1 | 52 | 1 | 53 | 1 | $40,000 to $120,000 | $50,000 |
| Managerial | 14 | 0 | 15 | 0 | 16 | 0 | 17 | 0 | $50,000 to $90,000 | $60,000 |
| Technical | 320 | 10 | 342 | 10 | 363 | 10 | 386 | 11 | $15 to $28/hr | $20/hr |
| | | | | | | | | | | |
| TOTALS: | 384 | 11 | 408 | 11 | 431 | 11 | 456 | 12 | $48,000 | $50,000 |

Salary and benefit total amounts should be provided for each job category. Do salary and wage employees receive same benefits? ☑ Yes ☐ No

If no, please explain any differences.

The data which you supply to the Bismarck Vision Fund will be used to assess your firm's qualifications for a business loan. We will not be able to process your financial application without it. There is a possibility this data might constitute a public record if and when a loan is approved, and, at this time, the data may be examined by anyone.

The undersigned says he/she is duly authorized to verify the foregoing application, that he/she has read the same and is familiar with the statements contained herein and that the same are true in substance and in fact. The undersigned specifically authorizes the Bismarck Vision Fund to do a background check on the applicant, including the checking of references and the verification of any information on the application.

| Signature of Officer of Applicant or Owner if Sole Proprietor | Date | Title |
|---|---|---|
| | 6-19-2020 | CFO |

BISMARCK MANDAN
CHAMBER | EDC

# BISMARCK VISION FUND APPLICATION - FORM 1

Please complete and return to the Bismarck Mandan Chamber EDC.
1640 Burnt Boat Drive, Bismarck, North Dakota 58504.

For more information, call 701-223-5660. Applications will be reviewed by the Bismarck Vision Fund Committee. Please allow 3 - 4 weeks for consideration.

| GENERAL CONTACT INFORMATION | |
|---|---|
| Business Name: Cloverdale Foods Company | FOR INTERNAL USE ONLY |
| Business Address: 3015 34th St NW | Date Received: |
| City: Mandan State: North Dakota Zip Code: 58554 | Date to Bismarck Vision Fund Committee: |
| Project Address: 3015 34th St NW | Date to Commission: |
| City: Mandan State: North Dakota Zip Code: 58554 | Date Commission Approved: |
| Contact: Miranda Bergquist | Funding Amount Approved: |
| Business Phone Number: 701-663-9511 Ext. 414 | Other: |
| Cell Number: 701-471-5372 | |
| E-Mail: mirandab@cloverdalefoods.com | |
| Date Business Established: 9/12/1925 | |
| Amount Vision Fund Funds Requested: $133,503.40 | |

**FINANCIAL INFORMATION**

Total Project Cost: $17 to $20 M Owner's Equity: $39.5% or $11.6M

**PURPOSE OF REQUEST**

☐ New Business ☑ Business/Equipment Updates ☑ Business Expansion ☐ Other:

**BUSINESS OWNERSHIP INFORMATION**

**Ownership Structure**

☐ Sole Proprietorship ☐ Partnership ☐ Limited Liability Corporation
☐ Public Corporation ☑ Other: S-Corporation

| Key Owner Names- (List all with a 20% interest or more) | Ownership % | Social Security Number: |
|---|---|---|
| Scott Russell | 23.56% | |
| TJ Russell | 37.15% | |
| Craig Russell | 23.43% | |
| | | |

| Key Management Name/Phone # | Titles |
|---|---|
| Miranda Bergquist/ 701-663-9511 Ext. 414 | Chief Financial Officer |

**EMPLOYEE INFORMATION**

| | | | | |
|---|---|---|---|---|
| **Current Employees** | Full Time: 384 | Avg. Salary: 48,000 | Part Time: 11 | Avg. Salary: 20,000 |
| **3-Year Projection** | Full Time: 456 | Avg. Salary: 50,000 | Part Time: 12 | Avg. Salary: 22,000 |
| **5-Year Projection** | Full Time: 512 | Avg. Salary: 52,000 | Part Time: 15 | Avg. Salary: 24,000 |

| | | |
|---|---|---|
| How many jobs will this project create? | Full-Time: 128 over 5 years | Part-Time: 4 over 5 years |
| Average salary of new jobs? | Full-Time: $42,000 | Part-Time: $20,000 |

BISMARCK MANDAN
CHAMBER | EDC

# BISMARCK VISION FUND APPLICATION - FORM 1

Please complete and return to the Bismarck Mandan Chamber EDC.
1640 Burnt Boat Drive, Bismarck, North Dakota 58504.

For more information, call 701-223-5660. Applications will be reviewed by the Bismarck Vision Fund. Executive Committee. Please allow 3 - 4 weeks for consideration.

**PROJECT INFORMATION**

Please provide project summary.

See Project Summary Attached

Describe what your company does to add value to your product, process or service.

See Project Summary Attached

Describe economic impact will this project have on the city of Bismarck.

See Project Summary Attached

Has or will this project receive any other incentive? ☑ Yes ☐ No
If yes, please explain.

Property Tax Exemption, CDBG Block Grant, SBA 504 Loan, Automation Tax Credit, APUC

Please attach the following:

- Copies of bids or receipts received that support cost assumptions
- A commitment letter from a financial institution that indicates terms for projects financing (if applicable.)
- A brief (no more than two pages) description of business, trade area served, kind of jobs to be created, and any other information that may help describe this project and demonstrate eligibility criteria are met.

BISMARCK MANDAN
CHAMBER / EDC

# BISMARCK VISION FUND APPLICATION - FORM 1

Please complete and return to the Bismarck Mandan Chamber EDC.
1640 Burnt Boat Drive, Bismarck, North Dakota 58504.

For more information, call 701-223-5660. Applications will be reviewed by the Bismarck Vision Fund Committee. Please allow 3 - 4 weeks for consideration.

*Additional information or documentation may be requested if deemed necessary.*

Be advised as per North Dakota open records law that applications may be released to the public if requested except for portions subject to NDCC 44-04-18.4 pertaining to confidentiality of trade secret, proprietary, commercial and financial information.

**Certification and Authorization**
I/We certify that all information set forth in this application is a true representation of the facts pertaining to the proposing business for the purpose of obtaining funding under the Bismarck Vision Fund.

I/We understand and acknowledge that any willful misrepresentation of the information contained in this application could result in disqualification from the program, requiring any funds already disbursed to be repaid in full to the City of Bismarck.

The undersigned specifically authorizes the Bismarck Mandan Chamber EDC or its representatives to conduct a background check on the applicant, including the checking of references and the verification of any information on the application.

I understand that personal and/or business information may be requested pursuant to this applicant for an incentive and I hereby give my consent for such information to be provided to the Bismarck Mandan Chamber EDC, Vision Fund Committee, the City of Bismarck or its representatives. I also understand that the Bismarck Vision Fund Committee and the City of Bismarck retain the decision as to whether this incentive application is approved, disapproved, or modified. It is my right to accept or decline the incentive amount and terms approved by the program.

The applicant further certifies that he/she has read and understands the Bismarck Vision Fund Guidelines. The applicant must comply with all local, state and federal regulations. It is understood that all funding commitments are contingent upon the availability of program funds.

**Release of Information**
The applicant hereby authorizes any third party to release to the Bismarck Vision Fund and/or the Bismarck Mandan Chamber EDC without limit, any and all financial information regarding the applicant that is requested by the Bismarck Mandan Chamber EDC, it's representatives or employees. Further, the applicant hereby authorizes release of said records and information by the Bismarck Mandan Chamber EDC to a third party, as deemed necessary by the Bismarck Mandan Chamber EDC, it's representatives or employees.

All owners, officers or partners must sign this application.

Signatures:

DocuSigned by:
Scott Russell
F3165A79201C42F...
*Applicant/Business Owner*

5/13/2020
*Date*

DocuSigned by:
Miranda Bergquist
F30722D4CEBE4FE...
*Applicant/Business Owner*

05/13/2020
*Date*

# Cloverdale Foods Expansion 2020-2021

## Project Summary and Economic Impact

Cloverdale Foods Company is experiencing significant growth and needs a large expansion to accommodate that growth. Cloverdale experienced a 22% growth rate in 2019; which created 64 new jobs and 6M pound increase in manufactured pounds. We are predicting a 10% increase in 2020 and additional 3.8M pound increase in manufactured pounds. The warehouse is currently at capacity and we have already had to start utilizing offsite storage both locally and out of state to help relieve high peak seasons. The bacon category has experienced the largest growth at 39% in 2019 equivalent to a 4.9M pound increase. The NE plant addition is necessary to sustain this growth and allow for dedicated raw meat dock area, bacon holding cooler area, and bacon injection area. The impact to the City of Bismarck and the surrounding economic base are numerous and beneficial. Job creation ranging from entry level up to manager level will occur. This will increase households in the community, which will in turnern impact the following sectors: public education, local banking, insurance, housing/rental properties, vehicle purchases, and utility needs. The larger facility will increase utilities, local mechanical, electrical and parts needs.

Highlights of Bismarck Impact:

- Approximately 55% or 220 of Cloverdale employees live in Bismarck
- 80% Rent apartments and 20% own
- Employees that Rent Contribute:
    - Approx. $1.475M of Rental Income Annually
    - Approx. $210k of Utilities Annually
- Groceries sales impact is approx. $800k Annually
- Bismarck Airport Plan Tickets Spend approximately $170k in 2019
- Maintenance and Parts needs approximately $250k Annually

**Cloverdale Foods Company**
3015 34th St. NW | Mandan, ND 58554

P.O. Box 667 | toll free: 800.669.9511 | local: 701.663.9511 | fax: 701.663.0690 | cloverdalefoods.com

# Cloverdale Foods Expansion 2020-2021

**Project Specifics:**

Warehouse Addition/Remodel – 44,000 sf warehouse addition on the northwest side of the plant. It would allow Cloverdale to grow from approximately 35M up to 70M Pounds annually. Our production flow of product putaway, picking orders, and storing product will be greatly enhanced.

NE Plant Addition– 8,000 sf cooler/freezer addition. This addition will allow us to have a dedicated dock for raw meat handling and additionsal cooler and injection space for processing our Bacon Growth. Our production process for Bacon will get streamlined, become more efficient, and allow us to grow quicker.

Office Addition – 3,000 sf office space additions above the new warehouse dock area.

Major Utility Upgrade – A large electrical and ammonia upgrade will be simultaneously under construction in lieu of these additions. Currently our electrical system is almost at max amp capacity. In order to install new equipment or run the new warehouse addition we need these 2 major utility upgrades.

Site Improvements – Additional investments will need be needed for a parking lot in the lot across the street and a potential road improvement project on 34th Street.

Total cost of all these components is currently estimated between $17M to $20M. As the RFP process wraps up, a more specific budget will be available. It will take approximately 18 months to complete the project and be in occupancy.

**Describe what your company does to add value to your product, process, or service.**

Cloverdale is a wholesale meat processor and through its unique and proprietary processes creates finished goods categories of bacon, hams, franks, and summer sausage.

**Cloverdale Foods Company**
3015 34th St. NW | Mandan, ND 58554

P.O. Box 667 | toll free: 800.669.9511 | local: 701.663.9511 | fax: 701.663.0690 | cloverdalefoods.com

CELEBRATING 100 YEARS
Mandan, ND

# Exhibit A: Cloverdale - RE

**LOAN TYPE:** PACE
**LOAN NUMBER:**
**LEAD BANK:**

*NOTE: The borrower and originating lender should be aware that the fund will provide a set stream of subsidy payments (interest buydown) based upon the payment schedule below. The amount of the borrower's payment, the amortization and all other terms of the loan shall be governed by the promissory note*
*The balances shown here, other than the specific buydown amounts, are intended for illustrative purposes only.*

## Buydown Account Details

| | |
|---|---|
| **INTEREST BUYDOWN AMOUNT:** | $445,848.33 |
| **BND BUYDOWN AMOUNT:** | $289,801.43 |
| **COMMUNITY BUYDOWN AMOUNT:** | $156,046.90 |
| **PRESENT VALUE BND:** | $288,764.54 |
| **PRESENT VALUE COMMUNITY:** | $155,488.57 |
| **CREATED DATE:** | 2/25/2020 |

## Loan without buydown

| | |
|---|---|
| **PRINCIPAL:** | $12,500,000.00 |
| **YIELD RATE:** | 4.75 |
| **AMORTIZATION (MONTHS):** | 240 |
| **PAYMENT:** | $81,251.60 |

| Period | Payment | Principal | Interest | Balance |
|---|---|---|---|---|
| 1 | $81,251.60 | $30,123.13 | $51,128.47 | $12,469,876.87 |
| 2 | $81,251.60 | $31,891.67 | $49,359.93 | $12,437,985.20 |
| 3 | $81,251.60 | $30,376.79 | $50,874.81 | $12,407,608.41 |
| 4 | $81,251.60 | $32,138.15 | $49,113.45 | $12,375,470.26 |
| 5 | $81,251.60 | $30,632.49 | $50,619.11 | $12,344,837.77 |
| 6 | $81,251.60 | $30,757.78 | $50,493.82 | $12,314,079.99 |
| 7 | $81,251.60 | $32,508.37 | $48,743.23 | $12,281,571.62 |
| 8 | $81,251.60 | $31,016.56 | $50,235.04 | $12,250,555.06 |
| 9 | $81,251.60 | $32,759.82 | $48,491.78 | $12,217,795.24 |
| 10 | $81,251.60 | $31,277.42 | $49,974.18 | $12,186,517.82 |
| 11 | $81,251.60 | $31,405.36 | $49,846.24 | $12,155,112.46 |
| 12 | $81,251.60 | $36,345.21 | $44,906.39 | $12,118,767.25 |
| | **$975,019.20** | **$381,232.75** | **$593,786.45** | |

## Loan with buydown

| | |
|---|---|
| **PRINCIPAL:** | $12,500,000.00 |
| **BORROWING RATE:** | 1.00 |
| **AMORTIZATION (MONTHS):** | 240 |

| Period | Payment | Principal | Interest | Balance |
|---|---|---|---|---|
| 1 | $40,887.02 | $30,123.13 | $10,763.89 | $12,469,876.87 |
| 2 | $42,283.23 | $31,891.67 | $10,391.56 | $12,437,985.20 |
| 3 | $41,087.28 | $30,376.79 | $10,710.49 | $12,407,608.41 |
| 4 | $42,477.82 | $32,138.15 | $10,339.67 | $12,375,470.26 |
| 5 | $41,289.14 | $30,632.49 | $10,656.65 | $12,344,837.77 |
| 6 | $41,388.06 | $30,757.78 | $10,630.28 | $12,314,079.99 |
| 7 | $42,770.10 | $32,508.37 | $10,261.73 | $12,281,571.62 |
| 8 | $41,592.36 | $31,016.56 | $10,575.80 | $12,250,555.06 |
| 9 | $42,968.62 | $32,759.82 | $10,208.80 | $12,217,795.24 |
| 10 | $41,798.30 | $31,277.42 | $10,520.88 | $12,186,517.82 |
| 11 | $41,899.31 | $31,405.36 | $10,493.95 | $12,155,112.46 |
| 12 | $45,799.19 | $36,345.21 | $9,453.98 | $12,118,767.25 |
| | **$506,240.43** | **$381,232.75** | **$125,007.68** | |

| Period | Interest Buydown | BND (65.00%) | Community (35.00%) |
|---|---|---|---|
| 1 | $40,364.58 | $26,236.98 | $14,127.60 |
| 2 | $38,968.37 | $25,329.44 | $13,638.93 |
| 3 | $40,164.32 | $26,106.81 | $14,057.51 |
| 4 | $38,773.78 | $25,202.96 | $13,570.82 |
| 5 | $39,962.46 | $25,975.60 | $13,986.86 |
| 6 | $39,863.54 | $25,911.30 | $13,952.24 |
| 7 | $38,481.50 | $25,012.98 | $13,468.52 |
| 8 | $39,659.24 | $25,778.51 | $13,880.73 |
| 9 | $38,282.98 | $24,883.94 | $13,399.04 |
| 10 | $39,453.30 | $25,644.64 | $13,808.66 |
| 11 | $39,352.29 | $25,578.99 | $13,773.30 |
| 12 | $12,521.97 | $8,139.28 | $4,382.69 |
| | **$445,848.33** | **$289,801.43** | **$156,046.90** |

# Exhibit A: Cloverdale - equipment

**LOAN TYPE:** PACE
**LOAN NUMBER:**
**LEAD BANK:**

*NOTE: The borrower and originating lender should be aware that the fund will provide a net stream of subsidy payments (interest buydown) based upon the payment schedule below. The amount of the borrower's payment, the amortization and all other terms of the loan shall be governed by the promissory note.*
*The balances shown here, other than the specific buydown amounts, are intended for illustrative purposes only.*

## Buydown Account Details

| | |
|---|---|
| **INTEREST BUYDOWN AMOUNT:** | $323,382.36 |
| **BND BUYDOWN AMOUNT:** | $210,198.57 |
| **COMMUNITY BUYDOWN AMOUNT:** | $113,183.79 |
| **PRESENT VALUE BND:** | $207,105.39 |
| **PRESENT VALUE COMMUNITY:** | $111,518.23 |
| **CREATED DATE:** | 3/21/2018 |

## Loan without buydown

| | |
|---|---|
| **PRINCIPAL:** | $2,500,000.00 |
| **YIELD RATE:** | 4.75 |
| **AMORTIZATION (MONTHS):** | 84 |
| **PAYMENT:** | $35,121.20 |

| Period | Payment | Principal | Interest | Balance |
|---|---|---|---|---|
| 1 | $35,121.20 | $24,895.51 | $10,225.69 | $2,475,104.49 |
| 2 | $35,121.20 | $25,323.91 | $9,797.29 | $2,449,780.58 |
| 3 | $35,121.20 | $25,100.92 | $10,020.28 | $2,424,679.66 |
| 4 | $35,121.20 | $25,523.51 | $9,597.69 | $2,399,156.15 |
| 5 | $35,121.20 | $25,307.98 | $9,813.22 | $2,373,848.17 |
| 6 | $35,121.20 | $25,411.50 | $9,709.70 | $2,348,436.67 |
| 7 | $35,121.20 | $25,825.30 | $9,295.90 | $2,322,611.37 |
| 8 | $35,121.20 | $25,621.07 | $9,500.13 | $2,296,990.30 |
| 9 | $35,121.20 | $26,028.95 | $9,092.25 | $2,270,961.35 |
| 10 | $35,121.20 | $25,832.34 | $9,288.86 | $2,245,129.01 |
| 11 | $35,121.20 | $25,938.00 | $9,183.20 | $2,219,191.01 |
| 12 | $35,121.20 | $26,922.52 | $8,198.68 | $2,192,268.49 |
| 13 | $35,121.20 | $26,154.21 | $8,966.99 | $2,166,114.28 |
| 14 | $35,121.20 | $26,547.00 | $8,574.20 | $2,139,567.28 |
| 15 | $35,121.20 | $26,369.78 | $8,751.42 | $2,113,197.50 |
| 16 | $35,121.20 | $26,756.46 | $8,364.74 | $2,086,441.04 |
| 17 | $35,121.20 | $26,587.08 | $8,534.12 | $2,059,853.96 |
| 18 | $35,121.20 | $26,695.83 | $8,425.37 | $2,033,158.13 |
| 19 | $35,121.20 | $27,073.28 | $8,047.92 | $2,006,084.85 |
| 20 | $35,121.20 | $26,915.76 | $8,205.44 | $1,979,169.09 |
| 21 | $35,121.20 | $27,286.99 | $7,834.21 | $1,951,882.10 |
| 22 | $35,121.20 | $27,137.46 | $7,983.74 | $1,924,744.64 |
| 23 | $35,121.20 | $27,248.46 | $7,872.74 | $1,897,496.18 |
| 24 | $35,121.20 | $28,111.01 | $7,010.19 | $1,869,385.17 |
| 25 | $35,121.20 | $27,474.90 | $7,646.30 | $1,841,910.27 |
| 26 | $35,121.20 | $27,830.31 | $7,290.89 | $1,814,079.96 |
| 27 | $35,121.20 | $27,701.11 | $7,420.09 | $1,786,378.85 |
| 28 | $35,121.20 | $28,050.12 | $7,071.08 | $1,758,328.73 |
| 29 | $35,121.20 | $27,929.15 | $7,192.05 | $1,730,399.58 |
| 30 | $35,121.20 | $28,043.39 | $7,077.81 | $1,702,356.19 |
| 31 | $35,121.20 | $28,382.71 | $6,738.49 | $1,673,973.48 |
| 32 | $35,121.20 | $28,274.18 | $6,847.02 | $1,645,699.30 |
| 33 | $35,121.20 | $28,606.97 | $6,514.23 | $1,617,092.33 |
| 34 | $35,121.20 | $28,506.84 | $6,614.36 | $1,588,585.49 |
| 35 | $35,121.20 | $28,623.44 | $6,497.76 | $1,559,962.05 |
| 36 | $35,121.20 | $29,358.01 | $5,763.19 | $1,530,604.04 |
| 37 | $35,121.20 | $28,860.60 | $6,260.60 | $1,501,743.44 |
| 38 | $35,121.20 | $29,176.80 | $5,944.40 | $1,472,566.64 |

## Loan with buydown

| | |
|---|---|
| **PRINCIPAL:** | $2,500,000.00 |
| **BORROWING RATE:** | 1.00 |
| **AMORTIZATION (MONTHS):** | 84 |

| Period | Payment | Principal | Interest | Balance |
|---|---|---|---|---|
| 1 | $27,048.29 | $24,895.51 | $2,152.78 | $2,475,104.49 |
| 2 | $27,386.50 | $25,323.91 | $2,062.59 | $2,449,780.58 |
| 3 | $27,210.45 | $25,100.92 | $2,109.53 | $2,424,679.66 |
| 4 | $27,544.08 | $25,523.51 | $2,020.57 | $2,399,156.15 |
| 5 | $27,373.92 | $25,307.98 | $2,065.94 | $2,373,848.17 |
| 6 | $27,455.65 | $25,411.50 | $2,044.15 | $2,348,436.67 |
| 7 | $27,782.33 | $25,825.30 | $1,957.03 | $2,322,611.37 |
| 8 | $27,621.10 | $25,621.07 | $2,000.03 | $2,296,990.30 |
| 9 | $27,943.11 | $26,028.95 | $1,914.16 | $2,270,961.35 |
| 10 | $27,787.89 | $25,832.34 | $1,955.55 | $2,245,129.01 |
| 11 | $27,871.31 | $25,938.00 | $1,933.31 | $2,219,191.01 |
| 12 | $28,648.56 | $26,922.52 | $1,726.04 | $2,192,268.49 |
| 13 | $28,042.00 | $26,154.21 | $1,887.79 | $2,166,114.28 |
| 14 | $28,352.09 | $26,547.00 | $1,805.09 | $2,139,567.28 |
| 15 | $28,212.18 | $26,369.78 | $1,842.40 | $2,113,197.50 |
| 16 | $28,517.46 | $26,756.46 | $1,761.00 | $2,086,441.04 |
| 17 | $28,383.74 | $26,587.08 | $1,796.66 | $2,059,853.96 |
| 18 | $28,469.59 | $26,695.83 | $1,773.76 | $2,033,158.13 |
| 19 | $28,767.58 | $27,073.28 | $1,694.30 | $2,006,084.85 |
| 20 | $28,643.22 | $26,915.76 | $1,727.46 | $1,979,169.09 |
| 21 | $28,936.30 | $27,286.99 | $1,649.31 | $1,951,882.10 |
| 22 | $28,818.25 | $27,137.46 | $1,680.79 | $1,924,744.64 |
| 23 | $28,905.88 | $27,248.46 | $1,657.42 | $1,897,496.18 |
| 24 | $29,586.84 | $28,111.01 | $1,475.83 | $1,869,385.17 |
| 25 | $29,084.65 | $27,474.90 | $1,609.75 | $1,841,910.27 |
| 26 | $29,365.23 | $27,830.31 | $1,534.92 | $1,814,079.96 |
| 27 | $29,263.23 | $27,701.11 | $1,562.12 | $1,786,378.85 |
| 28 | $29,538.77 | $28,050.12 | $1,488.65 | $1,758,328.73 |
| 29 | $29,443.27 | $27,929.15 | $1,514.12 | $1,730,399.58 |
| 30 | $29,533.46 | $28,043.39 | $1,490.07 | $1,702,356.19 |
| 31 | $29,801.34 | $28,382.71 | $1,418.63 | $1,673,973.48 |
| 32 | $29,715.66 | $28,274.18 | $1,441.48 | $1,645,699.30 |
| 33 | $29,978.39 | $28,606.97 | $1,371.42 | $1,617,092.33 |
| 34 | $29,899.34 | $28,506.84 | $1,392.50 | $1,588,585.49 |
| 35 | $29,991.39 | $28,623.44 | $1,367.95 | $1,559,962.05 |
| 36 | $30,571.31 | $29,358.01 | $1,213.30 | $1,530,604.04 |
| 37 | $30,178.62 | $28,860.60 | $1,318.02 | $1,501,743.44 |
| 38 | $30,428.25 | $29,176.80 | $1,251.45 | $1,472,566.64 |

| Period | Interest Buydown | BND (65.00%) | Community (35.00%) |
|---|---|---|---|
| 1 | $8,072.91 | $5,247.39 | $2,825.52 |
| 2 | $7,734.70 | $5,027.56 | $2,707.14 |
| 3 | $7,910.75 | $5,141.99 | $2,768.76 |
| 4 | $7,577.12 | $4,925.13 | $2,651.99 |
| 5 | $7,747.28 | $5,035.73 | $2,711.55 |
| 6 | $7,665.55 | $4,982.61 | $2,682.94 |
| 7 | $7,338.87 | $4,770.27 | $2,568.60 |
| 8 | $7,500.10 | $4,875.06 | $2,625.04 |
| 9 | $7,178.09 | $4,665.76 | $2,512.33 |
| 10 | $7,333.31 | $4,766.65 | $2,566.66 |
| 11 | $7,249.89 | $4,712.43 | $2,537.46 |
| 12 | $6,472.64 | $4,207.22 | $2,265.42 |
| 13 | $7,079.20 | $4,601.48 | $2,477.72 |
| 14 | $6,769.11 | $4,399.92 | $2,369.19 |
| 15 | $6,909.02 | $4,490.86 | $2,418.16 |
| 16 | $6,603.74 | $4,292.43 | $2,311.31 |
| 17 | $6,737.46 | $4,379.35 | $2,358.11 |
| 18 | $6,651.61 | $4,323.55 | $2,328.06 |
| 19 | $6,353.62 | $4,129.85 | $2,223.77 |
| 20 | $6,477.98 | $4,210.69 | $2,267.29 |
| 21 | $6,184.90 | $4,020.18 | $2,164.72 |
| 22 | $6,302.95 | $4,096.92 | $2,206.03 |
| 23 | $6,215.32 | $4,039.96 | $2,175.36 |
| 24 | $5,534.36 | $3,597.33 | $1,937.03 |
| 25 | $6,036.55 | $3,923.76 | $2,112.79 |
| 26 | $5,755.97 | $3,741.38 | $2,014.59 |
| 27 | $5,857.97 | $3,807.68 | $2,050.29 |
| 28 | $5,582.43 | $3,628.58 | $1,953.85 |
| 29 | $5,677.93 | $3,690.65 | $1,987.28 |
| 30 | $5,587.74 | $3,632.03 | $1,955.71 |
| 31 | $5,319.86 | $3,457.91 | $1,861.95 |
| 32 | $5,405.54 | $3,513.60 | $1,891.94 |
| 33 | $5,142.81 | $3,342.83 | $1,799.98 |
| 34 | $5,221.86 | $3,394.21 | $1,827.65 |
| 35 | $5,129.81 | $3,334.38 | $1,795.43 |
| 36 | $4,549.89 | $2,957.43 | $1,592.46 |
| 37 | $4,942.58 | $3,212.68 | $1,729.90 |
| 38 | $4,692.95 | $3,050.42 | $1,642.53 |

| | | | | |
|---|---|---|---|---|
| 39 | $35,121.20 | $29,097.99 | $6,023.21 | $1,443,468.65 |
| 40 | $35,121.20 | $29,407.47 | $5,713.73 | $1,414,061.18 |
| 41 | $35,121.20 | $29,337.30 | $5,783.90 | $1,384,723.88 |
| 42 | $35,121.20 | $29,457.29 | $5,663.91 | $1,355,266.59 |
| 43 | $35,121.20 | $29,756.60 | $5,364.60 | $1,325,509.99 |
| 44 | $35,121.20 | $29,699.50 | $5,421.70 | $1,295,810.49 |
| 45 | $35,121.20 | $29,991.95 | $5,129.25 | $1,265,818.54 |
| 46 | $35,121.20 | $29,943.65 | $5,177.55 | $1,235,874.89 |
| 47 | $35,121.20 | $30,066.13 | $5,055.07 | $1,205,808.76 |
| 48 | $35,121.20 | $30,507.31 | $4,613.89 | $1,175,301.45 |
| 49 | $35,121.20 | $30,313.89 | $4,807.31 | $1,144,987.56 |
| 50 | $35,121.20 | $30,588.96 | $4,532.24 | $1,114,398.60 |
| 51 | $35,121.20 | $30,563.00 | $4,558.20 | $1,083,835.60 |
| 52 | $35,121.20 | $30,831.02 | $4,290.18 | $1,053,004.58 |
| 53 | $35,121.20 | $30,814.12 | $4,307.08 | $1,022,190.46 |
| 54 | $35,121.20 | $30,940.16 | $4,181.04 | $991,250.30 |
| 55 | $35,121.20 | $31,197.50 | $3,923.70 | $960,052.80 |
| 56 | $35,121.20 | $31,194.32 | $3,926.88 | $928,858.48 |
| 57 | $35,121.20 | $31,444.47 | $3,676.73 | $897,414.01 |
| 58 | $35,121.20 | $31,450.53 | $3,670.67 | $865,963.48 |
| 59 | $35,121.20 | $31,579.17 | $3,542.03 | $834,384.31 |
| 60 | $35,121.20 | $32,038.61 | $3,082.59 | $802,345.70 |
| | **$2,107,272.00** | **$1,697,654.30** | **$409,617.70** | |

| | | | | |
|---|---|---|---|---|
| 39 | $30,366.03 | $29,097.99 | $1,268.04 | $1,443,468.65 |
| 40 | $30,610.36 | $29,407.47 | $1,202.89 | $1,414,061.18 |
| 41 | $30,554.96 | $29,337.30 | $1,217.66 | $1,384,723.88 |
| 42 | $30,649.69 | $29,457.29 | $1,192.40 | $1,355,266.59 |
| 43 | $30,885.99 | $29,756.60 | $1,129.39 | $1,325,509.99 |
| 44 | $30,840.91 | $29,699.50 | $1,141.41 | $1,295,810.49 |
| 45 | $31,071.79 | $29,991.95 | $1,079.84 | $1,265,818.54 |
| 46 | $31,033.66 | $29,943.65 | $1,090.01 | $1,235,874.89 |
| 47 | $31,130.36 | $30,066.13 | $1,064.23 | $1,205,808.76 |
| 48 | $31,478.66 | $30,507.31 | $971.35 | $1,175,301.45 |
| 49 | $31,325.96 | $30,313.89 | $1,012.07 | $1,144,987.56 |
| 50 | $31,543.12 | $30,588.96 | $954.16 | $1,114,398.60 |
| 51 | $31,522.62 | $30,563.00 | $959.62 | $1,083,835.60 |
| 52 | $31,734.22 | $30,831.02 | $903.20 | $1,053,004.58 |
| 53 | $31,720.87 | $30,814.12 | $906.75 | $1,022,190.46 |
| 54 | $31,820.38 | $30,940.16 | $880.22 | $991,250.30 |
| 55 | $32,023.54 | $31,197.50 | $826.04 | $960,052.80 |
| 56 | $32,021.03 | $31,194.32 | $826.71 | $928,858.48 |
| 57 | $32,218.52 | $31,444.47 | $774.05 | $897,414.01 |
| 58 | $32,223.30 | $31,450.53 | $772.77 | $865,963.48 |
| 59 | $32,324.86 | $31,579.17 | $745.69 | $834,384.31 |
| 60 | $32,687.58 | $32,038.61 | $648.97 | $802,345.70 |
| | **$1,783,889.64** | **$1,697,654.30** | **$86,235.34** | |

| | | | |
|---|---|---|---|
| 39 | $4,755.17 | $3,090.86 | $1,664.31 |
| 40 | $4,510.84 | $2,932.05 | $1,578.79 |
| 41 | $4,566.24 | $2,968.06 | $1,598.18 |
| 42 | $4,471.51 | $2,906.48 | $1,565.03 |
| 43 | $4,235.21 | $2,752.89 | $1,482.32 |
| 44 | $4,280.29 | $2,782.19 | $1,498.10 |
| 45 | $4,049.41 | $2,632.12 | $1,417.29 |
| 46 | $4,087.54 | $2,656.90 | $1,430.64 |
| 47 | $3,990.84 | $2,594.05 | $1,396.79 |
| 48 | $3,642.54 | $2,367.65 | $1,274.89 |
| 49 | $3,795.24 | $2,466.91 | $1,328.33 |
| 50 | $3,578.08 | $2,325.75 | $1,252.33 |
| 51 | $3,598.58 | $2,339.08 | $1,259.50 |
| 52 | $3,386.98 | $2,201.54 | $1,185.44 |
| 53 | $3,400.33 | $2,210.21 | $1,190.12 |
| 54 | $3,300.82 | $2,145.53 | $1,155.29 |
| 55 | $3,097.66 | $2,013.48 | $1,084.18 |
| 56 | $3,100.17 | $2,015.11 | $1,085.06 |
| 57 | $2,902.68 | $1,886.74 | $1,015.94 |
| 58 | $2,897.90 | $1,883.64 | $1,014.26 |
| 59 | $2,796.34 | $1,817.62 | $978.72 |
| 60 | $2,433.62 | $1,581.85 | $851.77 |
| | **$323,382.36** | **$210,198.57** | **$113,183.79** |

Bismarck

# Community Development Department

**DATE:** June 2, 2020

**FROM:** Ben Ehreth, AICP, Community Development Director

**ITEM:** Elk Ridge Second Addition – Partial Annexation, Zoning Change, Fringe Area Road Master Plan Amendment and Major Subdivision Final Plat

## REQUEST

Ronald Knutson, RBK Ventures, LLP, Boulder Ridge Developers, Inc. and Bismarck North Developers LLC are requesting approval of the partial annexation, a zoning change from the A – Agricultural and R5 – Residential zoning districts to the R5 – Residential and R10 – Residential zoning districts, a Fringe Area Road Master Plan amendment to eliminate the collector designation for a north-south roadway, and a major subdivision final plat for Elk Ridge Second Addition. The proposed annexation would not include the right-of-way for Tyler Parkway. These actions would allow the development of 100 lots in a mix of single and two-family residences.

The property is located in northwest Bismarck, between River Road and East Valley Drive, east of Promontory Point VI Addition along the west and Clairmont Road and south of Ash Coulee Drive along the west side of Tyler Parkway (a replat of Lot 11, Block 7, Lot 14, Block 10, Lot 1, Block 6, Lot 1, Block 5, Eagle Crest 6th Addition and Blocks 4 and 5, Elk Ridge Addition and part of the SE¼ of Section 18 and part of the NE¼ of Section 19, T138N-R80W/ Hay Creek Township).

Please place this item on the June 9, 2020 and June 23, 2020 City Commission meeting agendas.

## BACKGROUND INFORMATION

The Planning and Zoning Commission held a public hearing on these items on April 22, 2020.

No residents spoke at the public hearing; however, several residents did submit written comments prior to the hearing. The primary concerns raised were the proposed R10 zoning and the size of the lots compared to lots sizes in adjacent developments. It was noted during the public hearing that the R10 lots were platted to accommodate one-half of a twinhome and two would be combined for the construction of a single-family home.

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 8-1 vote with Commissioner Bitner abstaining, of the annexation, less the right-of-way for Tyler Parkway; the zoning change from the A – Agricultural and R5 – Residential zoning district to the R5 – Residential and R10 – Residential zoning districts; the Fringe Area Road Master Plan amendment to eliminate the collector designation on a north-south roadway within the proposed plat; and the major subdivision final plat for Elk Ridge Second Addition.

## RECOMMENDED CITY COMMISSION ACTION

June 9th meeting of the Board of City Commissioners – consider the partial annexation as outlined in Ordinance 6417, the zoning change as outlined in Ordinance 6418, and the Fringe Area Road Master Plan amendment as outlined in the resolution, and call for a public hearing on these items for the June 23rd meeting of the Board of City Commissioners.

June 23rd meeting of the Board of City Commissioners – hold a public hearing on the partial annexation as outlined in Ordinance 6417, the zoning change as outlined in Ordinance 6418, and the Fringe Area Road Master Plan amendment as outlined in the resolution; consider the request for approval of the major subdivision final plat for Elk Ridge Second Addition; and take final action on the four related requests.

## 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

Jenny Wollmuth, AICP, CFM | Planner, 355-1845 or jwollmuth@bismarcknd.gov

**ORDINANCE NO. 6417**

| | |
|---|---|
| *First Reading* | _____ |
| *Second Reading* | _____ |
| *Final Passage and Adoption* | _____ |

AN ORDINANCE ANNEXING PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA, DECLARING THE TERRITORY ANNEXED; DECLARING THE SAME TO BE A PART OF THE CORPORATE LIMITS OF SAID CITY.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA.

Section 1. Territory Annexed. The territory and land hereinafter described is hereby declared and found to be a part of the corporate limits of the City of Bismarck, Burleigh County, North Dakota, as follows:

Lots 1 and 2, Block 1; Lots 1-10, Block 2; Lots 1-3, Block 3; Lot 1, Block 4; Lots 1 and 2, Block 5; Lots 1-10, Block 6; Lot 1, Block 7; Lots 1-14, Block 8; Lots 1-3, Block 9; Lots 1 and 2, Block 10; Lots 1-3, Block 11; Lots 1-3, Block 12; Lots 1-16, Block 13; Lots 1-13, Block 14; Lots 1-16, Block 15, Elk Ridge Second Addition, less the right-of-way for Tyler Parkway and less that portion of the plat previously annexed.

The above described tract of land contains 53.72 acres, more or less.

Section 2. Provisions Applicable. From and after the final passage and adoption of this ordinance and upon recording of this ordinance with the Burleigh County Recorder, the territory herein described shall be a part of the corporate limits of the City of Bismarck, Burleigh County, North Dakota.

**ORDINANCE NO. 6418**

| | |
|---|---|
| *First Reading* | _____ |
| *Second Reading* | _____ |
| *Final Passage and Adoption* | _____ |
| *Publication Date* | _____ |

**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 A – Agriculture and R5-Residential zoning districts and included in the R5 – Residential zoning district:

Lots 1-3, Block 3; Lot 1, Block 4; Lots 1-2, Block 5; Lots 1-14, Block 8; Lots 1-3, Block 9; Lots 1-2, Block 10; Lots 1-3, Block 11; Lots 1-13, Block 14; and Lots 1-16, Block 15, Elk Ridge Second Addition.

The following described property shall be excluded from the A – Agriculture and R5-Residential zoning districts and included in the R10 – Residential zoning district:

Lots 1-2, Block 1; Lots 1-10, Block 2; Lots 1-10, Block 6; Lot 1, Block 7; Lots 1-3, Block 12; and Lots 1-16, Block 13, Elk Ridge Second Addition.

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.

# RESOLUTION

## AMENDMENTS TO THE FRINGE AREA ROAD MASTER PLAN IN SECTIONS 18 and 19, T139N-R80W/HAY CREEK TOWNSHIP

**WHEREAS**, the Board of City Commissioners of the City of Bismarck, North Dakota, wishes to amend the 2014 Bismarck/Burleigh County Fringe Area Road Master Plan (FARMP), as amended, governing expansion of the roadway network to support anticipated growth; and

**WHEREAS**, the Bismarck Planning and Zoning Commission adopted the FARMP on August 27, 2014 and the Board of City Commissioners received the FARMP on September 9, 2014.

**WHEREAS,** the City of Bismarck finds it necessary, from time to time, to amend portions of the FARMP to further the public interest; and

**WHEREAS,** the proposed amendment does reflect a change in conditions since the FARMP was adopted or last amended in the vicinity.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of City Commissioners of the City of Bismarck, North Dakota to amend the 2014 Bismarck/Burleigh County Fringe Area Road Master Plan, as amended, as follows and as shown on the attached exhibit:

> To eliminate the collector designation for a north-south roadway within Sections 18 and 19, T139N-R80W/Hay Creek Township in the City of Bismarck, Burleigh County, North Dakota.

**BE IT FURTHER RESOLVED** that the Community Development Director of the City of Bismarck and the Policy Board of the Bismarck-Mandan Metropolitan Planning Organization is directed to revise all subsequent publications of the Fringe Area Road Master Plan to reflect the amendments hereby resolved.

Adopted this 23rd day of June, 2020.

## CERTIFICATE

The undersigned, duly qualified member of the Bismarck Board of City Commissioners and City Administrator of the City of Bismarck, certify that the foregoing is a true and correct copy of a resolution, adopted at a legally convened meeting of the Board of City Commissioners held on June 23, 2020.

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the City of Bismarck, North Dakota, this 23rd Day of June, 2020.

(SEAL)

_____
Steve Bakken, President
Board of City Commissioners
Bismarck, North Dakota

ATTEST:

_____

Keith Hunke, City Administrator
Bismarck, North Dakota

# Fringe Area Road Master Plan Reference Map

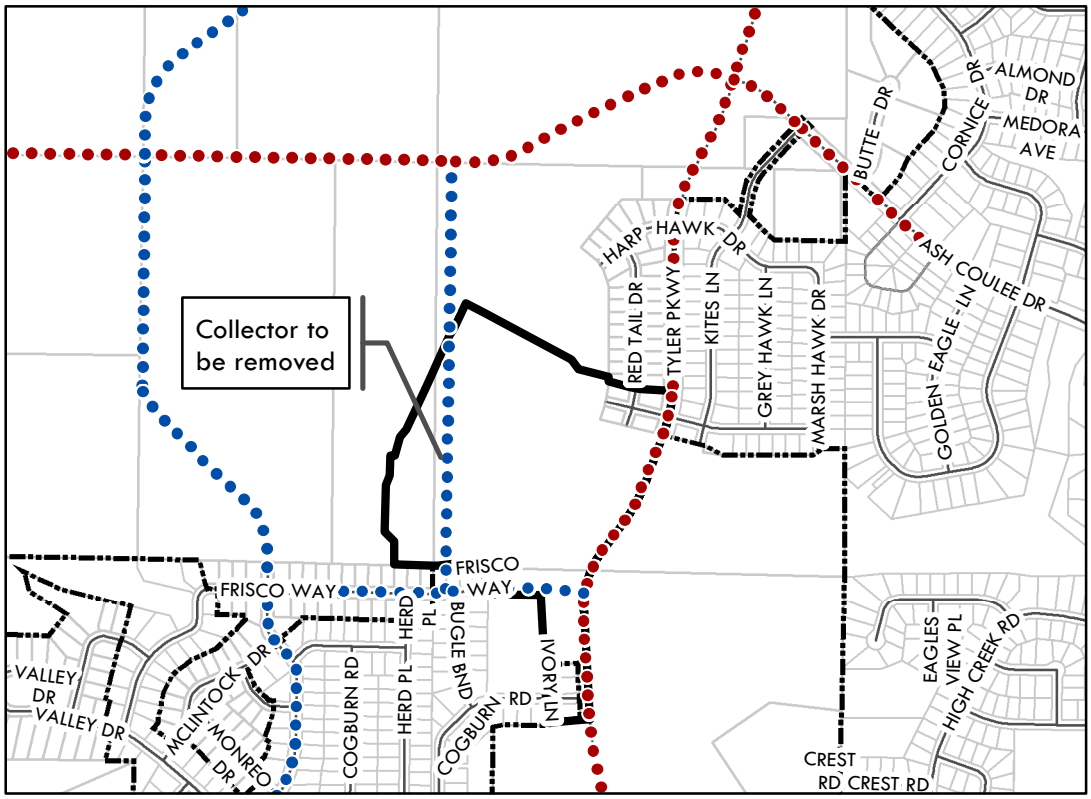
Elk Ridge Second Addition

FRMP2020-001

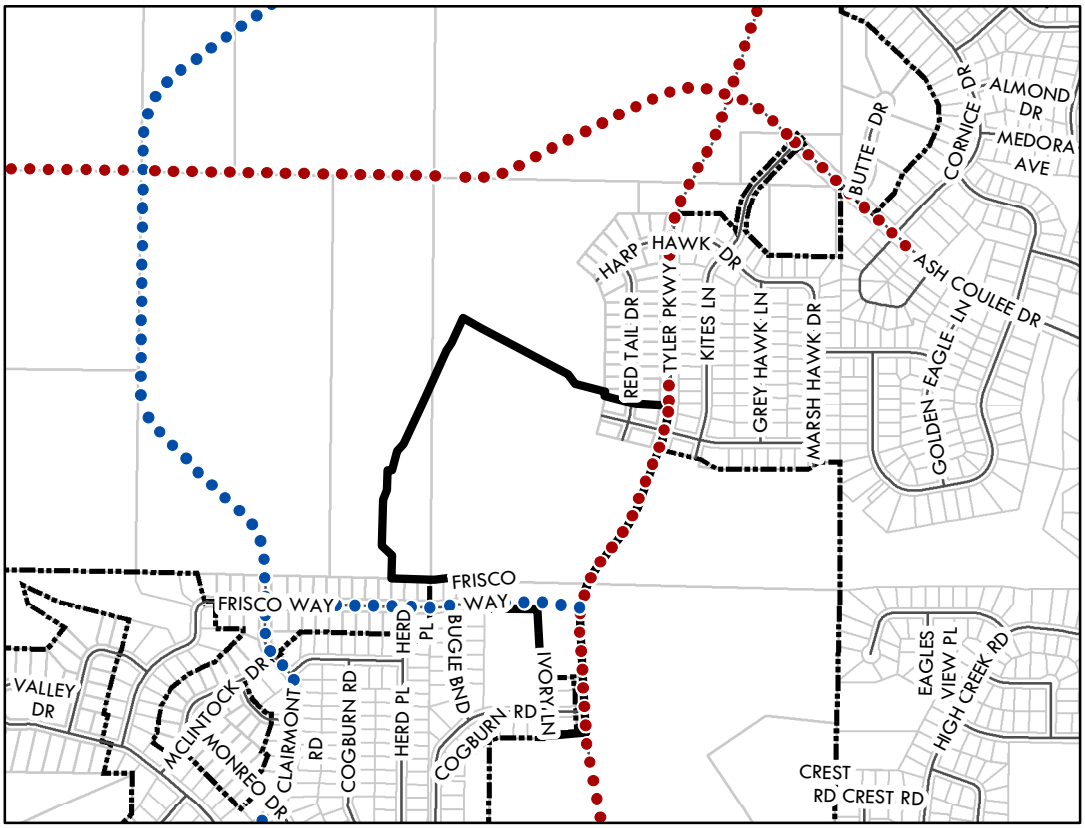
## Existing Plan

*Fringe Area Road Master Plan*

- Planned Arterial
- Planned Collector
- Associated Project Area
- City Limits




## Proposed Plan




Miles

0 0.075 0.15 0.3

*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
Deptartment
Planning Division
January 17, 2020

# STAFF REPORT

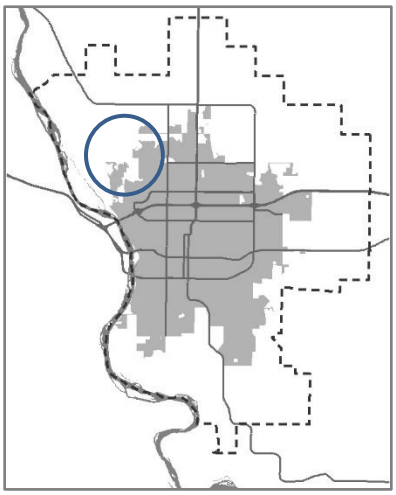
City of Bismarck
Community Development Department
Planning Division

**April 22, 2020**

| **Application for:** | | *TRAKiT Project ID:* |
|---|---|---|
| | **Annexation** | **ANNX2019-005:** |
| | **Zoning Change** | **ZC2019-013** |
| | **Fringe Area Road Master Plan Amendment** | **FRMP2020-001** |
| | **Major Subdivision Final Plat** | **FPLT2020-004** |

## Project Summary

| | |
|---|---|
| *Title:* | Elk Ridge Second Addition |
| *Status:* | Planning & Zoning Commission – Public Hearing |
| *Owner(s):* | Ronald M. Knutson, RBK Ventures, LLP<br>Boulder Ridge Development, Inc, and Bismarck North Developers |
| *Project Contact:* | Landon Niemiller, Swenson Hagen & Co. |
| *Location:* | In northwest Bismarck, between River Road and East Valley Drive, east of Promontory Point VI Addition along the west side of Tyler Parkway (a replat of Lot 11, Block 7, Lot 14, Block 10, Lot 1, Block 6, Lot 1, Block 5, Eagle Crest 6th Addition and Blocks 4 and 5, Elk Ridge Addition and part of the SE¼ of Section 18 and part of the NE¼ of Section 19, T138N-R80W/ Hay Creek Township) |
| *Project Size:* | 58.14 acres |
| *Request:* | Plat, zone, and annex property for future single and two-family residential development |



## Site Information

| **Existing Conditions** | | **Proposed Conditions** | |
|---|---|---|---|
| *Number of Lots:* | 9 parcels | *Number of Lots:* | 99 lots in 15 blocks |
| *Land Use:* | Undeveloped | *Land Use:* | Single and two-family residential |
| *Designated GMP Future Land Use:* | Already zoned. Not in Future Land Use Plan | *Designated GMP Future Land Use:* | Low Density Residential |
| *Zoning:* | A – Agriculture<br>R5 – Residential | *Zoning:* | R5 – Residential<br>R10 – Residential |
| *Uses Allowed:* | A – Agriculture<br>R – Single family residential | *Uses Allowed:* | R5 – Residential<br>R10 - Residential |
| *Max Density Allowed:* | A – 1 unit / 40 acres<br>R5 – 5 units / acre | *Max Density Allowed:* | R5 – 5 units / acre<br>R10 – 10 units / acre |

*(continued)*

**Property History**

| | | | | | |
|---|---|---|---|---|---|
| *Zoned:* | N/A | *Platted:* | N/A | Annexed: | N/A |

**Staff Analysis**

Ronald M. Knutson, RBK Ventures, LLP, Boulder Ridge Development, Inc., and Bismarck North Developers are requesting approval of a zoning change from the A – Agriculture and R5 – Residential zoning districts to the R5 – Residential and R10 –Residential zoning districts, approval of a major subdivision final plat for Elk Ridge Second Addition, and a Fringe Area Road Master Plan Amendment to eliminate a north-south collector roadway within the proposed plat and in Sections 18 and 19, T139N-R80W/Hay Creek Township. The property is proposed to be annexed prior to development.

The Planning and Zoning Commission considered this request at their meeting of January 22, 2020 and called for a public hearing on the zoning change and fringe area road master plan amendment and tentatively approved the preliminary plat.

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on April 10, 2020 and April 17, 2020, and 49 letters were mailed to the owners of nearby properties on April 9, 2020.

Adjacent uses include undeveloped A – Agricultural zoned property to the north, west and east; A – Agricultural and developing R5 – Residential zoned property to the northeast; and developing R5 – Residential property to the south.

*Concurrence with Plans*

The Future Land Use Plan in the 2014 Growth Management Plan, as amended, identifies the majority of the area in the proposed plat as Low Density Residential (LDR). The LDR land use designation allows for single and two-family residential uses and calls for densities in a range from 1 to 4 units per acre. The proposed plat generally conforms to the Future Land Use Plan.

The Growth Phasing Plan in the 2014 Growth Management Plan, as amended, identifies the majority of the proposed plat as Priority and a smaller area located along the western edge of the proposed plat, west of Elk Ridge Drive, as Future. The Priority area is an area where development is anticipated in the short term as municipal utilities are readily accessed, subject to available funding. Although the western edge of the proposed plat is located in the Future area, it is proposed to be served by utilities located within the Priority Area.

The 2014 Fringe Area Road Master Plan, as amended, identifies Frisco Drive as an east-west collector roadway and Tyler Parkway as a north-south arterial roadway.

The Fringe Area Road Master Plan also identifies a north-south collector roadway within area of the proposed plat, in Sections 18 and 19 of Hay Creek Township. A request to amend the Fringe Area Road Master Plan to eliminate this north-south collector classification has been made. Staff supports this request, as Ivory Lane within the plat, and the extension of Ivory Lane north to Ash Coulee Drive, will continue to provide north-south interconnectivity throughout the area, as indicated in the attached developer conceptual roadway plan.

*Neighborhood Parks and Open Space Policy*

The Bismarck Parks and Recreation District approved a Neighborhood Park Development Agreement for Elk Ridge Addition in 2018. The neighborhood park created with the agreement would also serve this plat.

**Required Findings of Fact** (relating to land use)

*Annexation*

1. The City of Bismarck and/or other agencies would be able to provide necessary public services, facilities and programs to serve any

*(continued)*

development allowed by the annexation at the time the property is developed;

2. The proposed annexation is a logical and contiguous extension of the current corporate limits of the City of Bismarck;
3. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance;
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
5. The proposed annexation would not adversely affect the public health, safety and general welfare.

*Zoning Change*

1. The proposed zoning change generally conforms to 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;
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.

*Fringe Area Road Master Plan Amendment*

1. The proposed amendment is compatible with adjacent land uses;
2. The proposed amendment is justified by a change in conditions since the Fringe Area Road Master Plan was established or last amended;
3. The proposed amendment is in the public interest and is not solely for the benefit of a single property owner;
4. The proposed amendment is consistent with the general intent and purpose of the zoning ordinance;
5. The proposed amendment is consistent with the other aspects of the master plan, other adopted plans, policies and accepted planning practice; and
6. The proposed amendment would not adversely affect the public health, safety, and general welfare.

*Final Plat*

1. All technical requirements for approval of a final plat have been met;
2. The final plat generally conforms to the preliminary plat for the proposed subdivision that was tentatively approved by the Planning and Zoning Commission;
3. The proposed subdivision generally conforms to the 2014 Fringe Area Road Master Plan, if amended as proposed;
4. The City Engineer has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP);
5. The provision of neighborhood parks has been meet with the approved neighborhood park in Elk Ridge Addition;
6. The proposed subdivision plat includes sufficient easements and rights-of-way to provide for orderly development and provision of municipal services beyond the boundaries of the subdivision.
7. The City of Bismarck and/or other agencies would be able to provide necessary public services, facilities and programs to serve any

*(continued)*

development allowed by the proposed subdivision at the time the property is developed;

8. The proposed subdivision is not located within the Special Flood Hazard Area (SFHA), also known as the 100-year floodplain, an area where the proposed development would adversely impact water quality and/or environmentally sensitive lands, or an area that is topographically unsuited for development;
9. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
10. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
11. The proposed subdivision would not adversely affect the public health, safety and general welfare.

**Staff Recommendation**

Based on the above findings, staff recommends approval of the annexation of the proposed plat less the right-of-way for Tyler Parkway; the zoning change from the A – Agriculture and R5 – Residential zoning district to the R5 – Residential and R10 – Residential zoning districts; the fringe area road master plan amendment to eliminate a north-south collector roadway within the proposed plat and in Sections 18 and 19, T139N-R80W/Hay Creek Township; and major subdivision final plat for Elk Ridge Second Addition.

**Attachments**

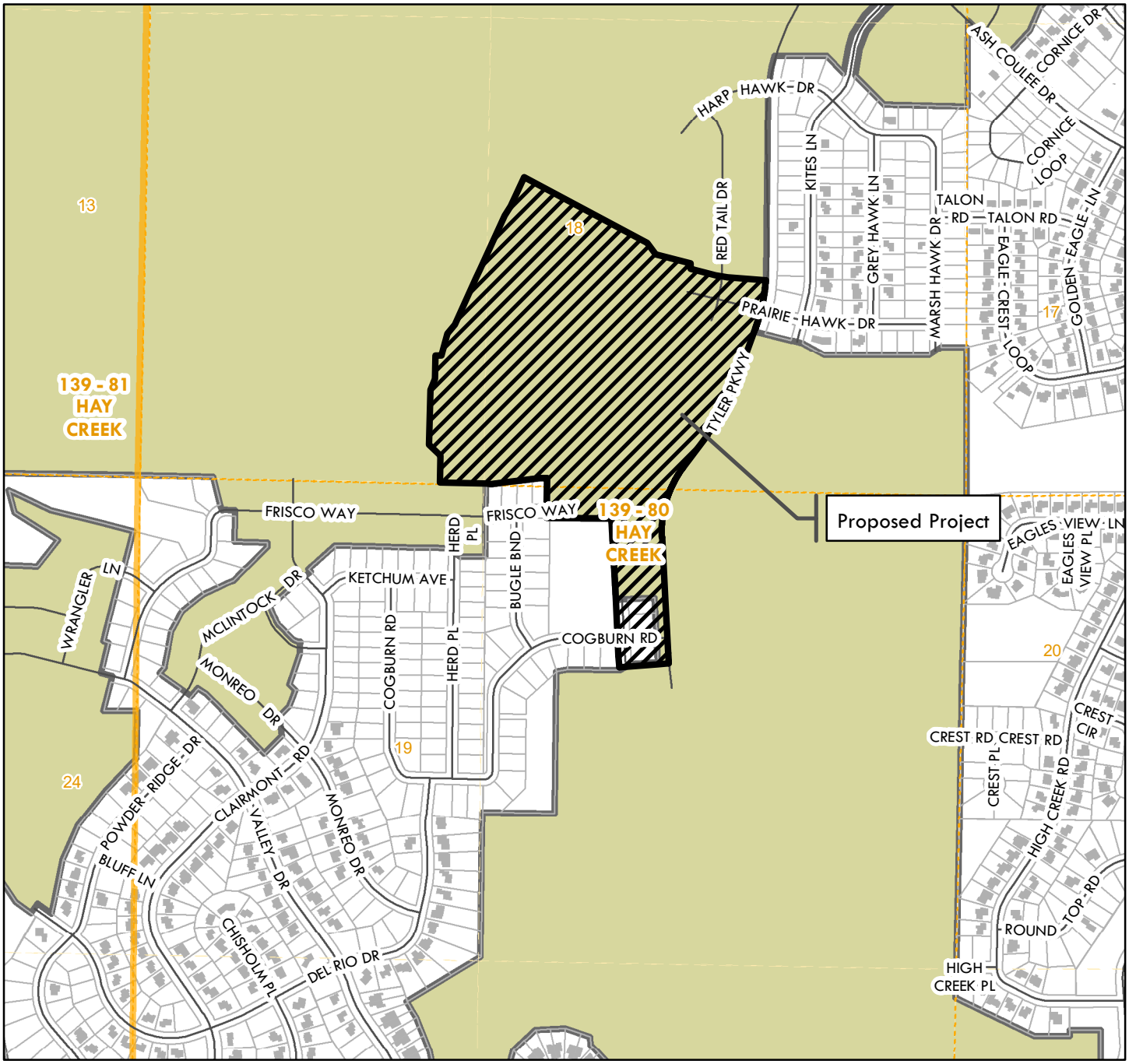
1. Location Map
2. Aerial Map
3. Zoning and Plan Reference Map
4. Fringe Area Road Master Plan Amendment Narrative
5. Developer Conceptual Roadway Plan
6. Fringe Area Road Master Plan Map
7. Final Plat
8. Preliminary Plat

*Staff report prepared by:* Jenny Wollmuth, AICP, CFM
701-355-1845 | jwollmuth@bismarcknd.gov

# Location Map

Elk Ridge Second Addition

ANNX2019-005
ZC2019-013
FRMP2020-001
FPLT2020-004



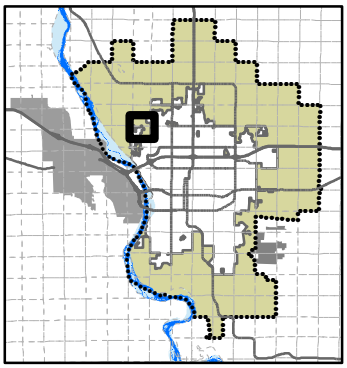

0 0.175 0.35 0.7 Miles

City Limits

Bismarck ETA Jurisdiction

County Outside ETA

*Section, township, and range indicated in orange*



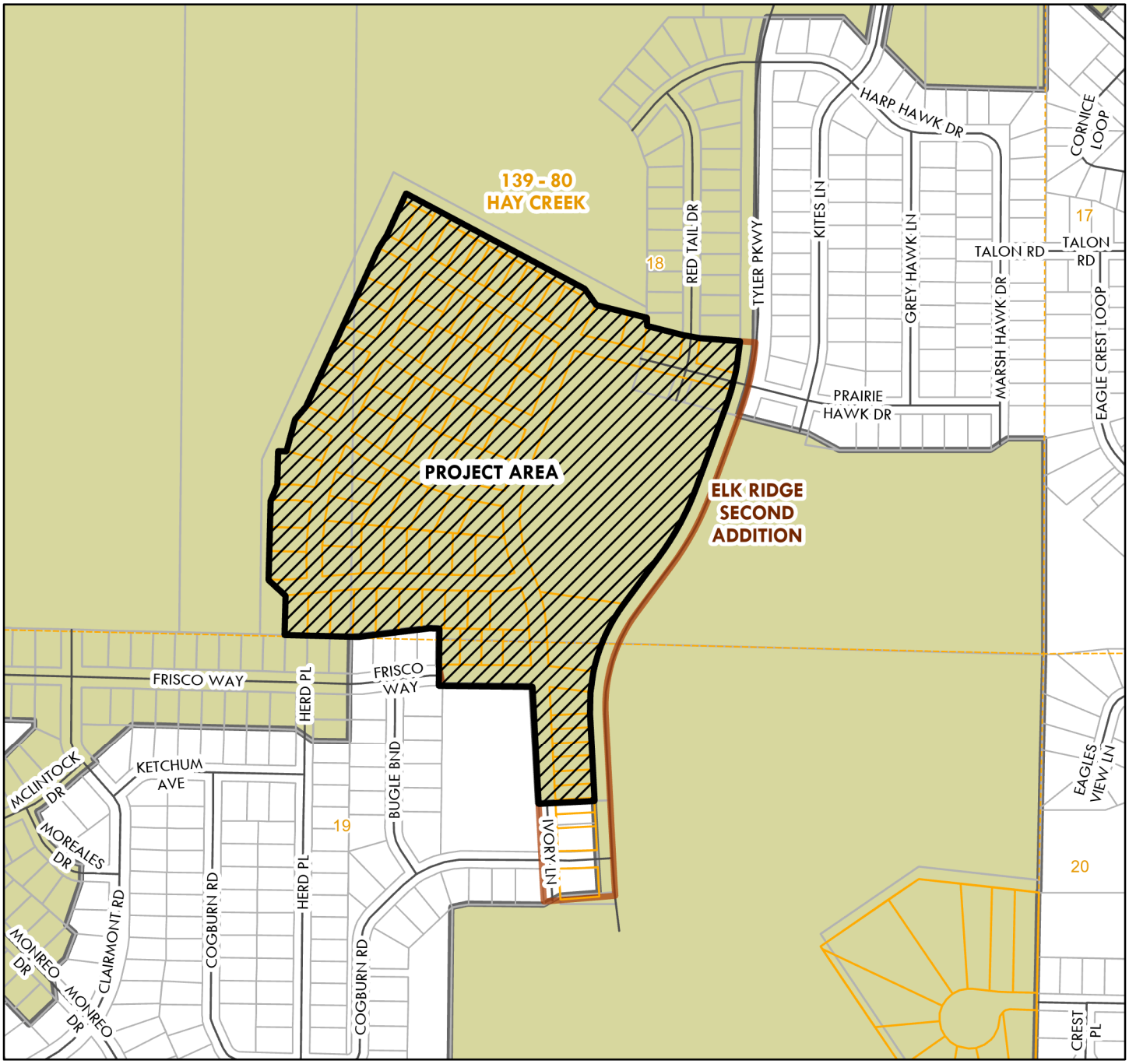
City of Bismarck
Community Development Department
Planning Division
April 15, 2020 (HLB)

*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.*

# Location Map

ANNEXATION OF PART OF ELK RIDGE SECOND ADDITION

ANNX2019-005




0 0.13 0.25 0.5 Miles

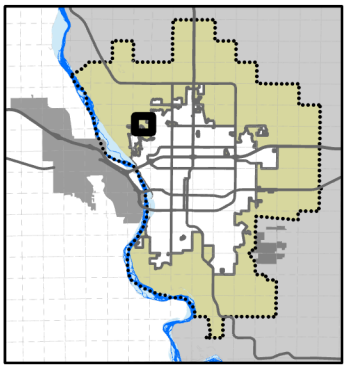
City Limits

Bismarck ETA Jurisdiction

County Outside ETA

Lots Pending Approval

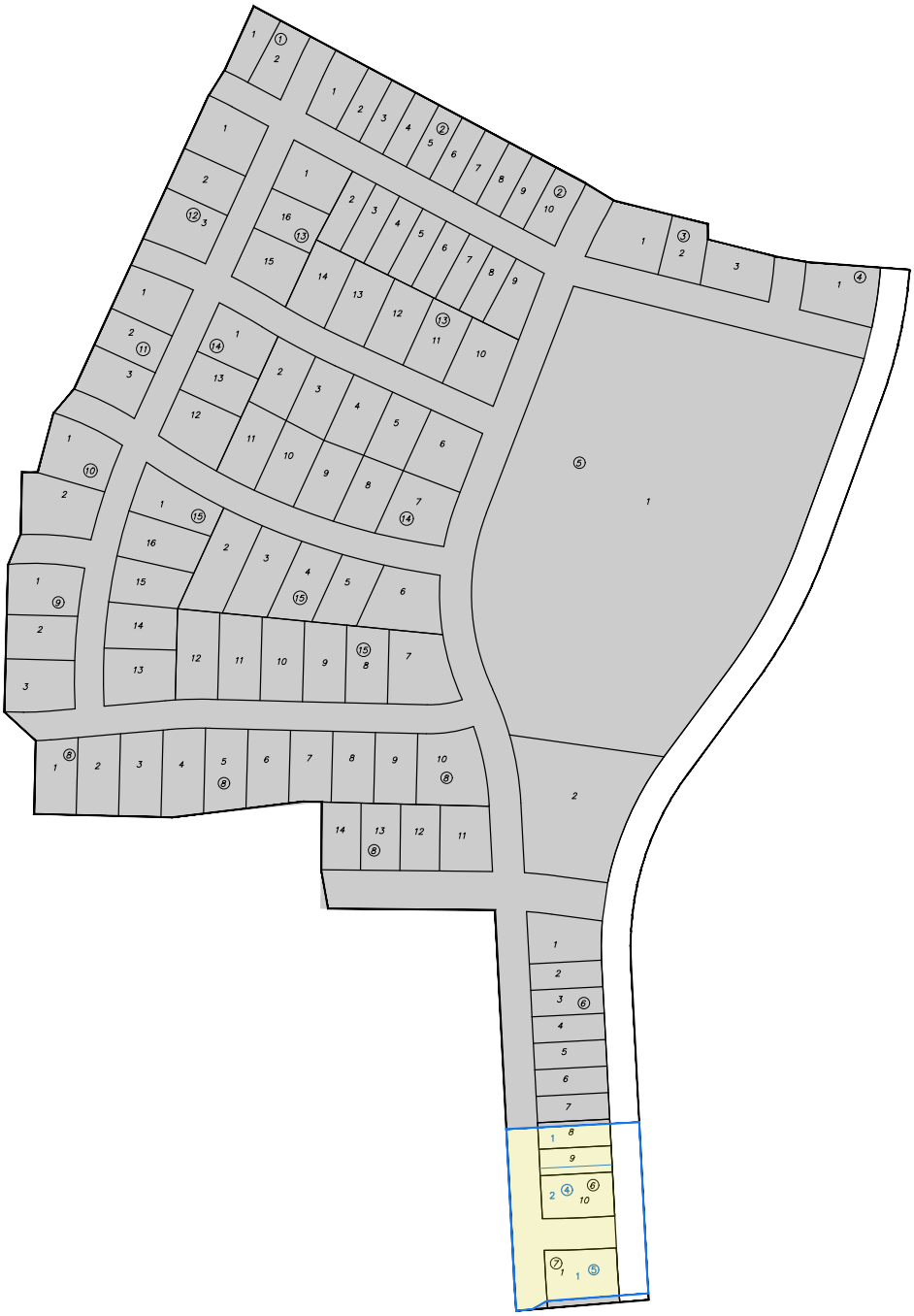
*Section, township, and range indicated in orange*



City of Bismarck
Community Development Department
Planning Division
June 1, 2020 (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.*

# ELK RIDGE 2ND ADDITION ANNEXATION



## ELK RIDGE 2ND ADDITION ANNEXATION
## 55.17 ACRES

ALL OF ELK RIDGE 2ND ADDITION
LESS TYLER PARKWAY RIGHT-OF-WAY

## PROPERTIES PREVIOUSLY ANNEXED

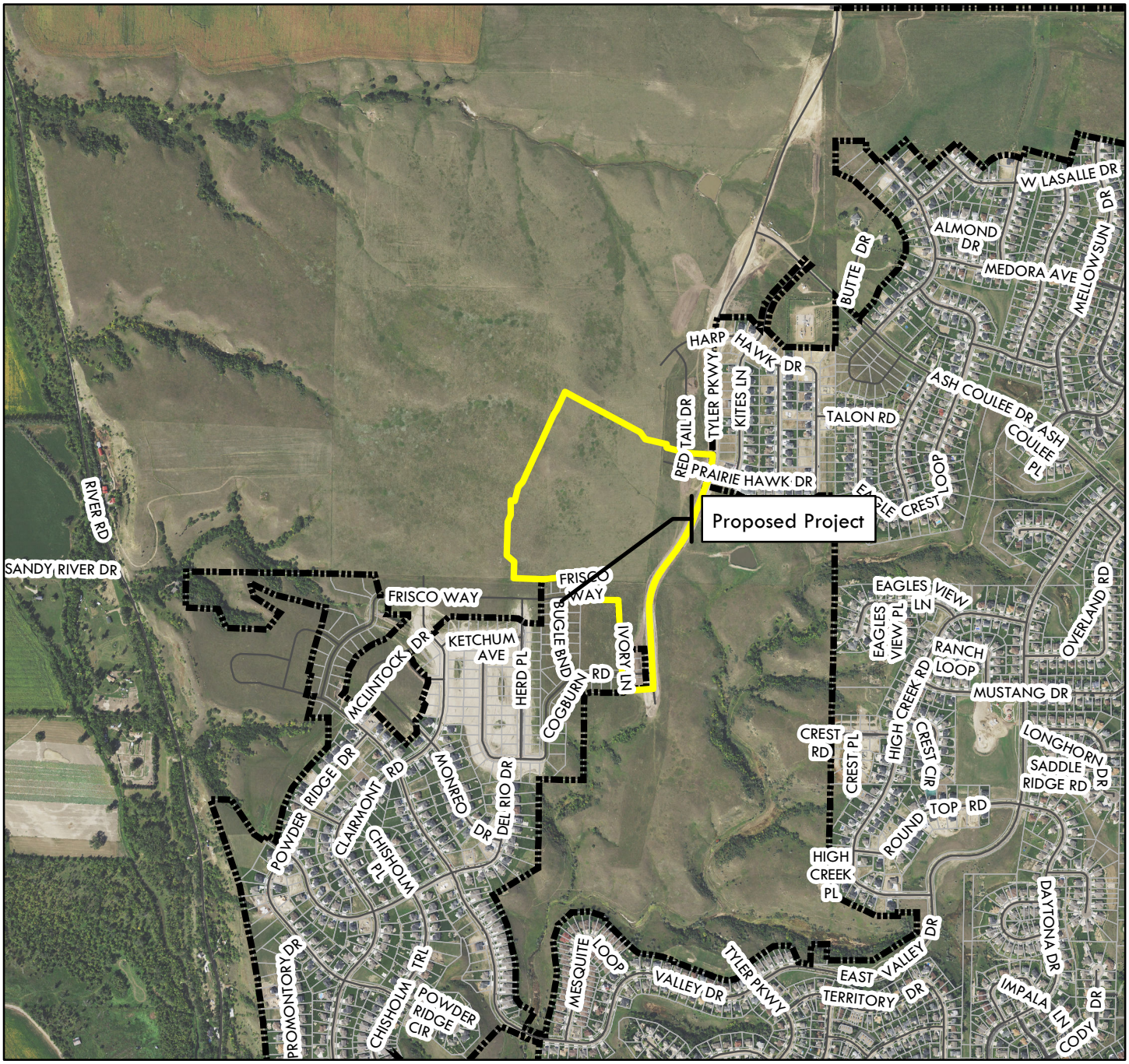
LOTS 1 & 2 BLOCK 4 ELK RIDGE ADDITION
(TO BE REPLATTED AS PART OF LOT 8 AND LOTS 9 & 10 BLOCK 6 ELK RIDGE 2ND ADDITION)

LOT 1 BLOCK 5 ELK RIDGE ADDITION
(TO BE REPLATTED AS PART OF LOT 1 BLOCK 7 ELK RIDGE 2ND ADDITION)

# Aerial Map

Elk Ridge Second Addition

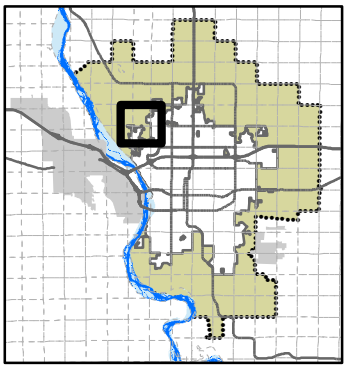
ANNX2019-005
ZC2019-013
FRMP2020-001
FPLT2020-004




Miles
0 0.325 0.65 1.3

City Limits
Bismarck ETA Jurisdiction

Aerial Imagery from 2018



City of Bismarck
Community Development Department
Planning Division
April 15, 2020

*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

Elk Ridge Second Addition

ZC2019-0013
PPLT2019-011
FRMP2020-001

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 |
| **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 |

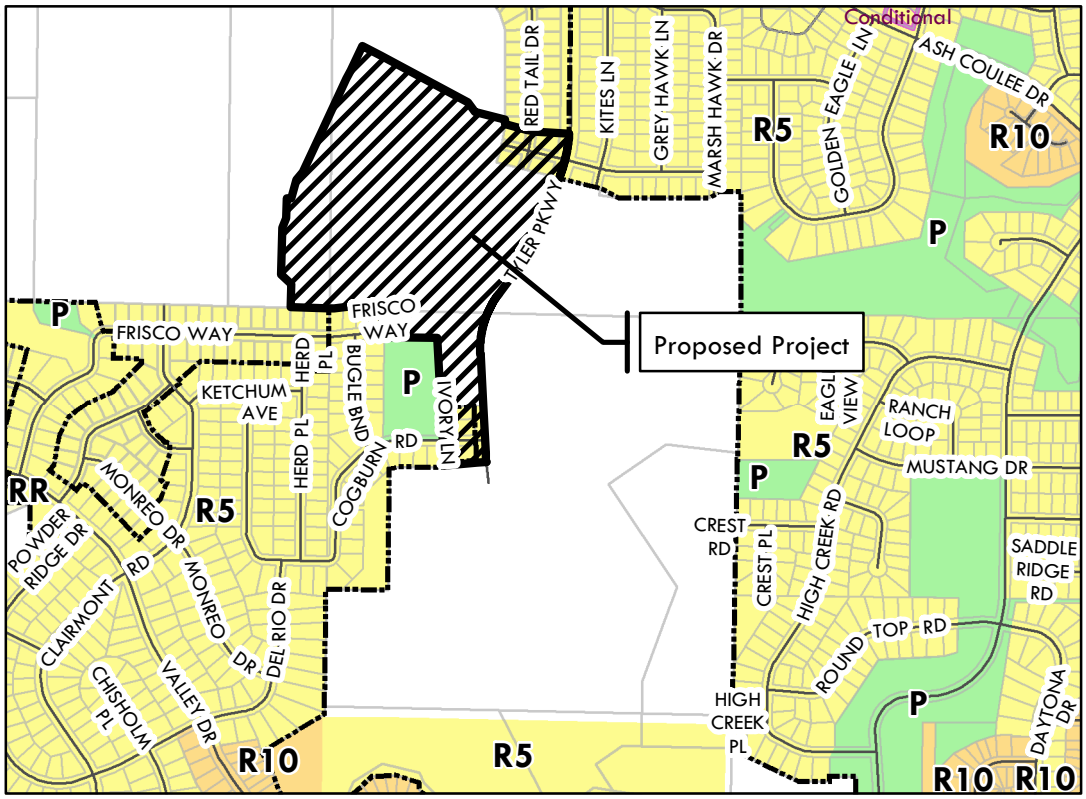
Diagonal lines indicate special condition

*Future Land Use Plan*

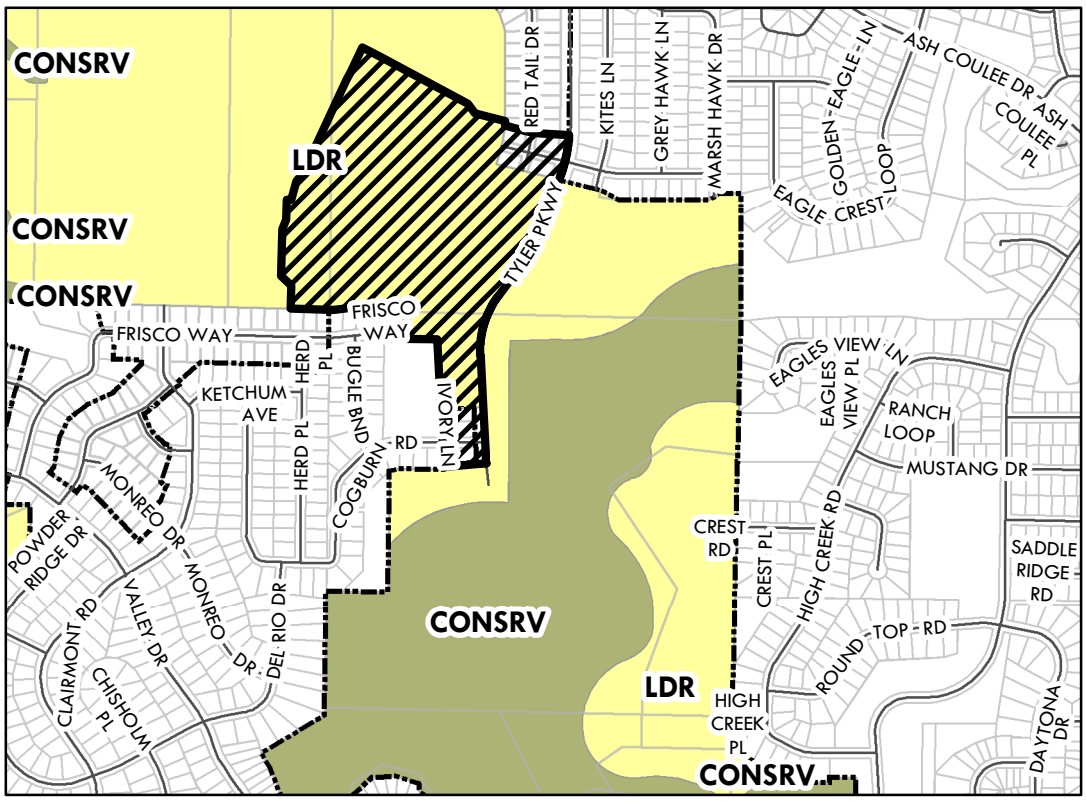
| | |
|---|---|
| **CONSRV** | Conservation |
| **BP** | Business Park |
| **C** | Commercial |
| **C/MU** | Commercial/ Mixed Use |
| **CIVIC** | Civic |
| **HDR** | High Density Residential |
| **I** | Industrial |
| **LDR** | Low Density Residential |
| **MDR** | Medium Density Residential |
| **MDR-/MU** | 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*

Zoning




Future Land Use Plan




0 0.175 0.35 0.7 Miles

City Limits

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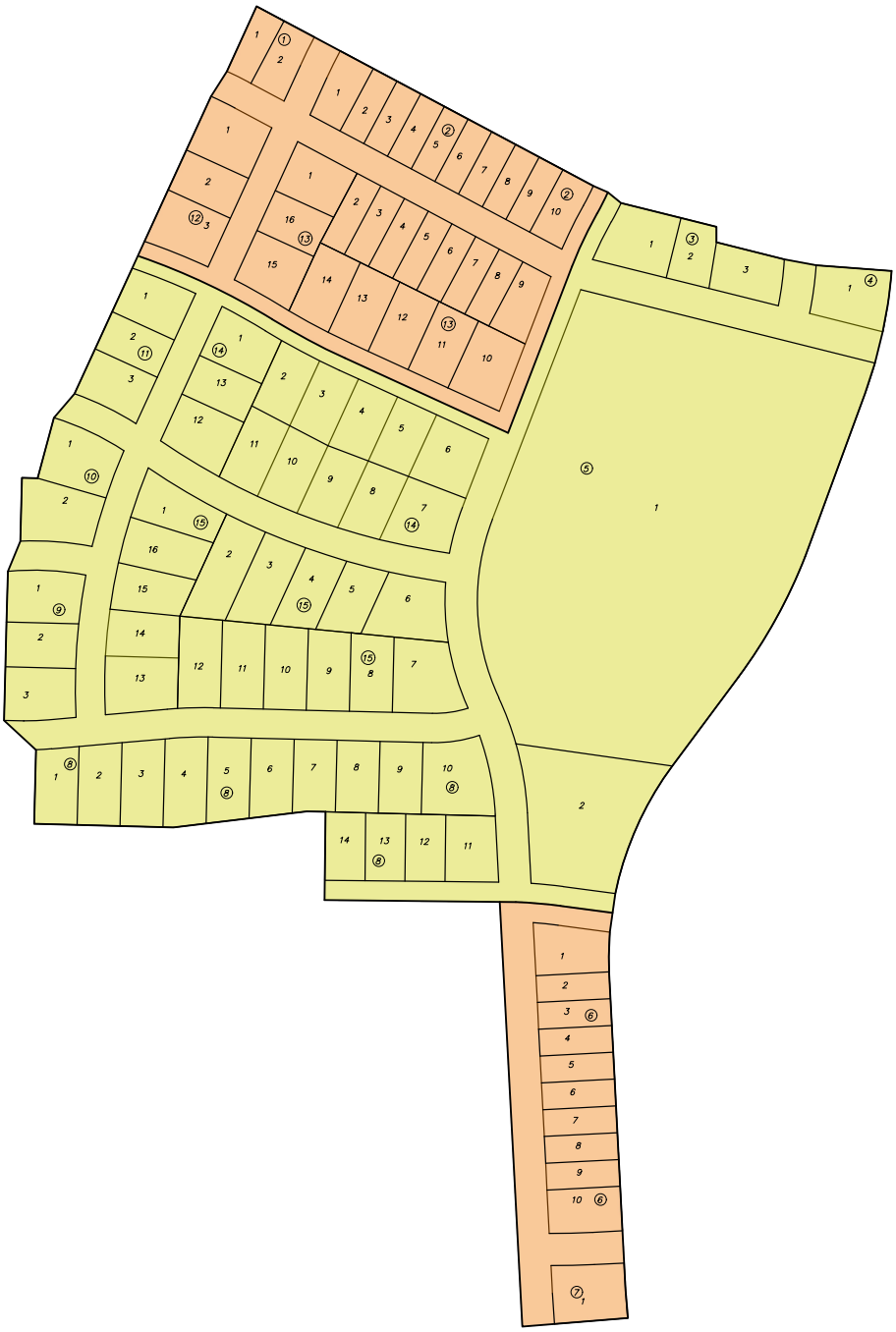
City of Bismarck
Community Development Dept.
Planning Division
January 16, 2020

# ELK RIDGE 2ND ADDITION ZONING



## ELK RIDGE 2ND ADDITION ZONING

R5 ZONING– BLOCKS 3, 4, 5, 8, 9, 10, 11, 14, 15

R10 ZONING– BLOCKS 1, 2, 6, 7, 12, 13

FARMP Amendment

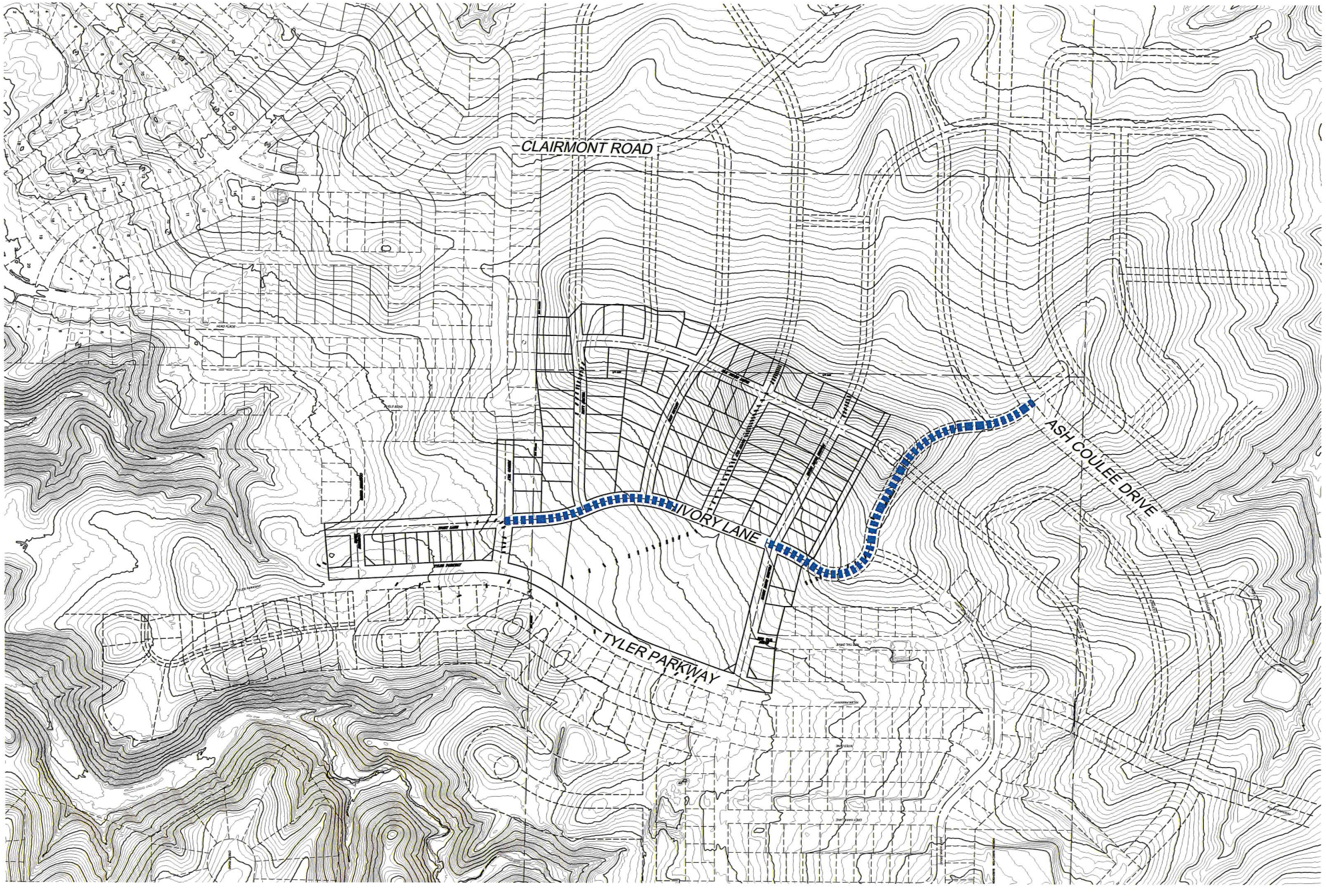
Bismarck North Developers, LLC is requesting an Amendment to the Fringe Area Road Master Plan for Ivory Lane within the future Elk Ridge Second Addition. The right-of-way, as shown on the attached exhibit, lies west of Tyler Parkway (an arterial road) and east of the extension of Clairmont Road (a collector road).

Currently, the FARMP requires a half-mile of collector road be dedicated in the southeast 1/4 of section 18-139-80, from the south line of Section 18, north to the westerly extension of Ash Coulee Drive, at which point it would become a local road. The proposed collector road is isolated to the SE 1/4, and would not significantly improve traffic flows or connectively within the area greater than the dedication of a local road.

Typically, the FARMP proposes arterial & collector roads to be dedicated on 1/4 lines and section lines, respectively, leaving a spacing of roughly a 1/2 mile between them. The location of Tyler Parkway (the arterial road) in this section is closer to the center of the SE 1/4 than the section line; consequently the spacing between planned collector & arterial roads is much closer than typical. This eliminates the need for a collector road within Elk Ridge Second Addition, as the area that would be served by a collector will instead use the Tyler Parkway for north-south traffic.

Connectively will still be maintained in the area, as Ivory Lane will be routed to Ash Coulee Drive, but as a local street with a 66' ROW width, which will allow for better parking & accessibility to a possible school site planned for the subdivision.

Additionally, Clairmont Road will still act as a collector road as future phases of the development are proposed. Clairmont Road will extend north and intersect with both Ash Coulee Drive/43rd Ave and 57th Ave, before transitioning to an arterial road at 71st Ave.




P:\Bismarck\Elk Ridge\SECOND\ELK RIDGE SECOND FINAL.dwg, Model, 1:400

# Fringe Area Road Master Plan Reference Map

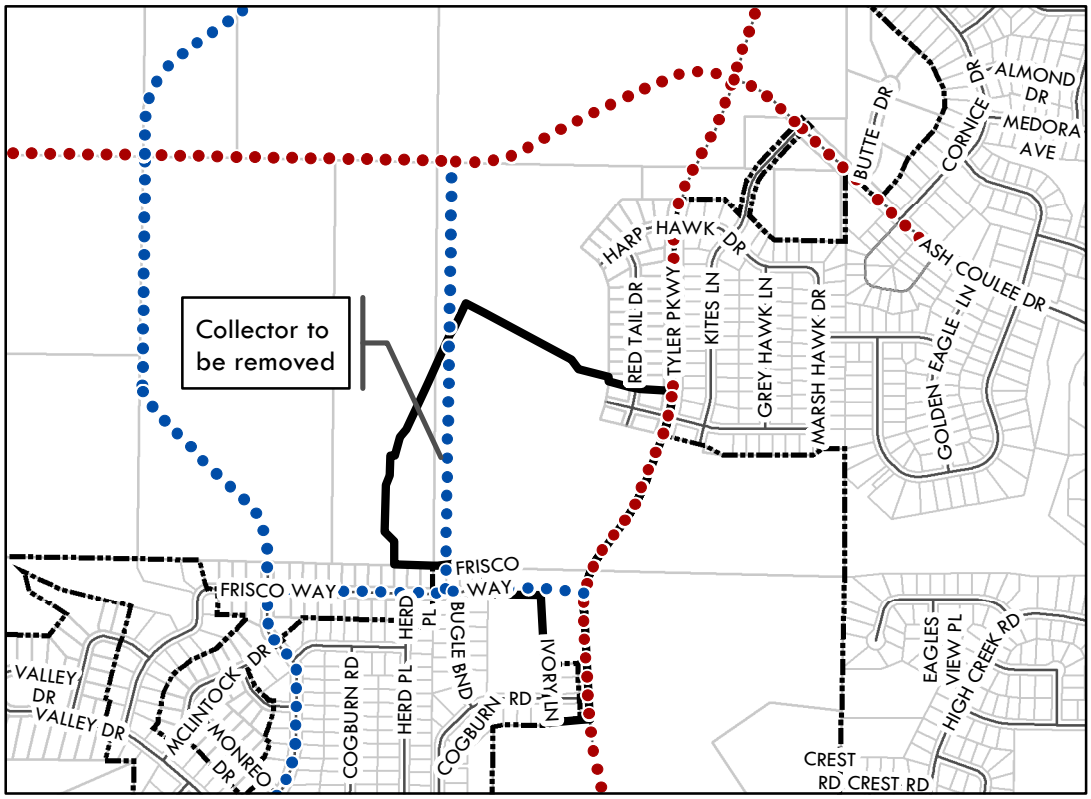
Elk Ridge Second Addition

FRMP2020-001

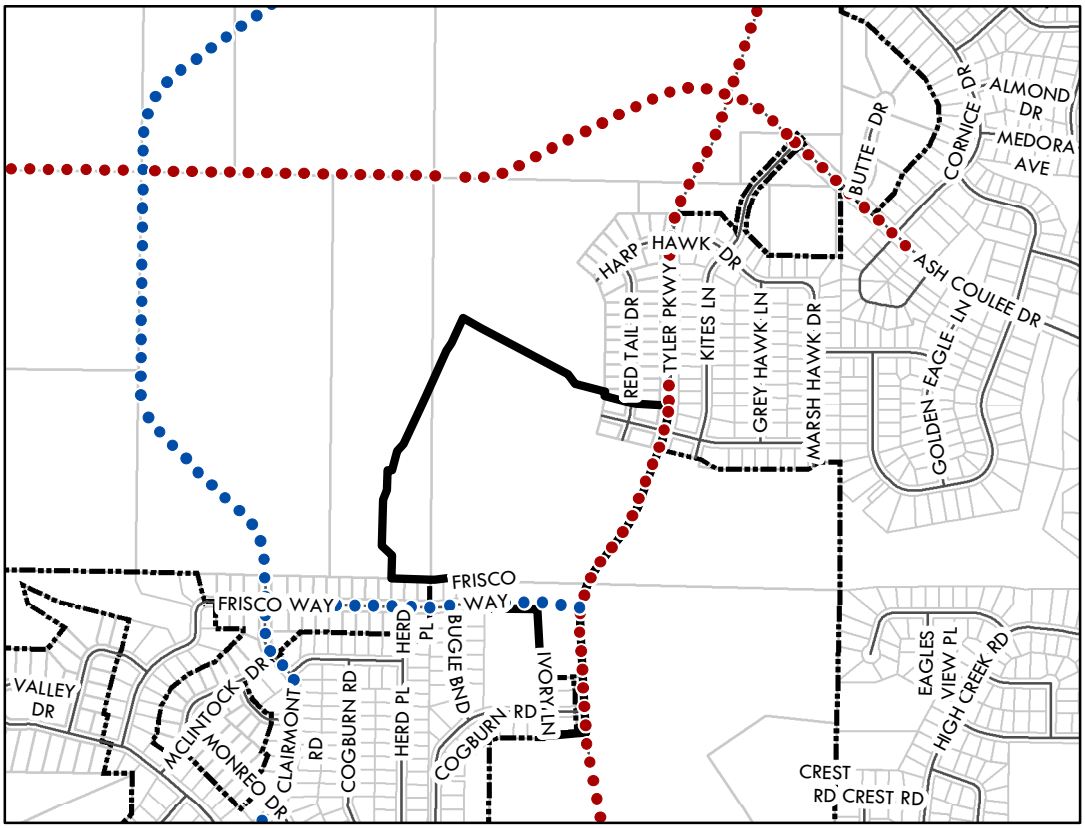
## Existing Plan

*Fringe Area Road Master Plan*

- Planned Arterial
- Planned Collector
- Associated Project Area
- City Limits




## Proposed Plan




Miles

0 0.075 0.15 0.3

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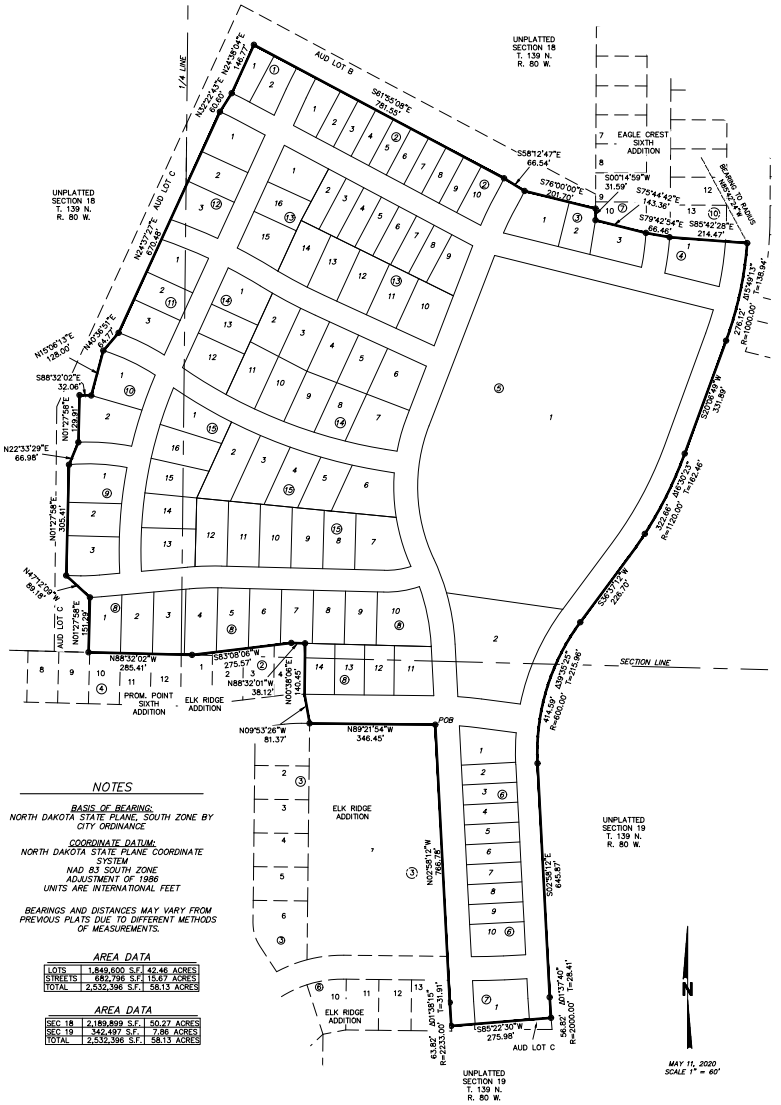
City of Bismarck
Community Development
Deptartment
Planning Division
January 17, 2020

# ELK RIDGE SECOND ADDITION

*BEING A REPLAT OF LOT 1 BLOCK 6, LOT 11 BLOCK 7, LOT 14 BLOCK 10, LOT 1 BLOCK 5, AND PART OF RED TRAIL DRIVE, PRAIRIE HAWK DRIVE, AND TYLER PARKWAY RIGHTS-OF-WAY, ALL WITHIN EAGLE CREST SIXTH ADDITION*
*AND A REPLAT OF BLOCKS 4 & 5 AND IVORY LANE RIGHT-OF-WAY AND PARTS OF COGBURN ROAD AND TYLER PARKWAY RIGHTS-OF-WAY ALL IN ELK RIDGE ADDITION AND PART OF AUDITOR'S LOTS B & C OF THE SE 1/4 OF SECTION 18, TOWNSHIP 139 NORTH, RANGE 80 WEST, AND ALL OF AUDITOR'S LOT B AND PART OF AUDITOR'S LOT C OF THE NE 1/4 OF SECTION 19 TOWNSHIP 139 NORTH, RANGE 80 WEST*

## BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA




### NOTES

BASIS OF BEARING:
NORTH DAKOTA STATE PLANE, SOUTH ZONE BY CITY ORDINANCE

COORDINATE DATUM:
NORTH DAKOTA STATE PLANE COORDINATE SYSTEM
NAD 83 SOUTH ZONE
ADJUSTMENT OF 1986
UNITS ARE INTERNATIONAL FEET

BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS PLATS DUE TO DIFFERENT METHODS OF MEASUREMENTS.

AREA DATA

| | | |
|---|---|---|
| LOTS | 1,849,600 S.F. | 42.46 ACRES |
| STREETS | 682,796 S.F. | 15.67 ACRES |
| TOTAL | 2,532,396 S.F. | 58.13 ACRES |

AREA DATA

| | | |
|---|---|---|
| SEC 18 | 2,189,899 S.F. | 50.27 ACRES |
| SEC 19 | 342,497 S.F. | 7.86 ACRES |
| TOTAL | 2,532,396 S.F. | 58.13 ACRES |

### DESCRIPTION

BEING A REPLAT OF LOT 1 BLOCK 6, LOT 11 BLOCK 7, LOT 14 BLOCK 10, LOT 1 BLOCK 5, AND PART OF RED TRAIL DRIVE, PRAIRIE HAWK DRIVE, AND TYLER PARKWAY RIGHTS-OF-WAY, ALL WITHIN EAGLE CREST SIXTH ADDITION AND A REPLAT OF BLOCKS 4 & 5 AND IVORY LANE RIGHT-OF-WAY AND PARTS OF COGBURN ROAD AND TYLER PARKWAY RIGHTS-OF-WAY ALL IN ELK RIDGE ADDITION AND PART OF AUDITOR'S LOTS B & C OF THE SE 1/4 OF SECTION 18, TOWNSHIP 139 NORTH, RANGE 80 WEST,AND ALL OF AUDITOR'S LOT B AND PART OF AUDITOR'S LOT C OF THE NE 1/4 OF SECTION 19 TOWNSHIP 139 NORTH, RANGE 80 WEST

DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 7 BLOCK 3 ELK RIDGE ADDITION; THENCE NORTH 89 DEGREES 21 MINUTES 54 SECONDS WEST, ALONG THE BOUNDARY OF SAID ELK RIDGE ADDITION, A DISTANCE OF 346.45 FEET; THENCE NORTH 09 DEGREES 53 MINUTES 26 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY, A DISTANCE OF 81.37 FEET; THENCE NORTH 00 DEGREES 38 MINUTES 06 SECONDS EAST, CONTINUING ALONG SAID BOUNDARY, A DISTANCE OF 140.45 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 01 SECOND WEST, CONTINUING ALONG SAID BOUNDARY, A DISTANCE OF 38.12 FEET; THENCE SOUTH 83 DEGREES 08 MINUTES 06 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY, A DISTANCE OF 275.57 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 02 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY, AND THE BOUNDARY OF PROMONTORY POINT SIXTH ADDITION, A DISTANCE OF 285.41 FEET; THENCE NORTH 01 DEGREE 27 MINUTES 58 SECONDS EAST, A DISTANCE OF 151.29 FEET; THENCE NORTH 47 DEGREES 12 MINUTES 09 SECONDS WEST, A DISTANCE OF 89.18 FEET; THENCE NORTH 01 DEGREE 27 MINUTES 58 SECONDS EAST, A DISTANCE OF 305.41 FEET; THENCE NORTH 22 DEGREES 33 MINUTES 29 SECONDS EAST, A DISTANCE OF 66.98 FEET; THENCE NORTH 01 DEGREE 27 MINUTES 58 SECONDS EAST, A DISTANCE OF 129.91 FEET; THENCE SOUTH 88 DEGREES 32 MINUTES 02 SECONDS EAST, A DISTANCE OF 32.06 FEET; THENCE NORTH 15 DEGREES 06 MINUTES 13 SECONDS EAST, A DISTANCE OF 128.00 FEET; THENCE NORTH 40 DEGREES 36 MINUTES 51 SECONDS EAST, A DISTANCE OF 64.77 FEET; THENCE NORTH 24 DEGREES 37 MINUTES 27 SECONDS EAST, A DISTANCE OF 670.48 FEET; THENCE NORTH 32 DEGREES 22 MINUTES 43 SECONDS EAST, A DISTANCE OF 60.60 FEET; THENCE NORTH 24 DEGREES 38 MINUTES 04 SECONDS EAST, A DISTANCE OF 146.77 FEET; THENCE SOUTH 61 DEGREES 55 MINUTES 08 SECONDS EAST, PARALLEL WITH THE NORTHEASTERLY LINE OF AUDITOR'S LOT B OF THE SE 1/4 OF SECTION 18, TOWNSHIP 139 NORTH, RANGE 80 WEST, A DISTANCE OF 781.55 FEET; THENCE SOUTH 58 DEGREES 12 MINUTES 47 SECONDS EAST, A DISTANCE OF 66.54 FEET; THENCE SOUTH 76 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 201.70 FEET TO THE WEST LINE OF LOT 10 BLOCK 7 EAGLE CREST SIXTH ADDITION; THENCE SOUTH 00 DEGREES 14 MINUTES 59 SECONDS WEST, ALONG SAID WEST LINE, A DISTANCE OF 31.59 FEET; THENCE SOUTH 75 DEGREES 44 MINUTES 42 SECONDS EAST, ALONG THE SOUTH LINE OF SAID LOT 10 BLOCK 7 EAGLE CREST SIXTH ADDITION, A DISTANCE OF 143.36 FEET; THENCE SOUTH 79 DEGREES 42 MINUTES 54 SECONDS EAST, A DISTANCE OF 66.46 FEET TO THE SOUTH LINE OF LOT 13 BLOCK 10 EAGLE CREST SIXTH ADDITION; THENCE SOUTH 85 DEGREES 42 MINUTES 28 SECONDS EAST, ALONG SAID SOUTH LINE AND ITS EASTERLY EXTENSION, A DISTANCE OF 214.47 FEET TO THE CENTERLINE OF TYLER PARKWAY RIGHT-OF-WAY; THENCE SOUTHWESTERLY AND TO THE RIGHT, ALONG SAID CENTERLINE, ON A 1000.00 FOOT RADIUS CURVE, THE RADIUS OF WHICH BEARS NORTH 85 DEGREES 42 MINUTES 24 SECONDS WEST, AN ARC LENGTH OF 276.12 FEET; THENCE SOUTH 20 DEGREES 06 MINUTES 49 SECONDS WEST, CONTINUING ALONG SAID CENTERLINE AND THE BOUNDARY OF AUDITOR'S LOT B OF THE SE 1/4 OF SECTION 18, TOWNSHIP 139 NORTH, RANGE 80 WEST, A DISTANCE OF 331.89 FEET; THENCE SOUTHWESTERLY AND TO THE RIGHT, CONTINUING ALONG SAID BOUNDARY, ON A 1120.00 FOOT RADIUS CURVE, AN ARC LENGTH OF 322.66 FEET; THENCE SOUTH 36 DEGREES 37 MINUTES 12 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY, A DISTANCE OF 226.70 FEET; THENCE SOUTHWESTERLY AND TO THE LEFT, CONTINUING ALONG SAID BOUNDARY AND THE BOUNDARY OF AUDITOR'S LOT B OF THE NE 1/4 OF SECTION 19, TOWNSHIP 139 NORTH, RANGE 80 WEST, ON A 600.00 FOOT RADIUS CURVE, AN ARC LENGTH OF 414.59 FEET; THENCE SOUTH 02 DEGREES 58 MINUTES 12 SECONDS EAST, CONTINUING ALONG SAID BOUNDARY AND THE CENTERLINE OF TYLER PARKWAY RIGHT-OF-WAY EASEMENT (DOC. #875093), A DISTANCE OF 646.87 FEET; THENCE SOUTHEASTERLY AND TO THE LEFT, CONTINUING ALONG SAID CENTERLINE AND ALONG THE BOUNDARY OF AUDITOR'S LOT C OF THE NE 1/4 OF SECTION 19, TOWNSHIP 139 NORTH, RANGE 80 WEST, ON A 2000.00 FOOT RADIUS CURVE, AN ARC LENGTH OF 56.82 FEET; THENCE SOUTH 85 DEGREES 22 MINUTES 03 SECONDS WEST, A DISTANCE OF 275.98 FEET TO THE EAST LINE OF LOT 13 BLOCK 6 ELK RIDGE ADDITION; THENCE NORTHWESTERLY AND TO THE LEFT, ALONG SAID EAST LINE, ON A 2233.00 FOOT RADIUS CURVE, AN ARC LENGTH OF 63.82 FEET THENCE NORTH 02 DEGREES 58 MINUTES 12 SECONDS WEST, ALONG SAID EAST LINE AND THE EAST LINE OF LOT 7 BLOCK 3 ELK RIDGE ADDITION, A DISTANCE OF 766.78 FEET TO THE POINT OF BEGINNING.

CONTAINING 58.13 ACRES, MORE OR LESS.

### SURVEYOR'S CERTIFICATE

I, TERRY BALTZER, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, HEREBY CERTIFY THAT THE APPROVED PLAT IS A TRUE COPY OF THE NOTES OF A SURVEY PERFORMED UNDER MY SUPERVISION AND COMPLETED ON _____ 2020, THAT ALL INFORMATION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT ALL MONUMENTS SHOWN HEREON ARE CORRECT, THAT ALL REQUIRED MONUMENTS HAVE BEEN SET, AND THAT ALL DIMENSIONAL AND GEODETIC DETAILS ARE CORRECT.

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH )

SWENSON, HAGEN & CO. P.C.
909 BASIN AVENUE
BISMARCK, NORTH DAKOTA
58504

_____
TERRY BALTZER
PROFESSIONAL LAND SURVEYOR
N.D. REGISTRATION NO. 3595

### APPROVAL OF CITY PLANNING COMMISSION

THE SUBDIVISION OF LAND AS SHOWN ON THE APPROVED PLAT HAS BEEN APPROVED BY THE PLANNING COMMISSION OF THE CITY OF BISMARCK, ON THE _____ 2020, IN ACCORDANCE WITH LAWS OF THE STATE OF NORTH DAKOTA, ORDINANCES OF THE CITY OF BISMARCK AND REGULATIONS ADOPTED BY THE SAID PLANNING COMMISSION. IN WITNESS WHEREOF ARE SET THE HANDS AND SEALS OF THE CHAIRMAN AND SECRETARY OF THE PLANNING COMMISSION OF THE CITY OF BISMARCK.

_____ MICHAEL J. SCHWARTZ – CHAIRMAN

_____ ATTEST BEN EHRETH – SECRETARY

### APPROVAL OF BOARD OF CITY COMMISSIONERS

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA, HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THE APPROVED PLAT, HAS ACCEPTED THE RE-DEDICATION OF ALL STREETS SHOWN THEREON, HAS APPROVED THE GROUNDS AS SHOWN ON THE ANNEXED PLAT AS AN AMENDMENT TO THE MASTER PLAN OF THE CITY OF BISMARCK, NORTH DAKOTA, AND DOES HEREBY VACATE ANY PREVIOUS PLATTING WITHIN THE BOUNDARY OF THE APPROVED PLAT.

THE FOREGOING ACTION OF THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA, WAS TAKEN BY RESOLUTION APPROVED THE _____ DAY OF _____, 2020.

_____ ATTEST KEITH J. HUNKE – CITY ADMINISTRATOR

### APPROVAL OF CITY ENGINEER

I, GABRIEL J. SCHELL, CITY ENGINEER OF THE CITY OF BISMARCK, NORTH DAKOTA, HEREBY APPROVE "ELK RIDGE SECOND ADDITION", BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA AS SHOWN ON THE PLAT.

_____ GABRIEL J. SCHELL CITY ENGINEER

### OWNER'S CERTIFICATE & DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT BISMARCK NORTH DEVELOPERS, LLC, BEING THE OWNER AND PROPRIETOR OF THE PROPERTY SHOWN HEREON HAS CAUSED THAT PORTION DESCRIBED HEREON TO BE SURVEYED AND PLATTED AS "ELK RIDGE SECOND ADDITION", BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA, AND DO SO DEDICATE AND RE-DEDICATE STREETS AS SHOWN HEREON INCLUDING ALL SEWER, CULVERTS, WATER AND OTHER PUBLIC UTILITY LINES WHETHER SHOWN HEREON OR NOT TO THE PUBLIC USE FOREVER.

THEY ALSO DEDICATE EASEMENTS TO THE CITY OF BISMARCK TO RUN WITH THE LAND, FOR GAS, ELECTRIC, TELEPHONE OR OTHER PUBLIC UTILITIES OR SERVICES ON OR UNDER THOSE CERTAIN STRIPS OF LAND DESIGNATED HEREON AS UTILITY EASEMENTS.

THEY FURTHERMORE DEDICATE UNTO THE CITY OF BISMARCK "STORM WATER AND DRAINAGE EASEMENTS" TO RUN WITH THE LAND FOR THE PURPOSE OF STORM SEWER AND SURFACE WATER DRAINAGE UNDER, OVER, THROUGH AND/OR ACROSS THOSE AREAS DEDICATED HEREON AS "STORM WATER AND DRAINAGE EASEMENTS" FOR THE PURPOSE OF CONSTRUCTION, RECONSTRUCTION, REPAIR, ENLARGING AND MAINTAINING STORM WATER MANAGEMENT FACILITIES TOGETHER WITH NECESSARY APPURTENANCES THERETO FOR STORM WATER, STORM SEWER AND SURFACE WATER DRAINAGE AND MANAGEMENT OF SAID STORM WATER FLOW IN A MANNER THAT WILL PERMIT THE FREE AND UNOBSTRUCTED FLOW OF WATER UNDER, OVER AND/OR ACROSS THE EASEMENT AREA.

STATE OF NORTH DAKOTA)
)
COUNTY OF BURLEIGH )

_____
RON KNUTSON
BISMARCK NORTH DEVELOPERS, LLC
555 HIGHWAY 1804 NE
BISMARCK, ND 58503

ON THIS _____ DAY OF _____, 2020, BEFORE ME PERSONALLY APPEARED RON KNUTSON OF BISMARCK NORTH DEVELOPERS, LLC, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

_____
NOTARY PUBLIC
BURLEIGH COUNTY, NORTH DAKOTA
MY COMMISSION EXPIRES _____


SWENSON, HAGEN & COMPANY P.C.
Surveying
Hydrology
Land Planning
Civil Engineering
Landscape & Site Design
Construction Management
909 Basin Avenue
Bismarck, North Dakota 58504
shemp@swensonhagen.com
Phone (701) 223 - 2600
Fax (701) 223 - 2606

# ELK RIDGE SECOND ADDITION

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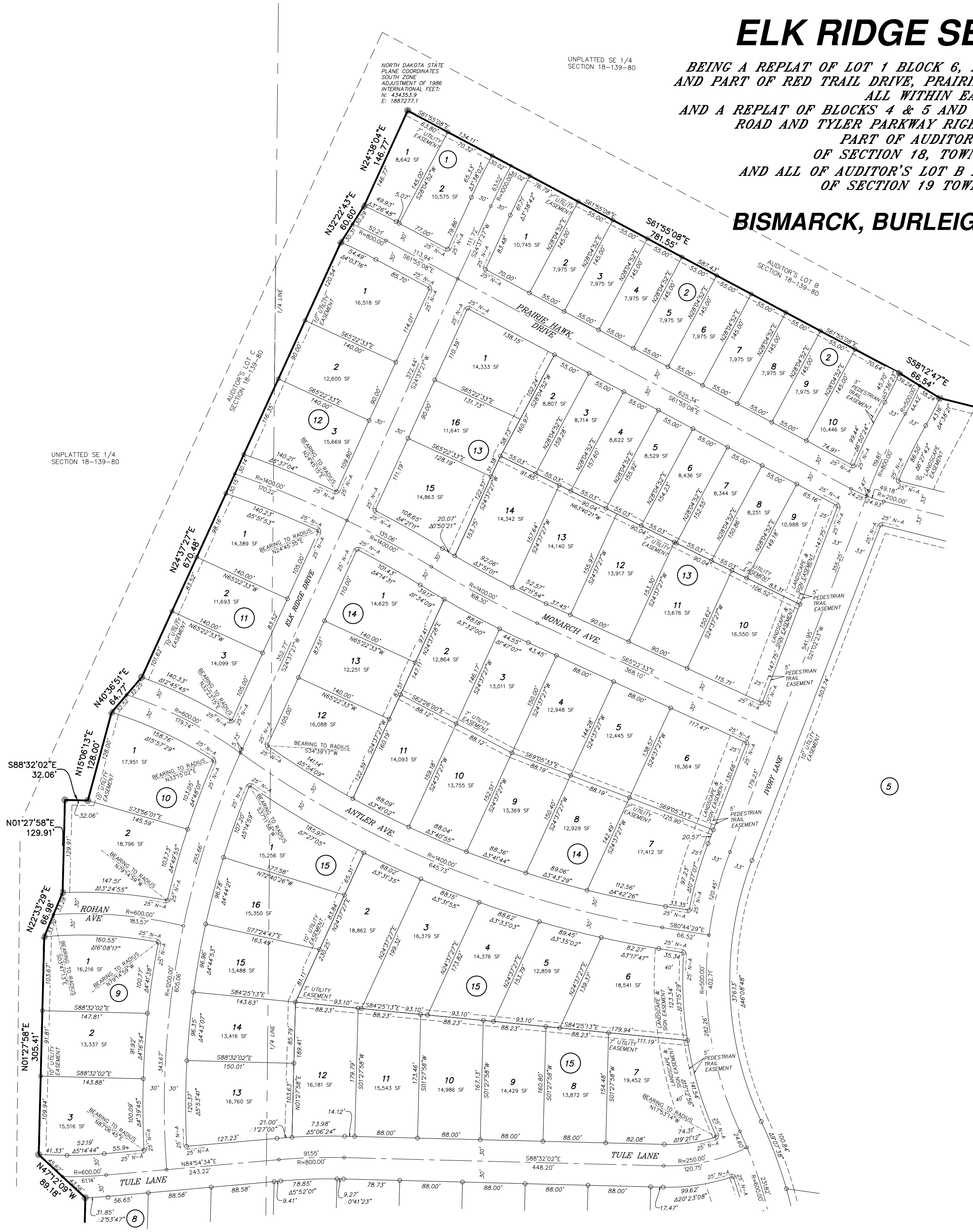
## BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA




MAY 11, 2020
SCALE 1" = 60'

### NOTES

BASIS OF BEARING:
NORTH DAKOTA STATE PLANE, SOUTH ZONE BY CITY ORDINANCE

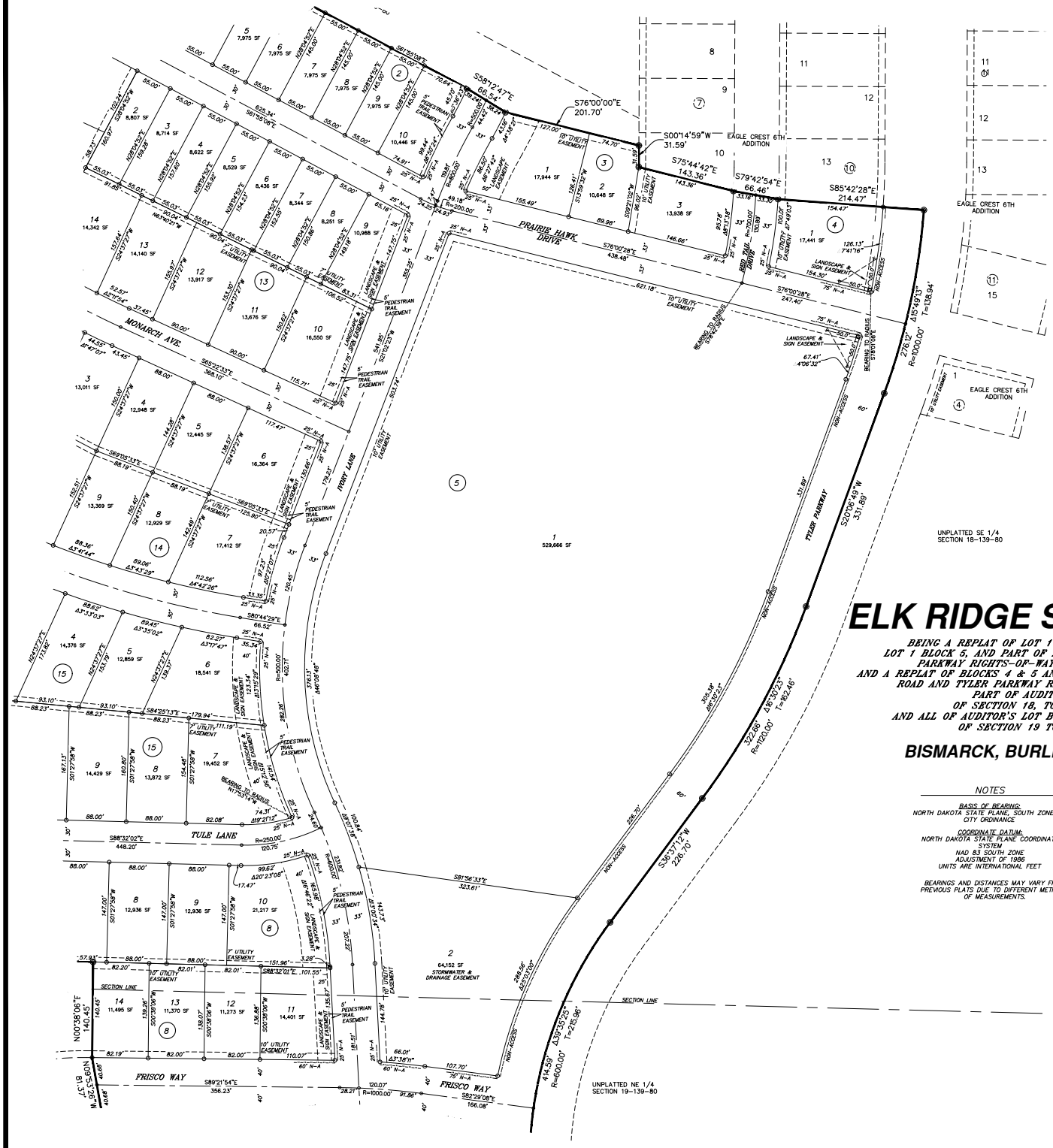
COORDINATE DATUM:
NORTH DAKOTA STATE PLANE COORDINATE SYSTEM
NAD 83 SOUTH ZONE
ADJUSTMENT OF 1986
UNITS ARE INTERNATIONAL FEET

BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS PLATS DUE TO DIFFERENT METHODS OF MEASUREMENTS.

VERTICAL BENCHMARK:


SWENSON, HAGEN & COMPANY P.C.
909 Basin Avenue
Bismarck, North Dakota 58504
sheng@swensonhagen.com
Phone (701) 223 - 2600
Fax (701) 223 - 2606

Surveying
Hydrology
Land Planning
Civil Engineering
Landscape & Site Design
Construction Management

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## BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA

NOTES

BASIS OF BEARING:
NORTH DAKOTA STATE PLANE, SOUTH ZONE BY CITY ORDINANCE

COORDINATE DATUM:
NORTH DAKOTA STATE PLANE COORDINATE SYSTEM.
NAD 83 SOUTH ZONE
ADJUSTMENT OF 1986
UNITS ARE INTERNATIONAL FEET

BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS PLATS DUE TO DIFFERENT METHODS OF MEASUREMENTS.

N

0 60'

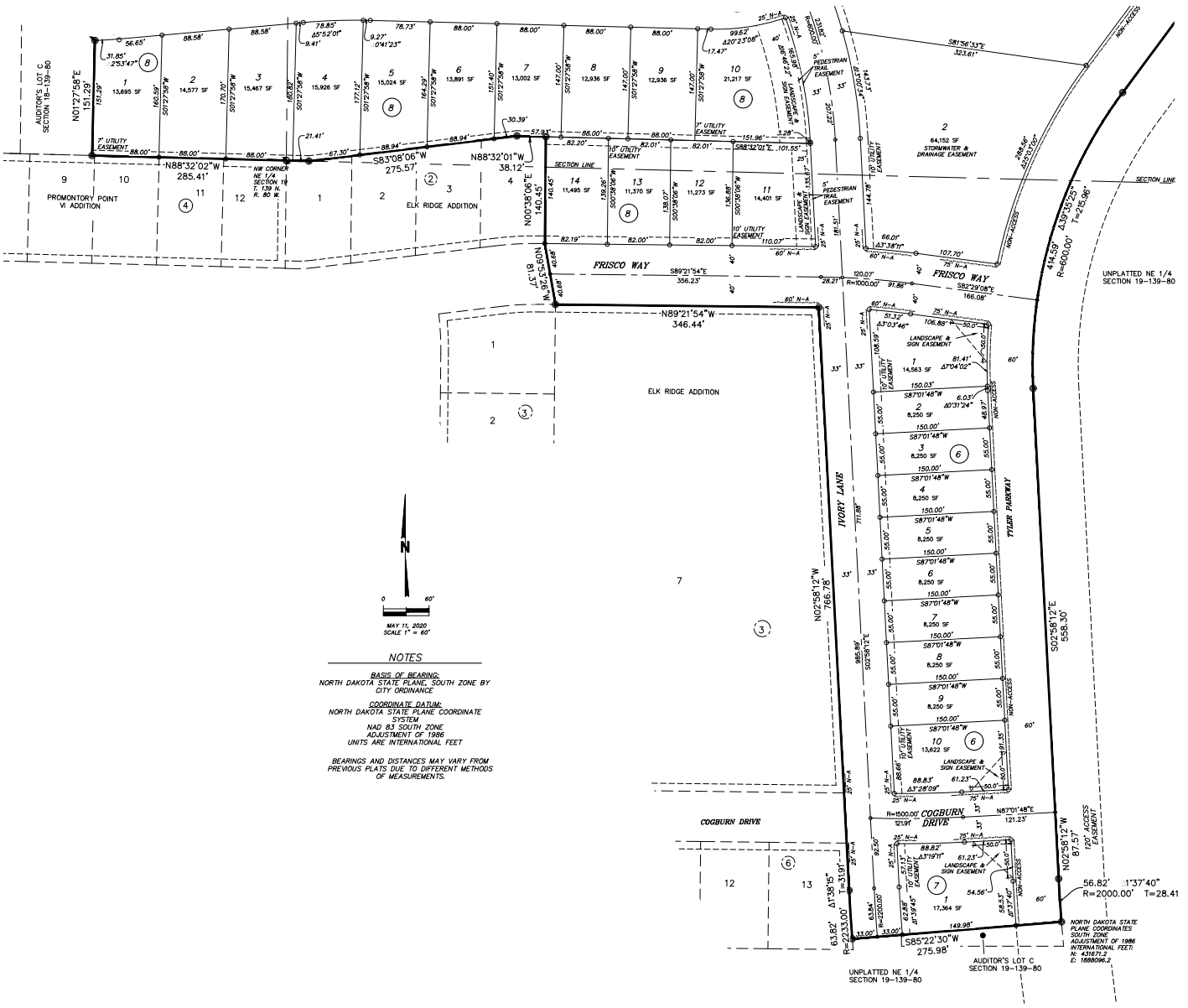
MAY 11, 2020
SCALE 1" = 60'

SWENSON, HAGEN & COMPANY P.C.
909 Basin Avenue
Bismarck, North Dakota 58504
shcmp@swensonhagen.com
Phone (701) 223 - 2690
Fax (701) 223 - 2696
Surveying
Hydrology
Land Planning
Civil Engineering
Landscape & Site Design
Construction Management

# ELK RIDGE SECOND ADDITION

*BEING A REPLAT OF LOT 1 BLOCK 6, LOT 11 BLOCK 7, LOT 14 BLOCK 10, LOT 1 BLOCK 5, AND PART OF RED TRAIL DRIVE, PRAIRIE HAWK DRIVE, AND TYLER PARKWAY RIGHTS-OF-WAY, ALL WITHIN EAGLE CREST SIXTH ADDITION*
*AND A REPLAT OF BLOCKS 4 & 5 AND IVORY LANE RIGHT-OF-WAY AND PARTS OF COGBURN ROAD AND TYLER PARKWAY RIGHTS-OF-WAY ALL IN ELK RIDGE ADDITION AND PART OF AUDITOR'S LOTS B & C OF THE SE 1/4 OF SECTION 18, TOWNSHIP 139 NORTH, RANGE 80 WEST, AND ALL OF AUDITOR'S LOT B AND PART OF AUDITOR'S LOT C OF THE NE 1/4 OF SECTION 19 TOWNSHIP 139 NORTH, RANGE 80 WEST*

## BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA




### NOTES

BASIS OF BEARING:
NORTH DAKOTA STATE PLANE, SOUTH ZONE BY CITY ORDINANCE

COORDINATE DATUM:
NORTH DAKOTA STATE PLANE COORDINATE SYSTEM
NAD 83 SOUTH ZONE
ADJUSTMENT OF 1986
UNITS ARE INTERNATIONAL FEET

BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS PLATS DUE TO DIFFERENT METHODS OF MEASUREMENTS.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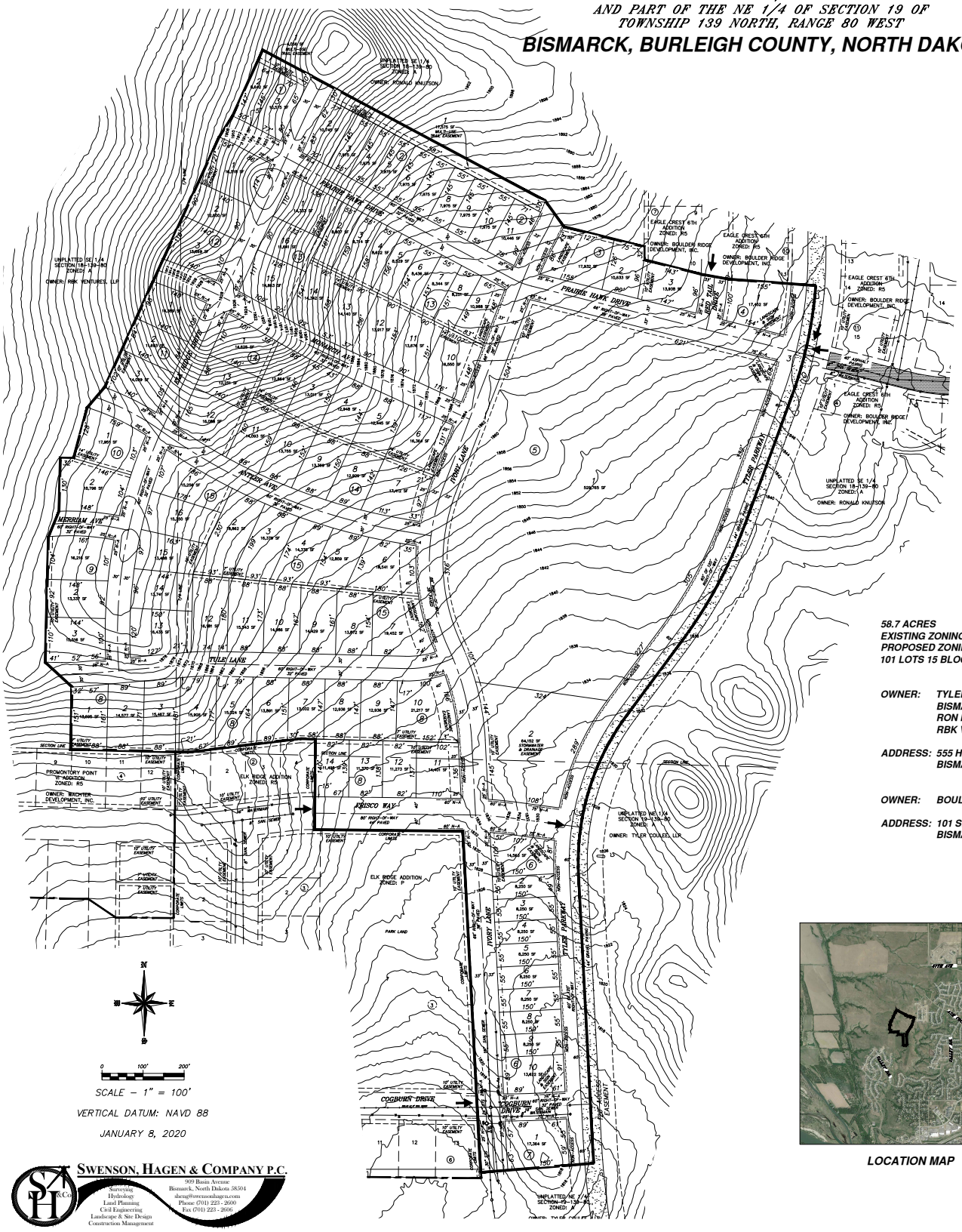
Bismarck, North Dakota 58504
shcmg@swensonhagen.com
Phone (701) 223 - 2690
Fax (701) 223 - 2696

# ELK RIDGE SECOND ADDITION

*A REPLAT OF LOT 11 BLOCK 7, LOT 14 BLOCK 10, LOT 1 BLOCK 6, LOT 1 BLOCK 5 EAGLE CREST 6TH ADDITION AND BLOCKS 4 & 5 OF ELK RIDGE ADDITION & PART OF THE SE 1/4 SECTION 18 AND PART OF THE NE 1/4 OF SECTION 19 OF TOWNSHIP 139 NORTH, RANGE 80 WEST*

## BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA




VERTICAL DATUM: NAVD 88

JANUARY 8, 2020

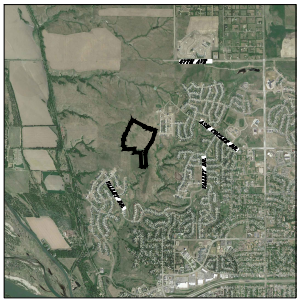
58.7 ACRES
EXISTING ZONING: A, R5
PROPOSED ZONING: R5, R10
101 LOTS 15 BLOCKS

OWNER: TYLER COULEE, LLP
BISMARCK NORTH DEVELOPERS
RON KNUTSON
RBK VENTURES, LLP

ADDRESS: 555 HWY 1804 NE
BISMARCK, ND 58503

OWNER: BOULDER RIDGE DEVELOPMENT, INC.

ADDRESS: 101 SLATE DR., STE. 1
BISMARCK, ND 58503



LOCATION MAP


SWENSON, HAGEN & COMPANY P.C.
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Bismarck, North Dakota 58504
shcmg@swensonhagen.com
Phone (701) 223 - 2600
Fax (701) 223 - 2606

Bismarck

# Community Development Department

**DATE:** June 2, 2020

**FROM:** Ben Ehreth, AICP, Community Development Director

**ITEM:** Huntington Cottages Second Addition – Zoning Change and Minor Subdivision Final Plat

## REQUEST

Chris Wentz and Huntington Enterprises, Inc. are requesting approval of a zoning change from the R5 – Residential zoning district to the R10 – Residential zoning district, and a minor subdivision final plat for Huntington Cottages Second Addition. These actions would allow the development of 20 residential units in 10 two-unit (twinhome) buildings. Because this project will require a petition for improvements for Colt Avenue, approval of a Development Agreement is required. In addition, because this project includes a private roadway with private utilities, approval of a Private Drive and Private Utility Agreement is also required.

The property is located in northwest Bismarck, west of North Washington Street along the south side of Colt Avenue (a replat of Lot 4, Block 2, KMK Estates).

Please place this item on the June 9, 2020 and June 23, 2020 City Commission meeting agendas.

## BACKGROUND INFORMATION

The Planning and Zoning Commission held a public hearing on these items on May 27, 2020.

No residents spoke at the public hearing; however, several residents did submit written comments prior to the hearing in support of the proposed development.

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 zoning change from the R5 – Residential zoning district to the R10 – Residential zoning district, and the minor subdivision final plat for Huntington Cottages Second Addition, with the following conditions: 1) the developer submits a petition for improvements to Colt Avenue prior to plat recordation; and 2) the developer enters into a Private Drive

and Private Utility Agreement and/or a Development Agreement with the City prior to plat recordation.

## RECOMMENDED CITY COMMISSION ACTION

June 9th meeting of the Board of City Commissioners – consider the zoning change as outlined in Ordinance 6425 and call for a public hearing on this item for the June 23rd meeting of the Board of City Commissioners.

June 23rd meeting of the Board of City Commissioners – hold a public hearing on the zoning change as outlined in Ordinance 6425; consider the request for approval of the minor subdivision final plat for Huntington Cottages Second Addition, the Development Agreement and the Private Drive and Private Utility Agreement, and take final action on the four related items.

## STAFF CONTACT INFORMATION – ZONING CHANGE AND PLAT

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

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

Will Hutchings | Planner, 355-1850 or whutchings@bismarcknd.gov

## STAFF CONTACT INFORMATION – DEVELOPMENT AGREEMENT and PRIVATE DRIVE AND PRIVATE UTILITY AGREEMENT

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

**ORDINANCE NO. 6425**

| | |
|---|---|
| *First Reading* | _____ |
| *Second Reading* | _____ |
| *Final Passage and Adoption* | _____ |
| *Publication Date* | _____ |

**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 R5-Residential zoning district and included in the R10 – Residential zoning district:

Lots 1-21, Block 1, Huntington Cottages Second Addition.

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

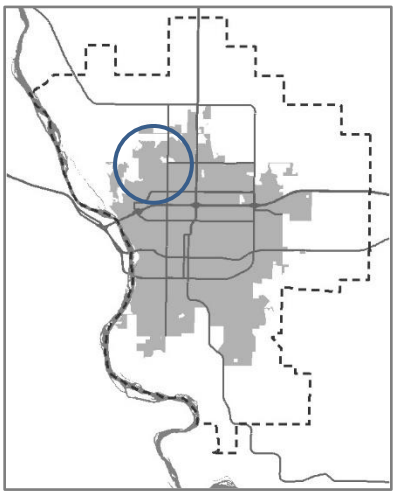
**May 27, 2020**

**Application for: Zoning Change**
**Minor Subdivision Final Plat**

*TRAKiT Project ID:* ZC2020-001
MPLT2020-002

## Project Summary

| | |
|---|---|
| *Title:* | Huntington Cottages Second Addition |
| *Status:* | Planning & Zoning Commission – Public Hearing |
| *Owner(s):* | Chris Wentz (owner)<br>Huntington Enterprises, Inc. (applicant) |
| *Project Contact:* | Ken Nysether, PE, SEH |
| *Location:* | In north Bismarck, west of North Washington Street, along the south side of Colt Avenue (a replat of Lot 4, Block 2, KMK Estates) |
| *Project Size:* | 4.54 acres |
| *Request:* | Rezone and replat property to allow future development of two-family residences and a storm water facility |



## Site Information

| **Existing Conditions** | | **Proposed Conditions** | |
|---|---|---|---|
| *Number of Lots:* | 1 lot in 1 block | *Number of Lots:* | 21 lots in 1 block |
| *Land Use:* | Single-Family Residential | *Land Use:* | Two-Family Residential |
| *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:* | R5 – Residential | *Zoning:* | R10 – Residential |
| *Uses Allowed:* | R5 – Single-family residential | *Uses Allowed:* | R10 – Single and two-family residential |
| *Max Density Allowed:* | R5 – 5 units / acre | *Max Density Allowed:* | R10 – 10 units / acre |

## Property History

| | | | | | |
|---|---|---|---|---|---|
| *Zoned:* | *02/2016* | *Platted:* | *08/1966* | Annexed: | 11/2014 |

*(continued)*

## Staff Analysis

Chris Wentz and Huntington Enterprises, Inc. are requesting approval of a zoning change from the R5 – Residential zoning district to the R10 – Residential zoning district and a minor subdivision final plat titled Huntington Cottages Second Addition. The proposed plat would create 21 lots and would allow the development of 10 two-family residences with one common lot for a permanent stormwater detention pond.

The Planning and Zoning Commission considered the zoning request at their meeting of February 26, 2020 and called for a public hearing on the zoning change.

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on May 15th and May 22nd and 37 letters were mailed to the owners of nearby properties on May 15th.

Adjacent uses include a mix of single-family and two-family residential to the north across Colt Avenue, a religious facility to the east, and single-family residential to the south and west.

Properties both within and along the northern portion of the proposed plat will be accessed from Colt Avenue. Colt Avenue is a rural road section so a petition for the improvement of the roadway to an urban street section will be required prior to the recordation of the plat.

*Private Drive and Utilities*

The proposed development would include both private drives and private utilities. A signed Private Drive and Private Utility Agreement will be required prior to recordation of the minor subdivision final plat.

The proposed plat indicates two private drives within the plat. Colt Loop will provide access to all inner lots within the proposed development and will be a loop with two access points along Colt Avenue. Colt Place is a spur off of Colt Loop that would provide a future option for connectivity to property south of the proposed plat. The applicant has indicated that this private drive segment will not be constructed at this time and if, in the future, it is determined to not be necessary, the applicant would vacate the access and utility easement provided for Colt Place.

*Utility Capital Charges*

The creation of any new lots in the City of Bismarck is subject to development capital charges for municipal utilities. The Public Works Department – Utility Operation Division has determined that utility capital charges will be due prior to the recordation of the proposed plat.

**Required Findings of Fact** (relating to land use)

*Zoning Change*

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;
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.

*(continued)*

*Minor Subdivision Final Plat*

1. All technical requirements for approval of a minor subdivision final plat have been met;
2. The City Engineer has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP);
3. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
4. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
5. The proposed subdivision 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 R5 – Residential zoning district to the R10 – Residential zoning district and the minor subdivision final plat for Huntington Cottages Second Addition, with the following conditions:

1. The developer submits a petition for improvements to Colt Avenue prior to plat recordation.
2. The developer enters into a Private Drive and Private Utility Agreement and/or development agreement with the City prior to plat recordation.

**Attachments**

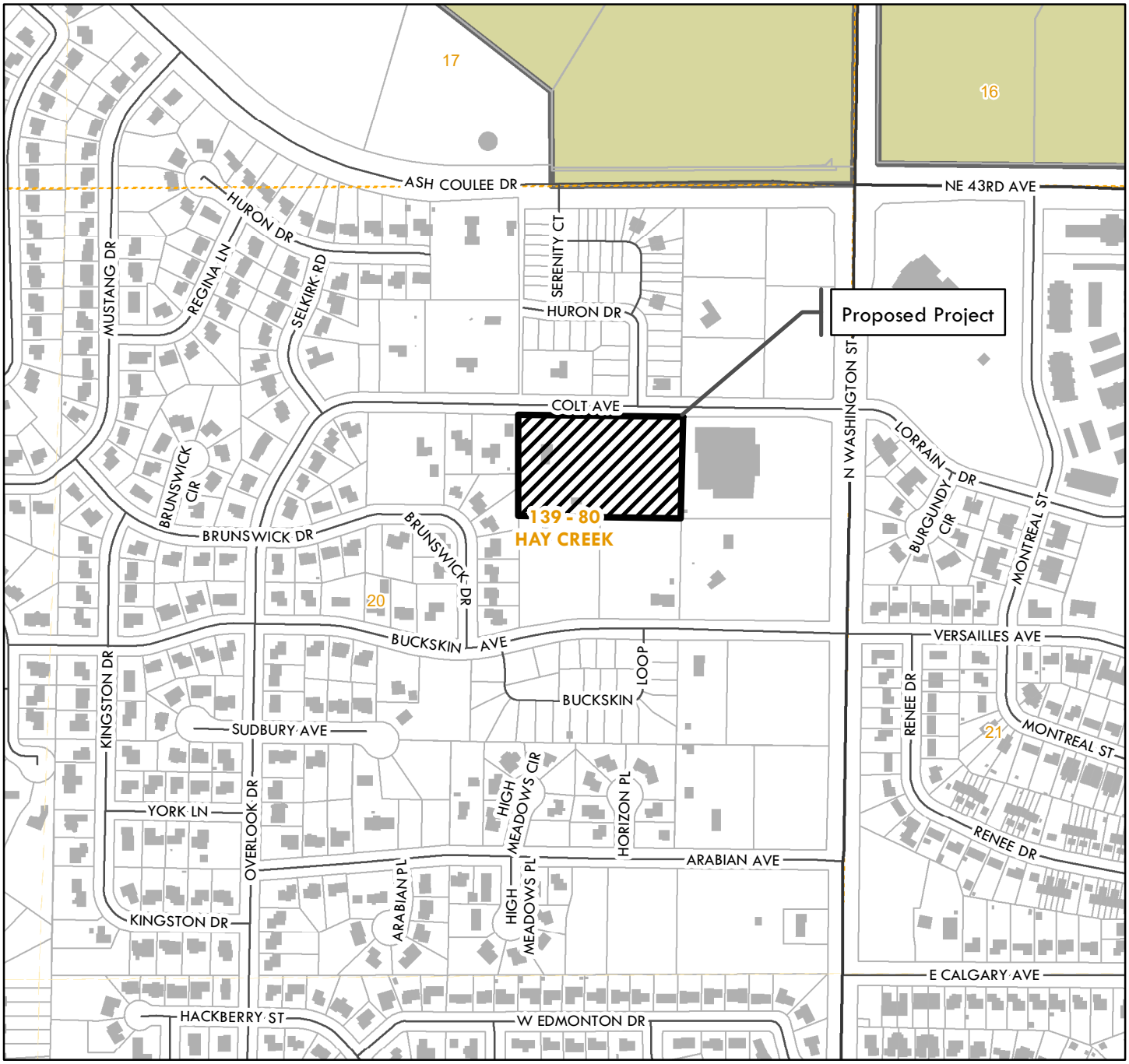
1. Location Map
2. Aerial Map
3. Zoning and Plan Reference Map
4. Proposed Plat
5. Underlying Plat with Replatted Area Highlighted

*Staff report prepared by:* Will Hutchings, Planner
701-355-1850 | whutchings@bismarcknd.gov

# Location Map

Huntington Cottages Second Addition

MPLT2020-002
ZC2020-001



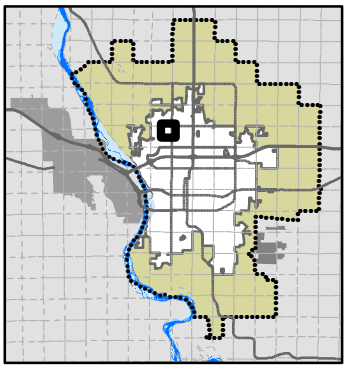

0 0.1 0.2 0.4 Miles

City Limits

Bismarck ETA Jurisdiction

County Outside ETA

*Section, township, and range indicated in orange*



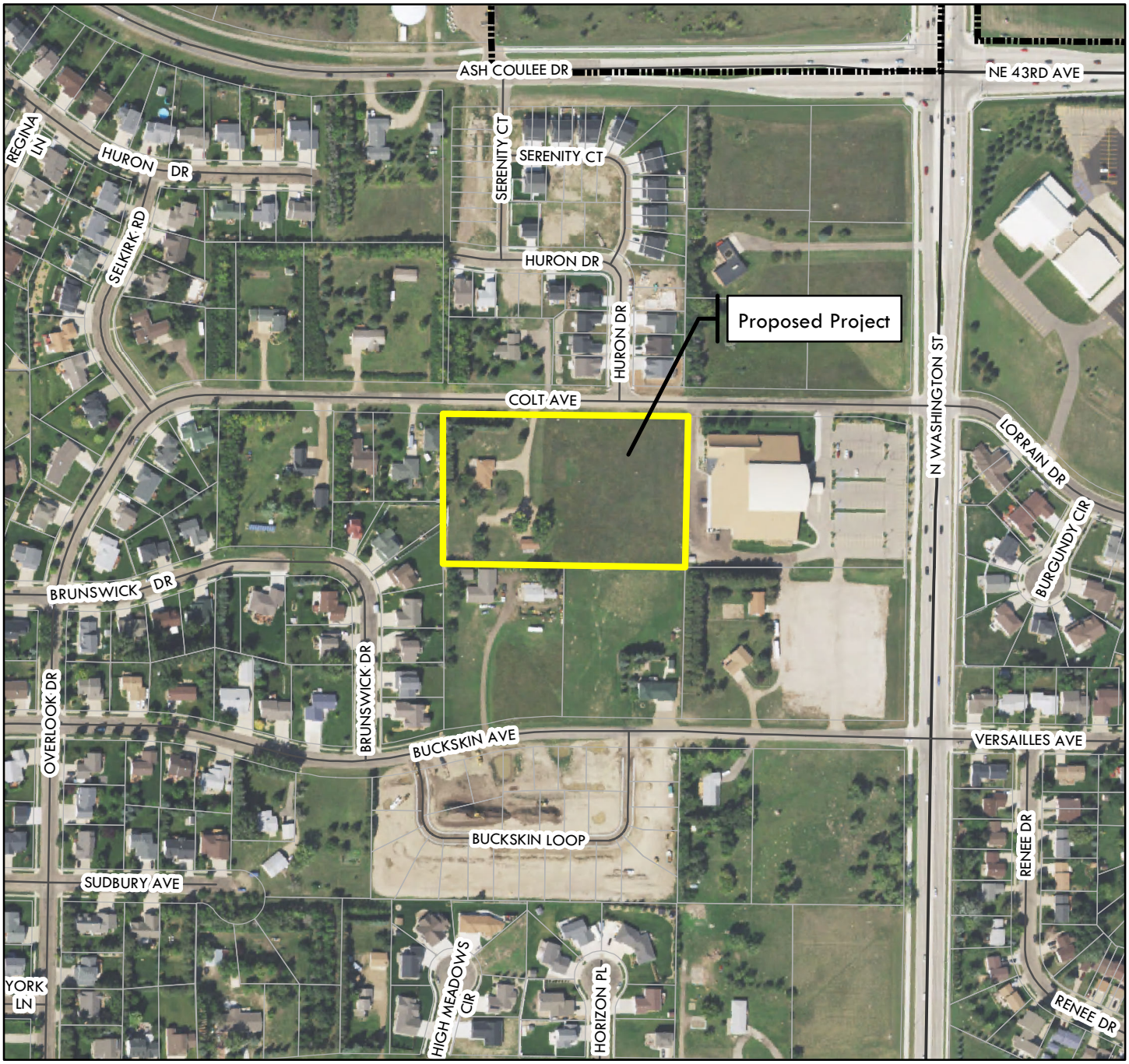
City of Bismarck
Community Development Department
Planning Division
January 27, 2020 (HLB)

*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

Huntington Cottages Second Addition

MPLT2020-002
ZC2020-001

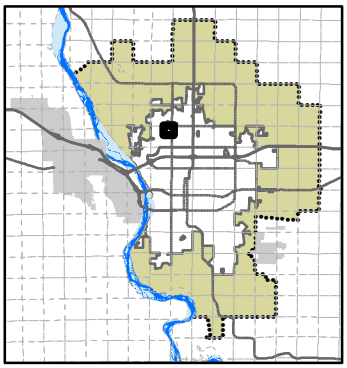



0 0.075 0.15 0.3 Miles

City Limits

Bismarck ETA Jurisdiction

Aerial Imagery from 2018



City of Bismarck
Community Development Department
Planning Division
February 20, 2020

*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

Huntington Cottages Second Addition

MPLT2020-002
ZC2020-001

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 |
| **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 |

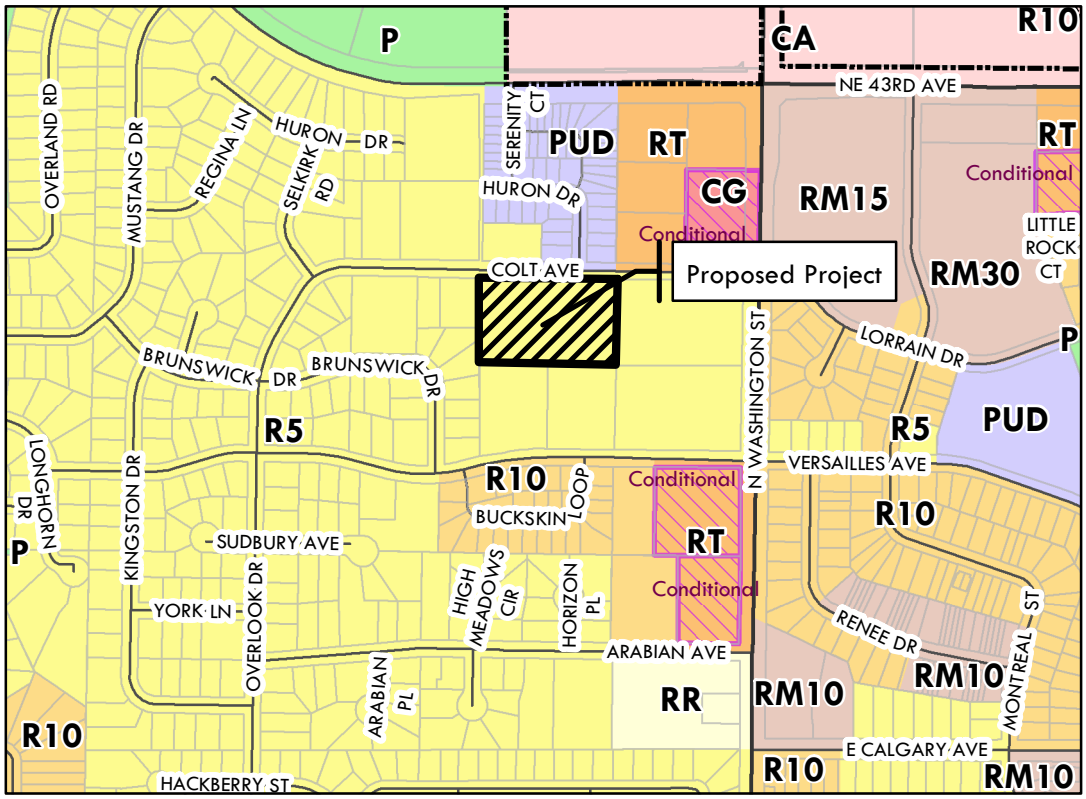
Diagonal lines indicate special condition

*Future Land Use Plan*

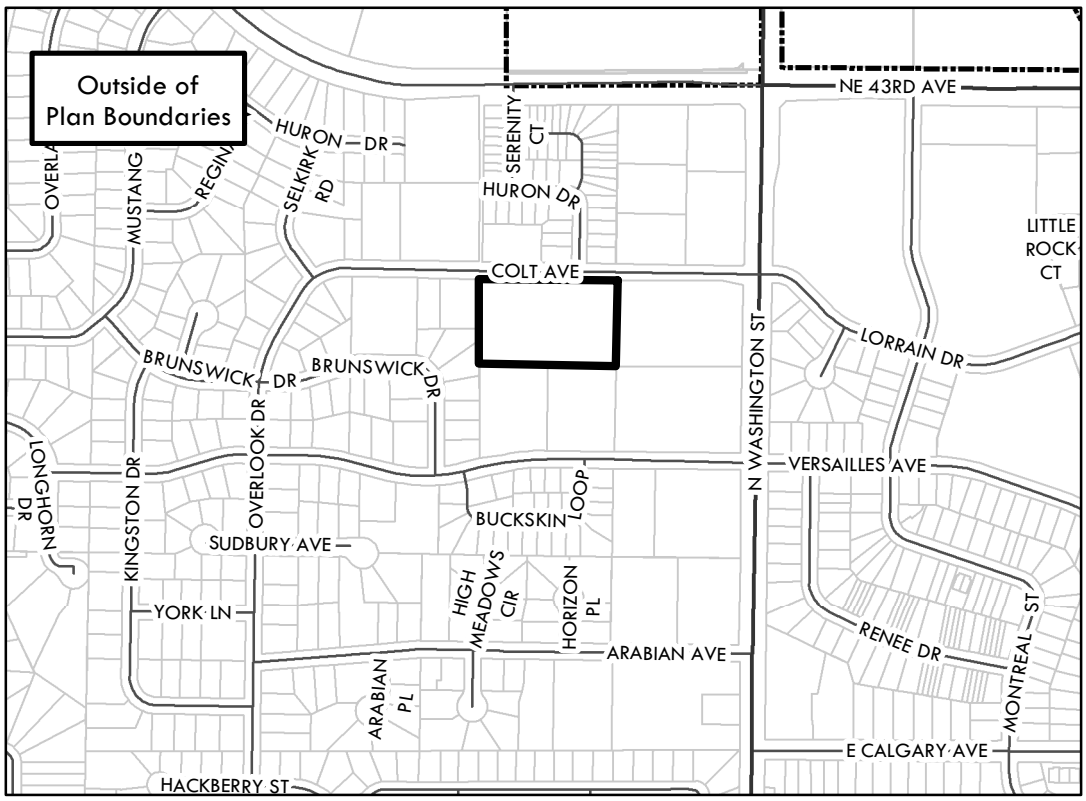
| | |
|---|---|
| **CONSRV** | Conservation |
| **BP** | Business Park |
| **C** | Commercial |
| **C/MU** | Commercial/ Mixed Use |
| **CIVIC** | Civic |
| **HDR** | High Density Residential |
| **I** | Industrial |
| **LDR** | Low Density Residential |
| **MDR** | Medium Density Residential |
| **MDR-/MU** | 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*

Zoning




Future Land Use Plan




0 0.1 0.2 0.4 Miles

City Limits

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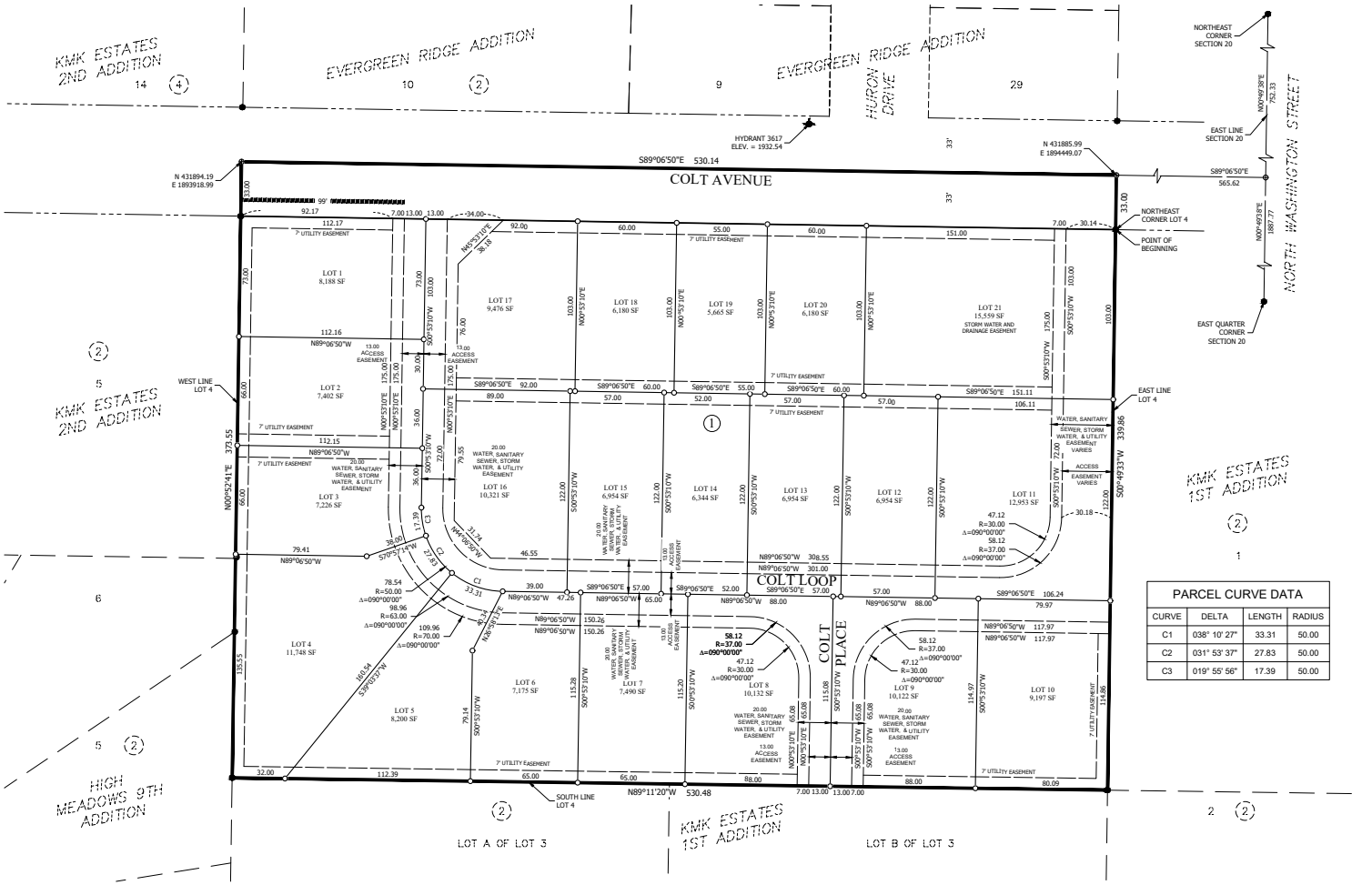
City of Bismarck
Community Development Dept.
Planning Division
February 20, 2020

# HUNTINGTON COTTAGES SECOND ADDITION

Being a replat of Lot 4, Block 2, KMK ESTATES and adjacent south half of the Colt Avenue Right of Way in the Northeast Quarter of Section 20, Township 139 North, Range 80 West of the Fifth Principal Meridian,City of Bismarck, Burleigh County, North Dakota




| PARCEL CURVE DATA | | | |
|---|---|---|---|
| CURVE | DELTA | LENGTH | RADIUS |
| C1 | 038° 10' 27" | 33.31 | 50.00 |
| C2 | 031° 53' 37" | 27.83 | 50.00 |
| C3 | 019° 55' 56" | 17.39 | 50.00 |

LEGEND:

- FOUND MONUMENT
- REBAR W/ CAP LS-8444
- ROADWAY POINT
- PLAT BOUNDARY
- NON ACCESS LINE
- EASEMENT LINE
- ADJACENT LOT LINE
- SECTION LINE

AREA TABULATIONS:

| | | | |
|---|---|---|---|
| 21 Lots | = | 180,421 SF | 4.14± Acres |
| Right of Way | = | 17,495 SF | 0.40± Acres |
| Total | = | 197,916 SF | 4.54± Acres |

## OWNER'S CERTIFICATE AND DEDICATION

Christopher K. Wentz., being all the owner of the lands platted herein, do hereby voluntarily consent to the execution of this plat titled HUNTINGTON COTTAGES SECOND ADDITION, and dedicate and rededicate all rights of way as shown on this plat for public use, and consent to any access control to the property as shown.

We also dedicate all easements as shown on this plat as "Utility Easements" to run with the land for public and private utilities or services on, across, above or under those certain strips of land.

We also dedicate for public use all easements as shown on this plat "Access, Water, Sanitary Sewer, Stormwater & Drainage Easements" to run with the land for the purpose of allowing the free and unobstructed flow of water under and/or over those areas including the construction and maintenance of storm water facilities together with necessary appurtenances.

We further dedicate any other easements or servitudes as shown and those that are recorded but not shown.

_____
Christopher K. Wentz

STATE OF NORTH DAKOTA )
) SS
COUNTY OF BURLEIGH )

Be it known on this _____ day of _____, 2020, before me personally appeared Christopher K. Wentz, known to me to be the person described in and who executed the within certificate and he acknowledged to me that he executed the same.

_____
Notary Public, Burleigh County, North Dakota

My Commission Expires: _____

## SURVEYOR'S CERTIFICATE:

I, Robert M. Illg, a Registered Professional Land Surveyor in the State of North Dakota, hereby certify that I made the within and foregoing plat which is a correct representation of the survey prepared under my direct supervision and completed on January 22nd, 2020, that all distances are correct, that the outside boundary lines are correctly designated hereon, that all dimensional and geodetic details shown hereon are true and correct to the best of my knowledge and belief and that all required monuments are placed in the ground as shown.

_____
Robert M. Illg
Registered Professional Land Surveyor
License No. LS-8444

PRELIMINARY
SEH
FOR REVIEW ONLY

## APPROVAL OF CITY ENGINEER

I, Gabriel J. Schell, City Engineer of the City of Bismarck, North Dakota, hereby approve "HUNTINGTON COTTAGES SECOND ADDITION" Bismarck, North Dakota, as shown hereon.

_____
Gabriel J. Schell - City Engineer

## APPROVAL OF CITY PLANNING AND ZONING COMMISSION

The subdivision of land as shown on this plat has been approved by the Planning and Zoning Commission of the City of Bismarck, North Dakota, on the _____ day of _____ 2020.
In accordance with the laws of the State of North Dakota and ordinances of the City of Bismarck.

_____ _____
Mike Schwartz Ben J. Ehreth
Chairman Secretary

## APPROVAL OF BOARD OF CITY COMMISSIONERS

The Board of City Commissioners of the City of Bismarck, North Dakota, has approved the subdivision of land as shown on this plat, has approved the grounds on the plat as an amendment to the Master Plan for the City of Bismarck, North Dakota, has accepted the rededication of all rights of way and public easements shown thereon, and does hereby vacate any previous platting within the boundary of this plat.

The foregoing action of the Board of City Commissioners of Bismarck, North Dakota, was approved the _____day of _____2020.

_____
Attest
Keith J. Hunke, City Administrator

## DESCRIPTION:

A replat of Lot 4, Block 2, KMK ESTATES and adjacent south half of the Colt Avenue Right of Way, in the Northeast Quarter of Section 20, Township 139 North, Range 80 West of the Fifth Principal Meridian, City of Bismarck, Burleigh County, North Dakota, and being more particularly described as follows:

Beginning at the Northeast Corner of said Lot 4; thence South 00 degrees 49 minutes 33 seconds West along the east line of said Lot 4, a distance of 339.86 feet to the southeast corner of said Lot 4; thence North 89 degrees 11 minutes 20 seconds West along the south line of said Lot 4, a distance of 530.48 feet to southwest corner of said Lot 4; thence North 00 degrees 52 minutes 41 seconds East along the west line of said Lot 4 and its northerly extension 373.55 feet to the centerline of Colt Avenue; thence South 89 degrees 06 minutes 50 seconds East along said centerline 530.14 feet to its intersection with the northerly extension of the east line of said Lot 4; thence South 00 degrees 49 minutes 33 seconds West along the northerly extension of the east line of said Lot 4 a distance of 33.00 feet to the Point of Beginning.

Containing 4.54 acres, more of less.

N

30 0 30 60
scale 15 feet

BASIS OF BEARING:
Derived from State Plane coordinates.

COORDINATE DATUM:
North Dakota State Plane Coordinate System
NAD 83 South Zone 3302 (Adjusted 86)
International Units

VERTICAL DATUM:
National Geodetic Vertical Datum 29
City Hydrant 3617
Colt Avenue and Huron DRIVE
Elevation = 1932.54

OWNER:
Christopher K. Wentz
2718 Essex Loop
Bismarck, ND 58504

SURVEYOR:
SEH / Robert M. Illg PLS
4719 Shelburne St.
Bismarck, ND 58503

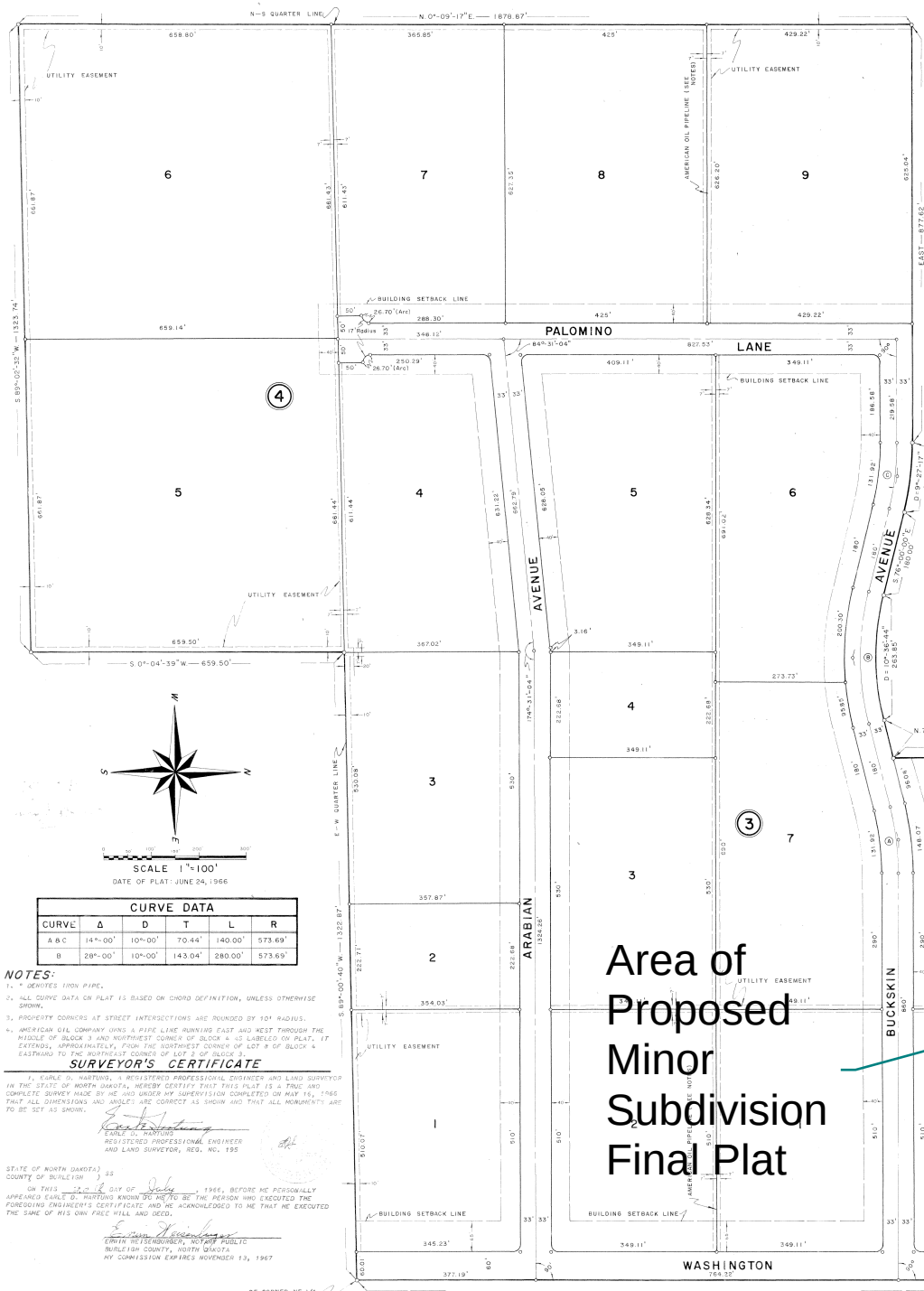
SURVEYED:
1/22/2020

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

DATE: 5/11/20

# K.M.K. ESTATES

BURLEIGH COUNTY, NORTH DAKOTA




| CURVE DATA | | | | | |
|---|---|---|---|---|---|
| CURVE | Δ | D | T | L | R |
| A & C | 14°-00' | 10°-00' | 70.44' | 140.00' | 573.69' |
| B | 28°-00' | 10°-00' | 143.04' | 280.00' | 573.69' |

## NOTES:

1. * DENOTES IRON PIPE.
2. ALL CURVE DATA ON PLAT IS BASED ON CHORD DEFINITION, UNLESS OTHERWISE SHOWN.
3. PROPERTY CORNERS AT STREET INTERSECTIONS ARE ROUNDED BY 10' RADIUS.
4. AMERICAN OIL COMPANY OWNS A PIPE LINE RUNNING EAST AND WEST THROUGH THE MIDDLE OF BLOCK 3 AND NORTHWEST CORNER OF BLOCK 4 AS LABELED ON PLAT. IT EXTENDS, APPROXIMATELY, FROM THE NORTHWEST CORNER OF LOT 9 OF BLOCK 4 EASTWARD TO THE NORTHEAST CORNER OF LOT 3 OF BLOCK 3.

## SURVEYOR'S CERTIFICATE

I, EARLE D. MARTUNS, A REGISTERED PROFESSIONAL ENGINEER AND LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, HEREBY CERTIFY THAT THIS PLAT IS A TRUE AND COMPLETE SURVEY MADE BY ME AND UNDER MY SUPERVISION COMPLETED ON MAY 16, 1966 THAT ALL DIMENSIONS AND ANGLES ARE CORRECT AS SHOWN AND THAT ALL MONUMENTS ARE TO BE SET AS SHOWN.

EARLE D. MARTUNS
REGISTERED PROFESSIONAL ENGINEER
AND LAND SURVEYOR, REG. NO. 195

STATE OF NORTH DAKOTA) SS
COUNTY OF BURLEIGH )

ON THIS 20 DAY OF July, 1966, BEFORE ME PERSONALLY APPEARED EARLE D. MARTUNS KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE FOREGOING ENGINEER'S CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME OF HIS OWN FREE WILL AND DEED.

ERWIN WEISENBURGER, NOTARY PUBLIC
BURLEIGH COUNTY, NORTH DAKOTA
MY COMMISSION EXPIRES NOVEMBER 13, 1967

REVISED: JULY 11, 1966

## DESCRIPTION

ALL THAT PART OF THE NORTHEAST QUARTER (NE¼) AND NORTH HALF (N½) OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER (NW¼,SE¼) OF SECTION TWENTY (20), TOWNSHIP ONE HUNDRED THIRTY-NINE NORTH (T.139N.), RANGE EIGHTY WEST (R.80W.) OF THE FIFTH PRINCIPAL MERIDIAN (5TH P.M.), COUNTY OF BURLEIGH, STATE OF NORTH DAKOTA THAT IS BOUNDED BY AND LIES WITHIN THE FOLLOWING DESCRIBED TRAVERSE:

BEGINNING AT A POINT LYING ON THE EAST LINE OF SAID SECTION TWENTY (20), AND SAID POINT BEING SOUTH (S.0°-00'-00"E.) ALONG SAID EAST LINE A DISTANCE OF THREE HUNDRED SEVENTY-EIGHT AND NO HUNDREDTHS (378.00) FEET FROM THE NORTHEAST CORNER OF SAID SECTION TWENTY (20). FROM SAID POINT OF BEGINNING THE TRAVERSE BEARS SOUTH (S.0°-00'-00"E.) ALONG SAID EAST LINE A DISTANCE OF TWO THOUSAND TWO HUNDRED SIXTY-TWO AND NO HUNDREDTHS (2262.00)FEET;THENCE BEARING SOUTH EIGHTY-NINE DEGREES, ZERO MINUTES, AND FORTY SECONDS WEST (S.89°-00'-40"W.) A DISTANCE OF ONE THOUSAND THREE HUNDRED TWENTY-TWO AND EIGHTY-SEVEN HUNDREDTHS (1322.87) FEET TO THE EAST LINE OF THE SAID NORTH HALF (N½) OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER (NW¼,SE¼); THENCE BEARING SOUTH ZERO DEGREES, FOUR MINUTES AND THIRTY-NINE SECONDS WEST (S.0°-04'-39"W.) ALONG SAID EAST LINE A DISTANCE OF SIX HUNDRED FIFTY-NINE AND FIFTY HUNDREDTHS (659.50) FEET TO THE SOUTH LINE OF THE SAID NORTH HALF (N½) OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER (NW¼,SE¼); THENCE BEARING SOUTH EIGHTY-NINE DEGREES, TWO MINUTES AND THIRTY-TWO SECONDS WEST (S.89°-08'-35"W.) ALONG SAID SOUTH LINE A DISTANCE OF ONE THOUSAND THREE HUNDRED THIRTY-THREE AND SEVENTY-FOUR HUNDREDTHS (1323.74) FEET TO THE NORTH-SOUTH QUARTER (N-S¼) LINE OF SAID SECTION TWENTY (20); THENCE BEARING NORTH ZERO DEGREES, NINE MINUTES AND SEVENTEEN SECONDS EAST (N.0°-09'-17"E.) ALONG SAID NORTH-SOUTH QUARTER (N-S¼) LINE A DISTANCE OF ONE THOUSAND EIGHT HUNDRED SEVENTY-EIGHT AND EIGHTY-SEVEN HUNDREDTHS (1878.87) FEET; THENCE BEARING EAST (N.90°-00'-00"E.) A DISTANCE OF EIGHT HUNDRED SEVENTY-SEVEN AND SIXTY-TWO HUNDREDTHS (877.62) FEET; THENCE BEARING SOUTHEASTERLY AND TO THE RIGHT ALONG A MINE DEGREE, TWENTY-SEVEN MINUTE AND SEVENTEEN SECOND (9°-27'-17") CURVE A DISTANCE OF ONE HUNDRED FORTY-EIGHT AND SEVEN HUNDREDTHS (148.07) FEET; THENCE BEARING SOUTH SEVENTY-SIX DEGREES, ZERO MINUTES AND ZERO SECONDS EAST (S.76°-00'-00"E.) A DISTANCE OF ONE HUNDRED EIGHTY AND NO HUNDREDTHS (180.00) FEET; THENCE BEARING TO THE LEFT ALONG A TEN DEGREE, THIRTY-SIX MINUTE AND FORTY-FOUR SECOND (10°-36'-44") CURVE A DISTANCE OF TWO HUNDRED SIXTY-THREE AND EIGHTY-FIVE HUNDREDTHS (263.85) FEET; THENCE BEARING NORTH SEVENTY-SIX DEGREES, ZERO MINUTES AND ZERO SECONDS EAST (N.76°-00'-00"E.) A DISTANCE OF EIGHTY-THREE AND NINETY-TWO HUNDREDTHS (83.92) FEET; THENCE BEARING NORTH (N.0°-00'-00"E.) A DISTANCE OF ONE THOUSAND FOUR HUNDRED EIGHTY-FIVE AND SEVENTEEN HUNDREDTHS (1485.17) FEET TO THE NORTH LINE OF SAID SECTION TWENTY (20); THENCE BEARING NORTH EIGHTY-EIGHT DEGREES, FIFTY-TWO MINUTES AND FIFTEEN SECONDS EAST (N.88°-52'-15"E.) ALONG SAID NORTH LINE A DISTANCE OF FIVE HUNDRED THIRTY AND TEN HUNDREDTHS (530.10) FEET; THENCE BEING SOUTH (S.0°-00'-00"W.) A DISTANCE OF THREE HUNDRED SEVENTY-EIGHT AND NO HUNDREDTHS (378.00) FEET; THENCE BEARING NORTH EIGHTY-EIGHT DEGREES, FIFTY-TWO MINUTES AND FIFTEEN SECONDS EAST (N.88°-52'-15"E.) A DISTANCE OF FIVE HUNDRED SEVENTY AND ELEVEN HUNDREDTHS (570.11) FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT CONTAINS ONE HUNDRED TWENTY-THREE AND SEVENTY-SIX HUNDREDTHS (123.76) ACRES, MORE OR LESS.

## OWNER'S CERTIFICATE & DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT THE K.M.K. CORPORATION, A NORTH DAKOTA CORPORATION, KENNETH J. LANDSBERGER AND GENEVIEVE M. LANDSBERGER, JOHN V. GARTNER AND DOROTHY M. GARTNER, JOSEF MUCHLER AND LIESELOTTE MUCHLER, WENDELIN SCHERR AND LOIS JEAN SCHERR, EARL F. LIPPERT AND CHRISTINA LIPPERT, AND RICHARD O. FLURER, ARE THE OWNERS AND PROPRIETORS OF THE PROPERTY SHOWN AND DESCRIBED ON THE ANNEXED PLAT AND HAVE CAUSED THE SAME TO BE SURVEYED AND PLATTED AS NOW SHOWN AS "K.M.K. ESTATES" AND DO HEREBY DEDICATE STREETS AS SHOWN HEREON, INCLUDING ALL SEWERS, CULVERTS, WATER DISTRIBUTION LINES, GAS DISTRIBUTION LINES, AND OTHER PUBLIC UTILITY LINES, WHETHER SHOWN HEREON OR NOT, TO THE PUBLIC USE FOREVER.

THEY ALSO DEDICATE EASEMENTS, TO RUN WITH THE LAND, FOR WATER, SEWER, GAS, ELECTRIC, TELEPHONE, OR OTHER PUBLIC UTILITY LINES OR SERVICES UNDER, ON, OR OVER THOSE CERTAIN STRIPS OF LAND DESIGNATED HEREON AS "UTILITY EASEMENTS".

OWNER: LOT 1, BLK. 1 — RICHARD O. FLURER

OWNER: LOT 3, BLK. 3 — EARL F. LIPPERT, CHRISTINA LIPPERT

OWNER: LOT 3, BLK. 3 — JOSEF MUCHLER, LIESELOTTE MUCHLER

OWNER: LOT 3, BLK. 4 — KENNETH J. LANDSBERGER, GENEVIEVE M. LANDSBERGER

CORPORATE SEAL

OWNER: LOT 2, BLK. 3 — WENDELIN SCHERR, LOIS JEAN SCHERR

OWNER: LOT 1, BLK. 4 — JOHN V. GARTNER, DOROTHY M. GARTNER

K.M.K. CORPORATION
BY: MARTHA H. KAVANEY, PRESIDENT
BEN MARCOVITZ, SECRETARY

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH )

ON THIS 26th DAY OF July, 1966, BEFORE ME PERSONALLY APPEARED MARTHA H. KAVANEY AND BEN MARCOVITZ, PRESIDENT AND SECRETARY OF K.M.K. CORP., KENNETH J. LANDSBERGER AND GENEVIEVE M. LANDSBERGER, JOHN V. GARTNER AND DOROTHY M. GARTNER, JOSEF MUCHLER AND LIESELOTTE MUCHLER, WENDELIN SCHERR AND LOIS JEAN SCHERR, EARL F. LIPPERT AND CHRISTINA LIPPERT, AND RICHARD O. FLUER, AND THEY EXECUTED THE FOREGOING INSTRUMENT AND EACH AND SEVERALLY ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR USES AND PURPOSES THEREIN EXPRESSED.

WILLIAM T. KAVANEY
NOTARY PUBLIC, BURLEIGH COUNTY, N. DAK.
MY COMMISSION EXPIRES Dec. 11th 1970

## CITY PLANNING COMMISSION APPROVAL

THE SUBDIVISION OF LAND AS SHOWN ON THE ANNEXED PLAT HAS BEEN APPROVED BY THE PLANNING COMMISSION OF THE CITY OF BISMARCK, ON Aug 18, 1966, IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH DAKOTA, ORDINANCES OF THE CITY OF BISMARCK, AND REGULATIONS ADOPTED BY SAID PLANNING COMMISSION. IN WITNESS WHEREOF ARE SET THE HANDS AND SEALS OF THE CHAIRMAN AND SECRETARY OF THE PLANNING COMMISSION OF THE CITY OF BISMARCK.

ADRIAN C. TAYLOR, CHAIRMAN — FOY BAKER, SECRETARY

## COUNTY PLANNING COMMISSION APPROVAL

THE SUBDIVISION OF LAND AS SHOWN ON THE ANNEXED PLAT HAS BEEN APPROVED BY THE PLANNING COMMISSION OF BURLEIGH COUNTY ON August 1, 1966, IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH DAKOTA AND REGULATIONS ADOPTED BY THE SAID PLANNING COMMISSION OF BURLEIGH COUNTY, NORTH DAKOTA.

ERVIN BOURGOIS, CHAIRMAN — BERNICE ASBRIDGE, SECRETARY

## APPROVAL OF BOARD OF COUNTY COMMISSION

THE BOARD OF COUNTY COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THE ANNEXED PLAT, HAS ACCEPTED THE DEDICATION OF ALL STREETS SHOWN THEREON AND HAS APPROVED THE GROUNDS AS SHOWN ON THE ANNEXED PLAT AS AN AMENDMENT OF THE MASTER PLAN OF BURLEIGH COUNTY.

THE FOREGOING ACTION OF THE BOARD OF COUNTY COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA, WAS TAKEN BY RESOLUTION APPROVED THE 2nd DAY OF August, 1966.

EMMET CARROLL, CHAIRMAN — ATTEST: BERNICE ASBRIDGE, COUNTY AUDITOR

Area of Proposed Minor Subdivision Final Plat

K. M. K. Estates

DEVELOPMENT AGREEMENT

The City of Bismarck (the City) and Huntington Enterprises, Inc. (the Owner) make this Development Agreement with regard to the development of a plat (the Plat) located in Bismarck, North Dakota and described as follows:

> Block 1, Lots 1-17 and 21, Huntington Cottages Second Addition to the City of Bismarck, Burleigh County, North Dakota

Owner desires to develop this Plat for residential use. The Plat is located on the south side of Colt Avenue west of Washington Street. The city would normally require the improvement of Colt Avenue adjacent to the Plat at the time of the development of the Plat. The parties are in agreement that the improvement of Colt Avenue adjacent to the Plat is not necessary for the development of the Plat at this time and can be delayed until such time as the City receives a petition to improve Colt Avenue from any parcel located on Colt Avenue between Washington Street and 1620' west of Washington Street.

In exchange for the City's agreement to delay the requirement of the improvement of Colt Avenue, between Washington Street and 1620' west of Washington Street, the parties agree as follows:

1. The City will approve the Plat and issue building permits in its normal course of business. Prior to such approvals or permits being issued, Owner will execute and deliver a petition for the improvement of Colt Avenue for that portion adjacent to the Plat. The petition will be conditioned that it will be deemed to be submitted upon the receipt of another valid petition for improvement of any portion of Colt Avenue between Washington Street and 1620' west of Washington Street. By entering into this Agreement, ***Owner*** also agrees to waive their right to protest a special assessment district formed to improve Colt Avenue that includes the roadway between Washington Street and 1620' west of Washington Street. This agreement will be placed of record in the title for the Plat, and all successors in interest agree to waive their right to protest the special assessment district under N.D.C.C. Ch 40-22 by accepting delivery of title. The City also agrees that in order to activate the petition, any project for the improvement of Colt Avenue between Washington Street and 1620' west of Washington Street must include the entire width of the roadway.

2. It is the intention of the parties that this Agreement will run with the land as to the parcels within the Plat and that Owner will have the obligation to inform any successor in interest of the terms of this Agreement and the successor's obligation to abide by this Agreement and include compliance with this Agreement as a condition in any written instrument of conveyance of real property within Huntington Cottages Second Addition.

3. The terms of this agreement shall be considered a covenant running with the land and bind all future owners in the same manner as if they had personally entered this agreement.

This Agreement shall bind the parties, their successors, assigns and heirs.
Dated this _____ day of _____, 2020

Huntington Enterprises, Inc.
Hunt Boustead, Its

_____

STATE OF NORTH DAKOTA )

) ss.

COUNTY OF BURLEIGH )

On this _____day of _____, 2019, before me personally appeared Hunt Boustead, 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 _____, 2019

_____

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 _____, 2019, 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)

## PETITION FOR PERMANENT STREET IMPROVEMENT

**DATE:** _____
To the Honorable Board of City Commissioners
Bismarck, North Dakota
Commissioners:

The undersigned owners of the property liable to be assessed for the improvement respectfully petition your Honorable Board to have permanent street improvements completed on:

Colt Avenue – from Washington Street to 1620' west of Washington Street

It is agreed that the necessary permanent street improvements be completed following the installation of the necessary water and sewer service line stubouts by the abutting property owner(s) and that 100% of the paving cost of said permanent street improvements be assessed to or other funding arrangements made by the benefitted property according to the Current Development Costs Policy. For parcels not zoned residential, 40% of the permanent street improvement cost will be prepaid by the benefitted petitioned property It is agreed that 100% of any temporary street improvements shall be prepaid by the benefited petitioned property.

| PROPERTY DESCRIPTION | SIGNATURE and ADDRESS (Property Owner/s) |
|---|---|
| Lot 1-21, Block 1 | |
| Huntington Cottages Second Addition | |
| | |
| | Hunt Boustead |
| | Huntington Enterprises, Inc. |

---

For City Engineer Use Only

_____ _____

Approved by Gabe J. Schell, PE Date
City Engineer, Bismarck, ND

PRIVATE DRIVE AND PRIVATE UTILITY AGREEMENT

The City of Bismarck (the “City") and Huntington Enterprises, Inc (the “Owner") make this Development Agreement with regard to the development of the property located in Bismarck, North Dakota and with the property (“the Property”) described as follows:

> Block 1, Lots 1-17 and 21, Huntington Cottages Second Addition to the City of Bismarck, Burleigh County, North Dakota

The Owner desires to develop the Property for residential use and is requesting utilizing a private drive(s), road(s) or access easement(s) (the “Private Drive”) to provide access and services to the parcels platted within the Property and identified above. The Property is located south of Colt Drive and west of N Washington Street.

The City agrees to the proposed use of a Private Drive provided the utilities listed below (“Private Utilities”) which serve the individual parcels within the Property are also privately owned, except where the City has agreed in writing to own Utilities.

The Private Drive and Private Utilities will include but not be limited to the following:

> Private Drive: The paved roadway or access from the City right-of-way, including all curb and gutter, pavement surface, subgrade and drain tile, driveway approaches and all signage including the private drive name and no parking fire lane signage if required by emergency services.
>
> Water: The water main from the city main, all curb stops between the City main and individual properties being served, water hydrants and valves and all equipment needed to operate the private water system in accordance with state and local requirements.
>
> Sanitary Sewer: The sewer main from the city sewer main, including the Y-connection at the city main, the Y-connections and manholes between the city main and individual

properties and all equipment needed to operate the private sanitary sewer system in accordance with state and local requirements.

Street Lighting: Streetlight poles, streetlight fixtures, electrical conduit and conductor, equipment needed to power and control the streetlights and all equipment needed to operate the private streetlighting system.

Storm Water Facilities: Storm sewer from the City storm system, inlets, manholes, detention ponds, water quality control systems, pump stations and all other equipment and facilities needed to operate the private storm sewer system in compliance with federal, state and local storm water requirements.

The construction, maintenance, operation and replacement of the Private Drive and Private Utilities located with the Property, or located outside the Property but serving exclusively the Property, are all entirely the responsibility of the Owner and its assigns, and the City shall have no responsibility with regard thereto, except that the City will maintain and repair utilities owned by the City.

The installation and use of the Private Drive and Private Utilities does not relieve the Owner from participating in the construction, maintenance, operation and replacement of City facilities as it relates to City funding methods and policies to fund City improvements.

A non-exclusive easement in favor of the City and any other applicable government authority or agency who has jurisdiction over the Property, is granted by this document upon and across the Property for purposes of performing such duties related to law enforcement, fire protection, life safety, health, sanitation and other matters as shall be required from time to time for the purpose of performing their authorized duties.

The Owner has the authority to grant an Easement to the City for purposes of servicing the Private Utilities within the Property and has the authority to expand such grant as deemed appropriate by the Owner.

The City, and the Owner, for good and valuable consideration hereby acknowledged, agree to the following terms and conditions:

1. The Owner agrees to submit a site plan for approval which demonstrates the location and dimension of the Private Drive in relation to the intended structures. The site plan will also show the location, size and material of the Private Utilities along with the required storm water submittals.

2. The Owner agrees to grant the City access over, across and on the Property to permit the City to accomplish the purpose as stated in this agreement.

3. The Owner agrees and understands that the City has no obligation to perform any maintenance or repair of any of the Private Utilities on the Property.

4. The City agrees to provide the following services:
    - Scheduled yearly fire hydrant flushing.
    - Technical assistance in the event a water main break or sewer failure should it occur.
    - Locating and providing curb stop shut-offs such that the Owner can service the Private Utilities

5. The City agrees to provide solid waste collection service consistent with the zoning and use of the Property during the normal course and operation of this service within the City.

6. The City agrees to exercise reasonable care when performing the maintenance described herein. Further, the City agrees to perform all services in a workmanlike manner, and to schedule the maintenance by the City Public Works Department in a manner which will provide efficiency and economy consistent with timeliness.

7. The Owner agrees to hold the City harmless from any and all damages that may occur due to the process and actions taken during or following any and all of services provided herein. The Owner will release, defend, indemnify, protect, and hold harmless the CITY and City officers, agents, representatives, employees, and contractors from and against any and all claims of personal injury, property damage or any other actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of the services provided under this agreement.

8. This Agreement will run with the land as to the parcels within the Property and that the Owner will have the obligation to inform any successor in interest of the terms of this Agreement and the successor's obligation to abide by this Agreement and include compliance with this Agreement as a condition in any written instrument of conveyance of real property within the Property, as well as record this Agreement with the Burleigh County Recorder. The terms of this agreement shall be considered a covenant running with the land and bind all future owners in the same manner as if they had personally entered this agreement.

9. This Agreement may not be modified, except in writing and signed by both parties.

10. This Agreement shall be controlled by the laws of the State of North Dakota, and any action brought as a result of any claim, demand or cause of action arising under the terms of this Agreement shall be brought in an appropriate venue in the State of North Dakota.

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

Dated this _____ day of _____, 20___

Huntington Enterprises, Inc.
Hunt Boustead, President

_____

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

On this _____ day of _____, 20___, 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 _____, 20___

_____

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 _____, 20___, 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)

# Community Development Department

**DATE:** June 2, 2020

**FROM:** Ben Ehreth, AICP, Community Development Director

**ITEM:** Heritage Ridge Second Addition – Annexation

## REQUEST

Benchmark Developments, LLC is requesting approval of the annexation of Heritage Ridge Second Addition. The proposed annexation would not include the right-of-way for 15th Street NW along the western edge of the plat. This action, combined with the previously approved zoning change and major subdivision final plat, would allow the development of 53 lots for single-family homes, future office or multi-family residential development, including a small lot that would be combined with the adjacent lot in Heritage Ridge Addition.

The property is located in northwest Bismarck, north of 57th Avenue NW and east of 15th Street NW (part of the SW¼ of Section 8, T139N-R80W/Hay Creek Township).

Please place this item on the June 9, 2020 and June 23, 2020 City Commission meeting agendas.

## BACKGROUND INFORMATION

The Planning and Zoning Commission held final consideration of this item on May 27, 2020.

At the conclusion of final consideration, and based on the findings contained in the staff report, the Planning & Zoning Commission recommended approval of the annexation of Heritage Ridge Second Addition, less the 15th Street NW right-of-way

## RECOMMENDED CITY COMMISSION ACTION

June 9th meeting of the Board of City Commissioners – consider the annexation as outlined in Ordinance 6426 and call for a public hearing on this item for the June 23rd meeting of the Board of City Commissioners.

June 23rd meeting of the Board of City Commissioners – hold a public hearing on the annexation as outlined in Ordinance 6426 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. 6426**

| | |
|---|---|
| *First Reading* | _____ |
| *Second Reading* | _____ |
| *Final Passage and Adoption* | _____ |

AN ORDINANCE ANNEXING PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA, DECLARING THE TERRITORY ANNEXED; DECLARING THE SAME TO BE A PART OF THE CORPORATE LIMITS OF SAID CITY.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA.

Section 1. Territory Annexed. The territory and land hereinafter described is hereby declared and found to be a part of the corporate limits of the City of Bismarck, Burleigh County, North Dakota, as follows:

Lots 1-16, Block 1, Lots 1-21, Block 2, Lot 1, Block 3, Lots 1-8, Block 4, and Lots 1-7, Block 5, Heritage Ridge Second Addition, less the 15th Street NW right-of-way along the western edge of the plat.

The above described tract of land contains 40.52 acres, more or less.

Section 2. Provisions Applicable. From and after the final passage and adoption of this Ordinance and upon recording of this ordinance with the Burleigh County Recorder, the territory herein described shall be a part of the corporate limits of the City of Bismarck, Burleigh County, North Dakota.

# STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

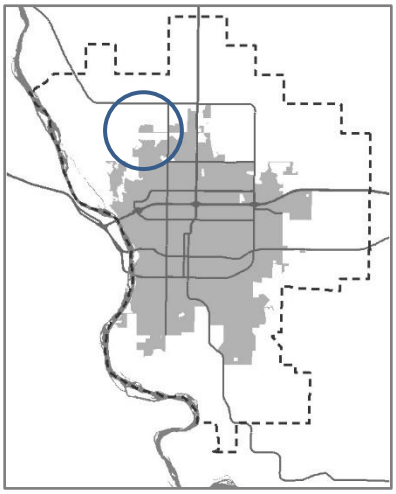
**May 27, 2020**

**Application for: Annexation**

*TRAKiT Project ID*: ANNX2020-004

## Project Summary

| | |
|---|---|
| *Title:* | Heritage Ridge Second Addition |
| *Status:* | Planning & Zoning Commission – Final Consideration |
| *Owner(s):* | Benchmark Developments, LLC |
| *Project Contact:* | Landon Niemiller, Swenson, Hagen & Co. |
| *Location:* | In northwest Bismarck, north of 57th Avenue NW and east of 15th Street NW (part of the SW¼ of Section 8, T139N-R80W/Hay Creek Township) |
| *Project Size:* | 40.22 Acres |
| *Request:* | Annex property for 51 single-family residential lots and two office or multifamily residential lots for future development |



## Site Information

| **Existing Conditions** | | **Proposed Conditions** | |
|---|---|---|---|
| *Number of Lots:* | Unplatted Tract | *Number of Lots:* | 53 lots in 5 blocks |
| *Land Use:* | Undeveloped | *Land Use:* | Single-family and multi-family residential and offices |
| *Designated GMP Future Land Use:* | Low Density Residential | *Designated GMP Future Land Use:* | Low Density Residential |
| *Zoning:* | A – Agricultural | *Zoning:* | R5 – Residential<br>Conditional RT – Residential |
| *Uses Allowed:* | A – Agriculture | *Uses Allowed:* | R5 – Single-family residential<br>Conditional RT – Offices and multi-family residential |
| *Max Density Allowed:* | A – 1 unit / 40 acres | *Max Density Allowed:* | R5 – 5 units / acre<br>Conditional RT – 10 units/acre |

## Property History

| | | | | | |
|---|---|---|---|---|---|
| *Zoned:* | *Pending* | *Platted:* | *Pending* | Annexed: | N/A |

*(continued)*

## Staff Analysis

Benchmark Developments, LLC is requesting approval of the annexation of all of Heritage Ridge Second Addition., except for the 15th Street NW right-of-way along the western edge of the plat.

Adjacent uses include developing residential uses of a similar character to the south, rural residential uses to the north, and undeveloped land to the east and west. The land to the east is proposed for single-family and two-family residential uses.

This request is associated with a major subdivision final plat and rezoning, which were recommended for approval by the Planning and Zoning Commission on April 22, 2020. The City Commission will take action on these request on May 26. The proposed plat would include 56 single-family residential lots, along with two office or multifamily lots, which would be accessed directly from 15th Street NE.

*Utility Capital Charges*

The creation of any new lots in the City of Bismarck is subject to utility capital charges for municipal utilities. The Public Works Department – Utility Operation Division has determined that utility capital charges will be due prior to annexation or establishment of the street improvement district for this subdivision, whichever is initiated last.

**Required Findings of Fact** (relating to land use)

1. 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 annexation at the time the property is developed;
2. The proposed annexation is a logical and contiguous extension of the current corporate limits of the City of Bismarck;
3. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance;
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
5. The proposed annexation would not adversely affect the public health, safety and general welfare.

## Staff Recommendation

Based on the above findings, staff recommends approval of the annexation of all of Heritage Ridge Second Addition, except for the 15th Street NW right-of-way along the western edge of the plat.

## Attachments

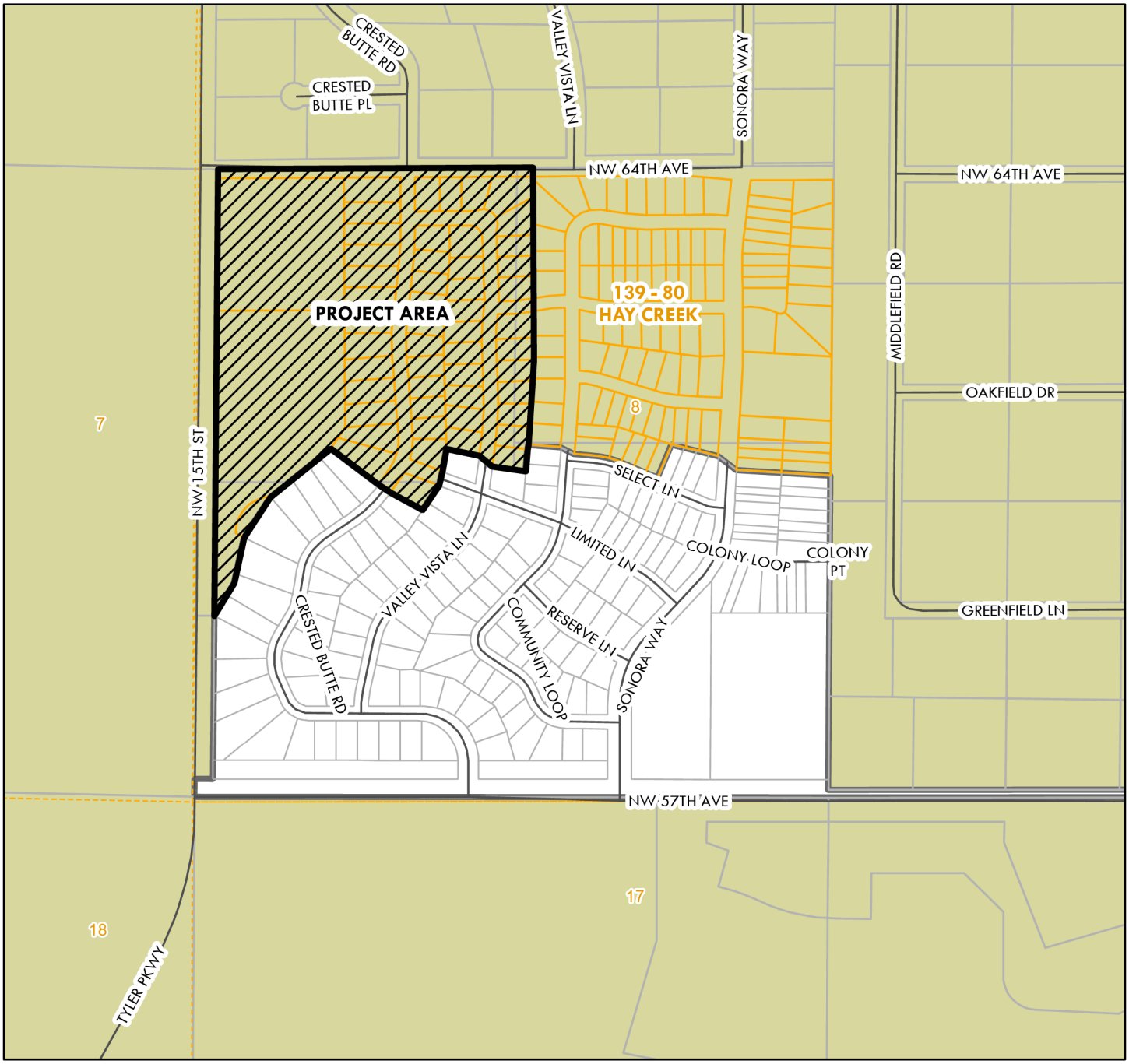
1. Location Map
2. Aerial Map
3. Zoning and Plan Reference Map

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

# Location Map

HERITAGE RIDGE SECOND ADDITION

ANNX2020-004



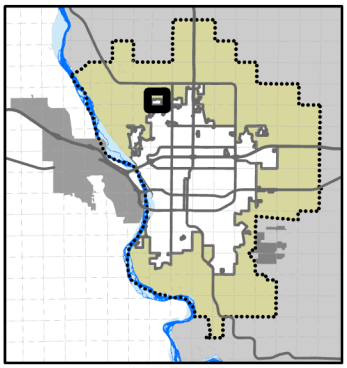

0 0.13 0.25 0.5 Miles

Bismarck ETA Jurisdiction

Lots Pending Approval

County Outside ETA

*Section, township, and range indicated in orange*



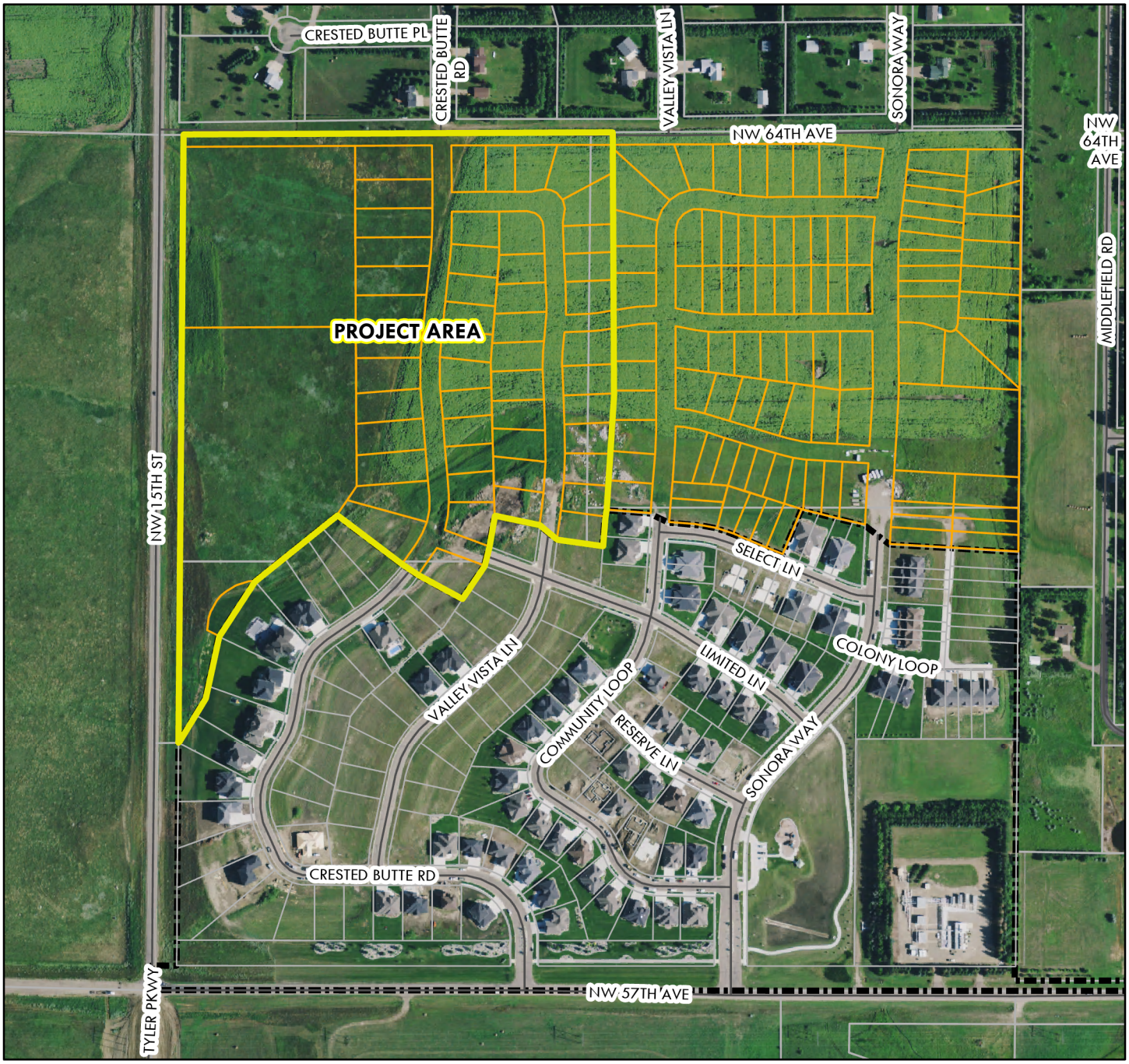
City of Bismarck
Community Development Department
Planning Division
May 22, 2020 (HLB)

*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

HERITAGE RIDGE SECOND ADDITION

ANNX2020-004




0 0.1 0.2 0.4 Miles

City Limits

Bismarck ETA Jurisdiction

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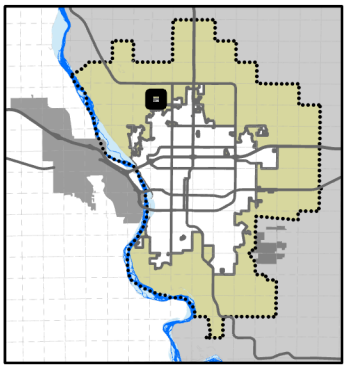


Aerial Imagery from 2019

City of Bismarck
Community Development Department
Planning Division
May 22, 2020

# Zoning and Plan Reference Map

HERITAGE RIDGE SECOND ADDITION

ANNX2020-004

*Zoning Districts*

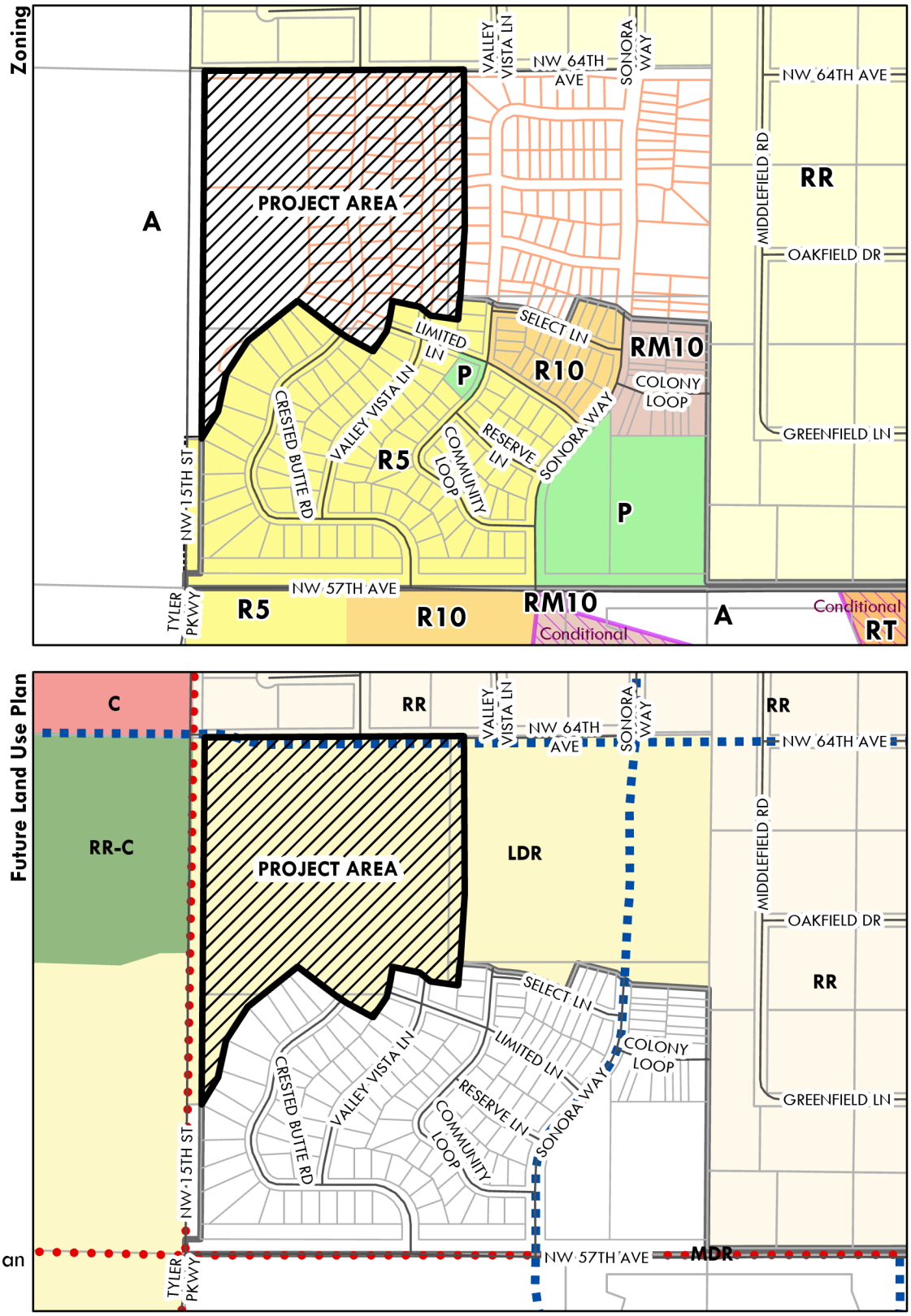
| | |
|---|---|
| **A** | Agriculture |
| **RR** | Rural Residential |
| **R5** | Residential |
| **RMH** | Manufactured Home Residential |
| **R10** | Residential |
| **RM** | Residential Multifamily |
| **RT** | Residential (Offices) |
| **HM** | Health and Medical |
| **CA** | Commercial |
| **CG** | Commercial |
| **MA** | Industrial |
| **MB** | Industrial |
| **PUD** | Planned Unit Development |
| **DC** | Downtown Core |
| **DF** | Downtown Fringe |

*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

- Future Arterial Road
- Future Collector Road




*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.*

0 0.07 0.15 0.3 Miles

City of Bismarck
Community Development Dept.
Planning Division
May 22, 2020

# City Attorney

**DATE:** June 16, 2020

**FROM:** Jannelle Combs, City Attorney

**ITEM:** Medieval Rush Temporary License to Use Premises Agreement

## REQUEST

Discuss and approve the Temporary License to Use Premises Agreement for the August 1, 2020, Medieval Rush event.

Please place this item on the 6/23/2020 City Commission regular meeting agenda.

## BACKGROUND INFORMATION

Tanner Schweitzer is the managing member of Recreation Athletic Wellness, LLC, which entity does the Medieval Rush event each year. He has previously held events at the fairgrounds and in New Salem. He has requested to use portions of bare land owned by the City of Bismarck near the Community Bowl for his course. In consultation with the City Engineer, the attached agreement was reached, which includes usual protections for indemnification to the City, as well as insurance and a $25,000 bond for reclamation of the site after the event. A few citizens have expressed concern with the use of the lands for this event, so we believed it appropriate for those who wish to express their concerns to do so in public comment at this meeting so the Commission can decide how best to proceed.

## RECOMMENDED CITY COMMISSION ACTION

Discuss and approve the Temporary License to Use Premises Agreement for the August 1, 2020, Medieval Rush event.

## STAFF CONTACT INFORMATION

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

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

TEMPORARY LICENSE TO USE PREMISES AGREEMENT

This License Agreement is entered into as of the_____, 2020, by and between City of Bismarck, PO Box 5503, Bismarck North Dakota ("City") and Recreation Athletic Wellness, LLC, whose address is 213 W Avenue A, Bismarck, ND 58501-3735 ("Licensee").

WHEREAS, City owns real property located near Bismarck State College, Bismarck, North Dakota, and WHEREAS, Licensee desires to have temporary use of property, as specified in Exhibit A, to host a race according to the schedule in Exhibit A; and

WHEREAS, City is willing to permit the Licensee to use the designated property for such purpose subject to the terms and conditions of this Temporary License to Use Premises Agreement ("Agreement");

NOW, THEREFORE, the parties agree as follows:

1. License to Use Licensed Space. City hereby grants Licensee permission to use the real property listed on Exhibit A (the "Licensed Space") on August 1, 2020, and in accordance with the purposes, specified on Exhibit A hereto. Exhibit A must detail the activities, and planned management designed to ensure safe operations in the Licensed Space. The parties expressly acknowledge and agree that this Agreement is not a lease, and that it does not create or convey to the Licensee any interest in the Licensed Space. Licensee will be entitled to occupy the Licensed Space solely for the purposes herein provided for the term stated herein. In the event of breach of Licensee of any of the covenants hereof, and in any event upon the expiration of the term of the License Agreement, City shall be entitled to immediate possession of the Licensed Space, and the Licensee shall not be entitled to any of the rights of a tenant under law, including the law of forcible entry and detainer.

2. Fee. Licensee will pay City $1.00 for the use of the property.

3. Independent Contractor. Licensee is an independent contractor and will have sole authority to control and direct the details of its performance and its activities. However, Licensee agrees that it will conduct all activities in accordance with applicable federal and state laws, and City policies and ordinances. In addition, Licensee agrees to employ the sufficient number of qualified staff for its operations. Licensee will not be the employee of City under the meaning or application of any federal or state laws, including but not limited to unemployment insurance or workers' compensation laws, and will not be entitled to any of the benefits of a City employee.

Licensee assumes all liabilities and obligations imposed by any such laws. Licensee will have no authority to act as an agent of City and will not hold itself out as such.

4. Use of Name. Licensee agrees not to use City's name, logos or marks for any advertising or other commercial purposes without the prior written approval of City.

5. Use of Licensed Space. Licensee shall use the Licensed Space only to conduct its activities in accordance with Exhibit A, utilizing only staff and materials supplied by Licensee. Licensee shall not use or permit the use of the Licensed Space for any other purpose. Licensee shall use and occupy the Licensed Space in a careful, safe and lawful manner which does not interfere with the use of the surrounding premises. Licensee agrees that its use of the Licensed Space shall at all times be in full compliance with all applicable laws, regulations and City policies and ordinances. Licensee agrees to remove all garbage and debris from the Licensed Space upon termination of this Agreement and return of the premises to their prior or improved condition. Licensee shall be responsible for any unreasonable wear or tear caused to the premises and/or any damage to equipment, including any costs incurred to clean or repair same. City, its agents and its employees shall have the right to enter the Licensed Space at all times. City shall in no event be liable for any inconvenience, disturbance, or other damage to Licensee by reason of the performance by City of any activities or work in, upon, above, or under the Licensed Space or for bringing materials, tools, and equipment in, through, above, or under the Licensed Space, nor shall the same constitute any ground for the abatement of any payments hereunder.

6. Condition of Premises. City makes no warranties whatsoever regarding the condition of the Licensed Space. Licensee has inspected the Licensed Space and found it suitable for Licensee's purposes. City shall not be liable for any personal injury or damage to property which Licensee or its guests or invitees may incur, regardless of the cause thereof. Licensee hereby releases City from all such liability, it being the intent of the parties that Licensee shall maintain adequate insurance to cover any such losses. Licensee hereby agrees to defend, indemnify and hold harmless City, its trustees, officers, employees and agents from and against any and all claims, damages, losses, suits, judgments, costs and expenses arising from Licensee's occupation of the Licensed Space including, but not limited to, the amounts of deductibles on Licensee's insurance policies, or any costs resulting from Licensee's failure to acquire insurance coverage as required hereunder, and any costs arising from subrogation under worker's compensation or liability claims.

7. Cultural Resource Preservation. Licensee shall provide Archaeological Monitoring by a qualified archaeologist in any area where excavation is proposed.

If cultural materials are encountered, a recommendation by the qualified archaeologist should be made and followed regarding that excavation area.

8. Insurance/Bond. Licensee agrees, at its sole cost and expense, to procure and maintain in full force during the term of this Agreement (i) statutory worker's compensation, (ii) general liability insurance, with limits of at least $1,000,000/$2,000,000 and (iii) surety bond, in favor of the City, in the amount of $25,000.00 from a company licensed to do business in North Dakota to insure Licensee's restoration of the property after completion of the event. Licensee agrees to name City as an additional insured on these policies. Licensee shall provide a certificate of proof of such insurance and bond at least 30 days prior to the event.

9. Compliance with Laws. Licensee agrees to comply with all applicable federal, state and local laws and regulations. Licensee will not discriminate on the basis of race, religion, age, sex, color, disability, sexual orientation, political affiliation, national or ethnic origin, or veteran status.

10. Liens. Licensee shall keep the Licensed Space free and clear of all construction, mechanic's or material men's liens or any other liens on account of any work done on the Licensed Space at Licensee's request. Licensee agrees to and shall indemnify, and hold the City 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 material men, or others, for work performed or materials or supplies furnished to Licensee for use on the Licensed Space.

11. Indemnification. City shall not be liable to Licensee's employees, agents or visitors or to any other person whomsoever, for any injury to a person or damage to property on or about the Licensed Space including sidewalks, parking lots, and other areas on or adjacent to the Licensed Space, caused by the negligence or misconduct of or situations involving the liability of the Licensee, its agents, servants, employees or of any other person entering upon the Licensed Space under express or implied invitation of Licensee. Licensee agrees to indemnify City from all liability, loss, or other damage claims or obligations resulting from any injuries to property or persons or any other losses sustained as a result of the Licensee's use of the Licensed Space.

12. Notices. Each provision of this Agreement with reference to the sending, mailing or delivery of any notice or the making of any payment between the parties shall be deemed to be delivered, whether actually received or not, when deposited in the U.S. Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested and addressed to either party at the address as they have specified by written notice pursuant to this Agreement.

**CITY**: City of Bismarck
City Administrator
P O. Box 5503
Bismarck, ND 58506-5503

**LICENSEE**: Recreation Athletic Wellness, LLC
213 W Avenue A
Bismarck, ND 58501-3735

13. Termination. This Agreement shall automatically terminate after the event is completed and the Licensed Space is restored to the condition it was immediately prior to Licensee's use of the Licensed Space. In addition, City may immediately terminate this Agreement if Licensee fails to abide by the terms and condition of this Agreement.

14. Assignment. Licensee may not assign or sub-license this Agreement without the prior written consent of City.

15. Entire Agreement; Amendment. This Agreement contains the entire agreement of the parties, and no covenants, representatives, inducements or promises, oral or otherwise, not embodied herein, shall be in force or effect. This Agreement may not be modified, nor any of its provisions waived, except by a writing signed by both parties.

16. Governing Law. This Agreement will be governed by and construed in accordance with the law of the State of North Dakota. The parties consent to the exclusive jurisdiction of the Burleigh County, North Dakota courts for any dispute arising hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and year above written in duplicate originals.

**CITY**: CITY OF BISMARCK

Dated this ____ day of _____, 2020.

By_____
Steve Bakken, President City Commission
City of Bismarck

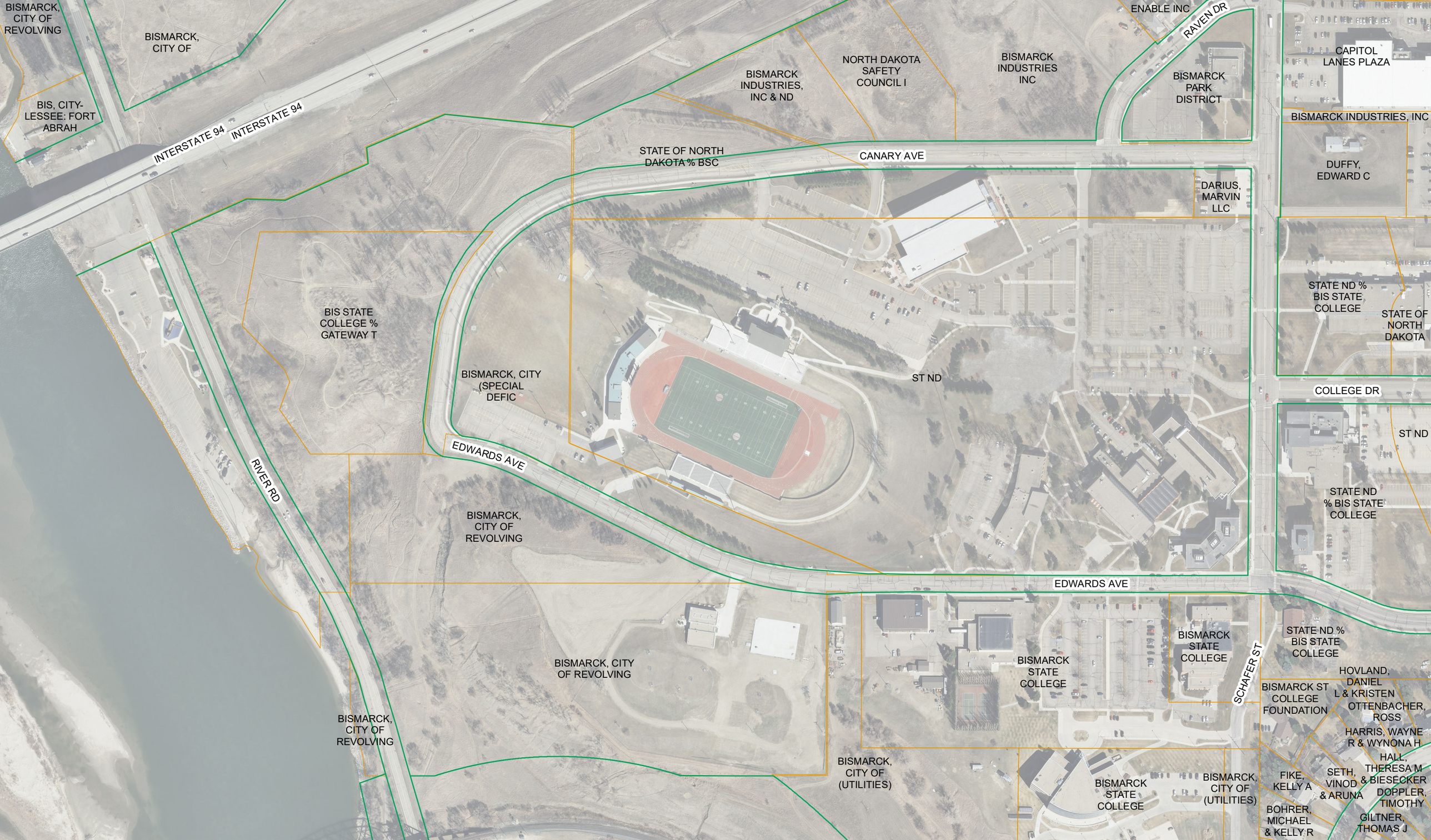
Attest:

_____
Keith J. Hunke, City
Administrator

**LICENSEE**: Recreation Athletic Wellness, LLC

Dated this ____ day of _____, 2020.

By_____
Tanner Schweitzer
Its Managing Member


BISMARCK, CITY OF REVOLVING
BISMARCK, CITY OF
BIS, CITY-LESSEE: FORT ABRAH
INTERSTATE 94
INTERSTATE 94
BISMARCK INDUSTRIES, INC & ND
NORTH DAKOTA SAFETY COUNCIL I
BISMARCK INDUSTRIES INC
ENABLE INC
RAVEN DR
BISMARCK PARK DISTRICT
CAPITOL LANES PLAZA
BISMARCK INDUSTRIES, INC
STATE OF NORTH DAKOTA % BSC
CANARY AVE
DUFFY, EDWARD C
DARIUS, MARVIN LLC
STATE ND % BIS STATE COLLEGE
STATE OF NORTH DAKOTA
BIS STATE COLLEGE % GATEWAY T
BISMARCK, CITY (SPECIAL DEFIC
ST ND
COLLEGE DR
ST ND
EDWARDS AVE
RIVER RD
STATE ND % BIS STATE COLLEGE
BISMARCK, CITY OF REVOLVING
EDWARDS AVE
BISMARCK, CITY OF REVOLVING
BISMARCK STATE COLLEGE
BISMARCK STATE COLLEGE
STATE ND % BIS STATE COLLEGE
SCHAFER ST
HOVLAND, DANIEL L & KRISTEN
BISMARCK ST COLLEGE FOUNDATION
OTTENBACHER, ROSS
HARRIS, WAYNE R & WYNONA H
BISMARCK, CITY OF REVOLVING
BISMARCK, CITY OF (UTILITIES)
HALL, THERESA M & BIESECKER
BISMARCK STATE COLLEGE
BISMARCK, CITY OF (UTILITIES)
FIKE, KELLY A
SETH, VINOD & ARUNA
DOPPLER, TIMOTHY
BOHRER, MICHAEL & KELLY R
GILTNER, THOMAS J

North Dakota
Safety Council
Canary Ave
BSC Aquatic
Wellness Ce
Finish
Start
Community Bowl
Canary Ave
Edwards Ave
River Rd
Werner Hall
Edwards Ave
BSC Armory
MEDIEVAL RUSH
Missouri River
River Rd
BSC M
Cente
National Energ
Google