



City Attorney

DATE: May 20, 2019

FROM: Janelle Combs, City Attorney

ITEM: Consider approval of purchase agreement with University of Mary with possible Executive Session under NDCC Section 44-04-19.2 regarding contract negotiation/negotiation strategy under NDCC Section 44-04-19.2(9) if agreement is not accepted in whole.

REQUEST

Consider approval of purchase agreement with University of Mary with possible Executive Session under NDCC Section 44-04-19.2 regarding contract negotiation/negotiation strategy under NDCC Section 44-04-19.2(9) if agreement is not accepted in whole.

Please place this item on the 5/28/2019 City Commission meeting agenda.

BACKGROUND INFORMATION

The University of Mary and the City of Bismarck executed an Option to Purchase on October 13, 2015, where Mary had the option to purchase the Public Health building, which option expired on October 13, 2020. Mary has exercised that option. The purchase amount is set at \$2,150,000.00 since this option was done prior to October 13, 2019.

Attached please find the proposed purchase agreement with attachments for your review and approval. This provides for a lease back for Public Health so that they will not have to vacate prior to closing, which we anticipate to occur within 60 days. Staff have negotiated the general terms that are acceptable for this type of purchase agreement and the price was set in the option. The lease terms follow generally the same as what the City used when leasing the property to others. The only item left for direction is a rate for the lease. The length of the lease is what Public Health believes is appropriate to be able to find a new space.

RECOMMENDED CITY COMMISSION ACTION

Consider approval of purchase agreement with the University of Mary for the Public Health building or enter executive session under NDCC 44-04-19.1(9) to provide direction for negotiation/negotiation strategy of the proposed purchase agreement.

STAFF CONTACT INFORMATION

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

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the “**Agreement**”) is entered into as of this ___ day of May, 2019 (the “**Effective Date**”), between the City of Bismarck, a North Dakota municipal corporation (“**Seller**”), and the University of Mary, a North Dakota nonprofit corporation (the “**Purchaser**”). Seller and Purchaser are the “**Parties**” to this Agreement, and each of them individually may be referred to as a “**Party**”. Purchaser has exercised its option to the purchase the Property under that certain Option to Purchase, dated October 13, 2015, between Seller and Purchaser (the “**Option**”), and this Agreement is the purchase agreement contemplated by the Option.

In consideration of the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. **Real Property.** Seller agrees to sell, convey, assign, transfer, and deliver to Purchaser, the following real property (collectively, the “**Property**”), in the County of Burleigh, State of North Dakota:

Tract 500 of Blocks 13 and 15, Original Plat, Bismarck, North Dakota.

together with all improvements, buildings and fixtures thereon, and together also with all easements, privileges, rights, hereditaments and appurtenances benefiting, connected or appurtenant thereto.

2. **Purchase Price.** Purchaser shall purchase the Property from Seller for US \$2,150,000 (the “**Purchase Price**”).

3. **Conditions Precedent.** In addition to all other conditions and remedies set forth in this Agreement, Purchaser is not obligated to perform or proceed to Closing under this Agreement unless the following conditions precedent are satisfied on or prior to the Closing Date:

(a) On the Closing Date, Seller is able to convey good and marketable title to the Property free and clear of any and all Liens, free and clear of any and all Objections, and free and clear of any and all other encumbrances, except Permitted Encumbrances, in accordance with Section 4;

(b) All representations and warranties of Seller set forth in this Agreement shall be true as of the Closing Date;

(c) Seller shall have performed all of its covenants, duties, and obligations under this Agreement; and

(d) Purchaser, at its cost and option, has obtained a Phase I, Phase II and any other environmental studies of the Property it deems necessary, in all cases reflecting no environmental concerns or hazardous materials at the Property and not recommending any further investigation or study or recommending obtaining any no further action letter from any governmental authority; however, Purchaser has 60 days from the Effective Date to perform any and all inspections and due diligence, except for title (subject to and as provided in Section 4 below), to Purchaser’s satisfaction. If Purchaser gives written notice to Seller that Purchaser is not satisfied with results of its due diligence/inspections within 60 days of the Effective Date, all earnest money shall be returned to Purchaser within two business days and this Purchase Agreement and Option will be null and void. Upon the Purchaser accepting the results of the due diligence/inspections or

expiration of the 60-day due diligence period, said earnest money shall be non-refundable to the Purchaser but applicable as part payment for the purchase of the Property. If Purchaser does not provide written notice of termination to Seller as provided in this paragraph, by 5:00 pm CT on the 60th day after the Effective Date of this Purchase Agreement (the "Diligence Deadline"), then Purchaser's due diligence contingency shall be deemed waived.

If any of these conditions precedent has not been satisfied (or otherwise waived by Purchaser), then this Agreement may be terminated at the option of Purchaser exercised by written notice to Seller delivered at any time prior to the Closing (or, with respect to satisfaction of due diligence/inspections condition set forth in clause (d) above, by not later than the Diligence Deadline), and this Agreement shall be of no further force or effect.

Seller shall, within 10 days following the Effective Date, deliver to Purchaser copies of any Phase I, Phase II or any other environmental studies, inspections, reports or information pertaining to the Property, any hazardous materials or any soil composition or condition in Seller's possession or control. Seller shall provide Purchaser and Purchaser's agents reasonable access to the Property, and reasonable information, necessary to complete any inspections, reports or surveys, including any Phase I, Phase II, or the Survey.

4. Title Examination.

(a) Title Examination and Objections. Seller shall, within 10 days following the Effective Date, deliver to Purchaser updated Abstract(s) of Title covering the Property including all appropriate searches (the "**Abstract**", whether one or more). Within a reasonable period of time following Purchaser's receipt of the Abstract, Purchaser shall, at its expense, order from The North Dakota Guaranty & Title Co., or another title company selected by Purchaser (as applicable, the "**Title Company**"), a title insurance commitment covering the Property, showing all matters affecting title to the Property and binding the Title Company to issue at Closing a standard form of ALTA Owner's Policy of Title Insurance, in the full amount of the Purchase Price, with gap coverage (the "**Title Commitment**"), together with legible copies of all instruments (the "**Exception Instruments**") referenced in the Title Commitment. Purchaser may, at Purchaser's expense and option, order an ALTA/ACSM Survey of the Property ("**Survey**") to be prepared by a licensed North Dakota surveyor. The Title Commitment, and Exception Instruments, and if applicable, the Survey, are referred to, collectively, as the "**Title Evidence**".

Purchaser shall examine the Title Evidence, and any other information relevant to and affecting title, and object in writing to any matters disclosed thereby (the "**Objections**"), and shall deliver such Objections to Seller by not later than the later of (a) 20 business days following the date on which the Purchaser has received the last of all Title Evidence (including the Survey if ordered by the Purchaser within 10 business days following its receipt of the Title Commitment) or (b) 30 business days following the date of Purchaser's receipt of the Abstract (as applicable, the "**Objection Period**"). Objections may include items that, in Purchaser's reasonable judgment, materially interfere with Purchaser's proposed uses of, or improvements to, the Property. Any matters (except for Liens) shown or raised in the Title Evidence to which Purchaser does not provide Objection(s) within the Objection Period will be deemed waived and become Permitted Encumbrances.

(b) Cure of Objections by Seller. Seller shall, at its expense, diligently undertake to resolve all Objections, and if necessary, the Closing Date shall, at the option of Purchaser, be extended by up to 120 days to allow Seller to do so. If all Objections are not corrected by the Closing Date, as extended by the preceding sentence, this Agreement may be terminated at the option of Purchaser by written notice of such termination to Seller delivered at any time prior to Closing. If all objected to matters are corrected

within said time, or Purchaser elects in writing to close notwithstanding any uncorrected matters, the parties shall promptly close this transaction.

(c) Free and Clear of all Liens. Notwithstanding anything in this Agreement to the contrary, it is a condition precedent to Purchaser's obligation to consummate the transaction contemplated by this Agreement, and an obligation of Seller under this Agreement, that on the Closing Date, Seller must convey title to the Property free and clear of any and all Liens, and Liens must be satisfied, released, and resolved by Seller, at Seller's sole cost and expense. "**Liens**" shall mean any current, future, or conditional monetary obligation affecting, encumbering, or secured by the Property or any part of the Property, including any mortgage, deed of trust, contract for deed, Lien (including, without limitation, any judgment Lien, tax Lien, mechanic's Lien, construction Lien or the like), lease or occupancy agreement or occupancy right (other than the Leases), collateral assignment of leases, financing statement or the like.

5. Closing. The transaction contemplated by this Agreement shall close (the "**Closing**") within 90 days following the Effective Date except as extended in accordance with the provisions of Section 4 above (the date on which Closing actually occurs is referred to herein as the "**Closing Date**").

- (a) On the Closing Date, Seller shall prepare, obtain, execute, and/or deliver to Purchaser, the following:
 - (i) A Warranty Deed in proper recordable form and sufficient to vest in Purchaser good and marketable title to the Property, free and clear of all liens, charges and encumbrances, except the following (collectively, the "**Permitted Encumbrances**"): installments of real estate taxes and special assessments not yet due and payable; zoning, land use, building and similar ordinances; and any other matters not objected to by Purchaser under Section 4 (except Liens, which shall not under any circumstances be deemed Permitted Encumbrances).
 - (ii) A customary Seller' Affidavit completed in a manner allowing the Title Company to remove the standard printed title policy exceptions.
 - (iii) The Lease Assignment and the Estoppel Certificates.
 - (iv) Releases, satisfactions, or payoff statements for all Liens, in a form acceptable to the Title Company.
 - (v) All other documents affecting title to and possession of the Property, and reasonably necessary to transfer or assign the same to Purchaser, free and clear of all Liens, charges, and encumbrances, except the Permitted Encumbrances.
 - (vi) Any other documents reasonably required by the Title Company.
- (b) On the Closing Date, Purchaser shall deliver the Purchase Price as set forth in Section 2, less the \$100.00 already paid by Purchaser to Seller pursuant to the Option.
- (c) The Closing and delivery of all such documents shall take place at the offices of the Title Company.
- (d) Seller shall deliver final possession of the Property to Purchaser on the Closing Date.

6. **Taxes and Assessments.** Real estate taxes and special assessment installments for the year 2018 (payable 2019), and all prior years, shall be paid by Seller in full on or prior to Closing. Real estate taxes and installments of special assessments for 2019 shall be prorated between Seller and Purchaser, as of the Closing Date, based on the prior year's information if the tax statements for 2019 are not yet available.

7. **Allocation of Costs.** Except as otherwise provided in this Agreement, Purchaser shall pay for its title examination. Seller shall pay to obtain all releases and/or satisfactions of all Liens, and any actions necessary to cure the Objections. Purchaser shall pay the premium for any Owner's Policy of Title Insurance for the Property to be issued to Purchaser at Closing. The parties shall share equally any closing fee charged by the Closing Agent. All other items not specifically allocated between the Parties under this Agreement shall be paid for by the party ordering the same.

All rents under the Leases paid in advance to Seller for any periods following the Closing Date shall be prorated on a per diem basis between Seller and Purchaser to the Closing Date, with Seller being entitled to all rents received for all periods prior to the Closing Date, and Purchaser being entitled to all rents applicable to the Closing Date and periods thereafter. Seller shall assign and transfer to Purchaser all security deposits (if any) of tenants held by Seller under the Leases, in accordance with applicable law, via a credit against the balance of the Purchase Price due at Closing. All utilities, and other operational expenses for the Property, shall be prorated to the Closing Date.

8. **Leases.** Exhibit A attached to this Agreement sets forth and identifies all leases, occupancy agreements or the like (whether written or oral) in effect and pertaining to the Property (each a "**Lease**" and collectively, the "**Leases**"). At Closing, the Leases shall be assigned to and assumed by Purchaser pursuant the Assignment and Assumption of Leases (the "**Lease Assignment**"), in the form reasonably acceptable to Seller and Purchaser. At Closing, Seller shall deliver to Purchaser estoppel certificates from each tenant under the Leases (the "**Estoppel Certificates**"), which shall be in customary form reasonably acceptable to Purchaser, provided, none of the Estoppel Certificates may contain any tenant statements or disclosures that Purchaser deems unacceptable (in Purchaser's commercially reasonable judgment discretion) or that contravene or conflict with any representation, warranty or covenant of Seller hereunder. Additionally, at Closing, Seller shall sign a tenant notification letter prepared by Purchaser to be sent to the tenants under the Leases, informing such tenants as to the change in ownership and providing instructions as to future delivery of payments of rent and notices under the Leases.

9. **Operation of Property Prior to Closing.** From and after the Effective Date, and at all times this Agreement remains effective, Seller shall: (a) insure, operate, maintain and repair all portions of the Property in a commercially reasonable manner, and as required under the Leases, keeping the Property in substantially the same condition as existing on the Effective Date; (b) pay, when due and prior to any delinquency, all installments of real estate taxes and special assessments; (c) within 10 business days after the receipt of same, provide Purchaser with copies of any and all notices whatsoever it receives or sends concerning the Property; and (d) not amend or modify any Lease and not enter into any additional lease or other agreement granting a person or entity the right to use or occupy the Property, or any portion of the Property, or otherwise pertaining to the Property in any manner, without in any such case, the prior written consent of Purchaser, which may be withheld in Purchaser's sole and absolute discretion.

10. **Representations and Warranties.** Seller represents and warrants to Purchaser, as of the Effective Date and Closing Date, that:

(a) at Closing: (i) except for Permitted Encumbrances, Seller will own the Property, to the best of Seller's knowledge, free and clear of all Liens, charges, encumbrances, and there will be no liabilities

or obligations (direct or contingent) and no contracts or commitments relating to the Property that extend beyond the Closing Date; (ii) there will be no unpaid amounts for labor or materials provided to the Property; and (iii) there shall be no Liens on the Property other than those for which sufficient sums of Seller's closing proceeds are applied at Closing to completely satisfy the same or release the Property from the same.

(b) Seller has the full right, power, and authority to sell, convey, and transfer the Property to Purchaser and to execute, deliver, and carry out the provisions of this Agreement and all other documents and instruments to be executed and delivered by Seller under this Agreement.

(c) Other than the Leases identified on Exhibit A attached hereto, Seller is not a party to any lease or other agreement that would allow any other person, entity, or party to possess any portion of the Property beyond the Closing Date. Seller has not entered into any purchase agreements, contracts for deed, rights of first refusal, options, or the like through which someone other than Purchaser has a right to acquire all or any part of the Property or that might prevent consummation of the transactions contemplated this Agreement.

(d) There is no action, litigation, investigation, condemnation, or proceeding of any kind pending, or to Seller's knowledge, threatened, against the Property or Seller with respect to the Property, and Seller has no notice of any claimed violations relating to the Property from any local, state, or federal governing authority. Further, there are no violations of law, ordinances, or other legal requirements with respect to the Property or that will result from Closing, to Seller's knowledge.

(e) Exhibit A is a true, correct and complete listing of all Leases. Seller has provided Purchaser with true, correct and complete copies of all Leases, and all amendments or extensions thereto, and any personal guarantees thereof. The Leases are in full force and effect, enforceable in accordance with their respective terms, and none of the Leases permits the occupancy or use of the Property or any portion thereof by any tenant or occupant for any period beyond December 31, 2020. Neither Seller nor any tenant under any of the Leases, is in breach, violation or default under any Lease, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach, violation or default under any such Lease.

Seller shall not commit intentional or negligent actions nor intentionally or negligently fail to take any actions that materially and adversely render any of the above representations or warranties no longer accurate or true, and Seller shall be liable to Purchaser for all such actions or inactions.

11. Risk of Loss/Damage, Destruction and Eminent Domain. Prior to Closing, the risk of loss or damage to the Property shall remain with Seller. If, prior to Closing, the Property or any part thereof is damaged or destroyed by fire, flood, elements or any other cause, or any part thereof is taken or threatened to be taken by eminent domain, and in any such case Purchaser determines (in Purchaser's reasonable judgment) that such event has a material adverse affect on the Property, then Purchaser may terminate this Agreement. If Purchaser elects to proceed and consummate this Agreement despite said event(s), Seller shall assign to Purchaser all of Seller's right, title and interest in and to all insurance proceeds and/or condemnation proceeds. In the event of any casualty or condemnation, Seller shall contemporaneously provide copies of all written information and communication sent and received by Seller, and Seller shall afford Purchaser the opportunity to participate in all communications and meetings regarding same.

12. Assignment. Neither Party may assign its rights and obligations under this Agreement without the written consent of the other Party.

13. Survival. All covenants, agreements, representations, warranties, and any indemnification provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, and shall survive and continue in full force and effect and be binding after the Closing Date and delivery of the Warranty Deed. A Party breaching any representation, warranty, covenant, or obligation in this Agreement shall indemnify, defend, and hold the other Party harmless with respect to any suit, loss, cost, expense, damage, liability, or the like (including attorney's fees) arising out of or relating to any such breach.

14. Timing. Time is of the essence as to all dates and time periods set forth in this Agreement. With respect to computation of time periods provided in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included, and any time period provided in this Agreement which shall end on a day other than a business day shall automatically extend to, and end on, the next business day thereafter. "Business days" do not include a Saturday, Sunday, or legal holiday on which banking institutions in the State of North Dakota are authorized to remain closed, or a day on which the New York Stock Exchange is closed.

15. No Brokers. Seller and Purchaser each represent to one another that they have not contracted with or engaged any real estate agent or broker in connection with the Property or transaction contemplated in this Agreement.

16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and may not be amended or modified by any previous negotiations or agreements between the Parties. No subsequent amendment or modification of this Agreement shall be effective unless in writing and signed by the Party against which it is sought to be enforced. If any term, covenant or condition of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, and/or the application of such term, covenant or condition to person or circumstances other than those in respect to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of North Dakota.

18. Review by Counsel. The Parties agree that they have had this Agreement reviewed by counsel of their own choosing, or otherwise have had the full opportunity to have this Agreement reviewed by such counsel. For purposes of interpreting the meaning of any of the terms of this Agreement, this Agreement shall be deemed to have been jointly drafted by both Parties.

19. Attorney's Fees. Each Party agrees to pay to the prevailing Party its reasonable attorney's fees incurred in any suit or action instituted by either Party to enforce the provisions of this Agreement.

20. Notices. Any notice or election required or permitted to be given or served by any party hereto upon any other shall be deemed given or served in accordance with the provisions of this Agreement if said notice or election is (a) delivered personally, (b) mailed by United States certified mail, return receipt requested with postage prepaid, or (c) delivered by nationally recognized courier, utilizing the "overnight" option and with delivery charges prepaid, and in any case properly addressed to the applicable party's address provided on the signature page of this Agreement. Notices shall be deemed given at the time of delivery if by personal delivery, or as of the date deposited in the mails or with such courier, as applicable. Any party may change its address for service of notice by providing the other party notice in the manner

specified above. Legal counsel to any party to this Agreement shall have the right to give a notice on the respective party's behalf.

21. Further Cooperation. Following Closing, each party hereto shall take such further actions as may be reasonably requested by the other party to carry out the provisions of this Agreement and give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder.

22. Seller Leaseback. At Closing, Seller (as tenant) and Buyer (as landlord) shall each execute and deliver the Lease Agreement attached hereto as Exhibit B.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Purchase Agreement to be executed effective as of the Effective Date first set forth above.

**SELLER:
CITY OF BISMARCK**

By: _____

Its: _____

Seller's Address for Notices:

City of Bismarck, City Administrator
Attn: Keith Hunke
221 N. Fifth St., Fourth Floor
Bismarck, ND 58506

**PURCHASER:
UNIVERSITY OF MARY**

By: _____

Its: _____

Purchaser's Address for Notices:

University of Mary
Attn: Greg Vetter
7500 University Drive
Bismarck, ND 58504

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. This Agreement may be signed by facsimile, PDF, or other electronic means, and such signatures shall be as binding on the party providing the same as original signatures.

EXHIBIT A

(the “**Leases**”)

1. Lease Agreement, dated September 28, 2004, between the City of Bismarck, as landlord, and Bismarck State College, as tenant, as amended March 12, 2019, by the City Commission;
2. Lease Agreement, dated December 14, 2017, between the City of Bismarck, as landlord, and Schaff Tax & Financial Services, Inc., as tenant; and
3. Lease, dated April 28, 2015 between the City of Bismarck, as landlord, and the State of North Dakota, North Dakota Department of Health, as tenant.

EXHIBIT B

Seller Leaseback—Lease Agreement

Attached.

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), is made and entered into this [INSERT CLOSING DATE], 2019, by and between The UNIVERSITY OF MARY referred to in this document as "**LANDLORD**" and The CITY OF BISMARCK referred to in this document as "**TENANT**".

WITNESSETH

In consideration of the payment of rental as provided in this document, the **LANDLORD** does demise and lease to the **TENANT**, and the **TENANT** does take and lease from the **LANDLORD**, a part of the premises situated within the City of Bismarck, County of Burleigh, State of North Dakota, more particularly described as follow:

A portion of the building located at 500 East Front Avenue, Bismarck, North Dakota consisting of approximately 14,992 square feet, with 39 assigned parking spots, as shown on Exhibit A attached to this Lease Agreement.

Referred to in this document as the "Leased Premises" or sometimes the "Premises". The **TENANT**, in return for its payment of rents, will also enjoy all rights, privileges, easements, appurtenances and immunities belonging to or in any way pertaining to the said Leased Premises, subject to the following terms and conditions:

ARTICLE I

TERM

1.01 This Lease shall commence [INSERT CLOSING DATE], 2019, and shall be for an initial term of 18 months (the "**Initial Term**"). The term of this Lease shall automatically renew on a month-to-month basis (each such month, an "**Extension Month**") at the end of the Initial Term, and at the end of each Extension Month thereafter, until terminated as provided in this Section or elsewhere in this Lease. Either Landlord or Tenant may terminate this Lease effective as of end the Initial Term, or at the end of any Extension Month, as applicable, by providing the other party with not less than 180 days' notice of termination prior thereto; this Lease shall then terminate in accordance with all other provisions hereof on the last day of the Initial Term or Extension Month, as applicable, that is 180 days after

provision of notice of termination by the other party hereunder.

ARTICLE 2
USE OF LEASED PREMISES

2.01 The **TENANT** shall use the Leased Premises solely for the purpose of public health and office use, together with attendant facilities and other operations generally associated therewith.

2.02 No change in the business use of the Leased Premises by the **TENANT** shall be made or permitted without the express written consent of the **LANDLORD**.

2.03 **TENANT** will not permit the Leased Premises to be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous; it being understood and agreed that the use of the Leased Premises in the proper and ordinary conduct of **TENANT'S** business for the purposes set forth in this article shall not in any event be considered in violation of this paragraph.

ARTICLE 3
RENT

3.01 **TENANT** agrees to pay **LANDLORD** \$_____ per month as monthly rent for said Leased Premises.

3.02 The monthly rent shall be paid in advance on the first day of each month during the lease term in lawful money of the United States to **LANDLORD**, 7500 UNIVERSITY DRIVE, BISMARCK, NORTH DAKOTA 58504, or at such other place or places and to such other party or parties as **LANDLORD** may hereafter designate.

3.03 The monthly rent reflects that **TENANT** will provide snow removal, cleaning of common area of the building, Tenant's Premises, and **LANDLORD'S** portion of the building used by itself.

ARTICLE 4
[SECTION RESERVED]

ARTICLE 5
UTILITIES

5.01 **TENANT** shall pay for all costs of internet, cable television, satellite, telephone or other communication services, equipment installation and service fees.

5.02 **LANDLORD** will furnish, at its own expense, reasonable heat and air conditioning during usual business hours and during the usual and appropriate seasons.

ARTICLE 6
REPAIRS AND COVENANT AGAINST WASTE

6.01 The **LANDLORD** and **TENANT** have jointly inspected the Leased Premises and **TENANT** accepts the Leased Premises in AS-IS condition with all defects and agrees that the **LANDLORD** is under no further obligation to repair any such defects or make any improvements to the Premises. **TENANT** will, at its own expense, during the term of this Lease or any extension thereof, keep the Leased Premises in good order and repair, and keep them free from waste or nuisance of any kind, existing conditions and normal wear and tear excepted. **LANDLORD** will, during the term of this lease or any extension thereof, keep the parking areas in good order and repair, and keep them free from waste or nuisance of any kind. The **TENANT** shall furnish, at its own expense, janitorial services within the Leased Premises.

6.02 **TENANT** shall conserve heat, air conditioning, water and electricity and shall use due care in the uses of the Leased Premises, and of the public areas in the building, and without qualifying the foregoing, shall not neglect or misuse water fixtures, electric lights and heating and air conditioning apparatus.

ARTICLE 7
RIGHT TO ENTER

7.01 **LANDLORD**, its agents and representatives may at any and all reasonable times during the day and night enter to view and inspect the Leased Premises, or to clean and maintain the same, or to make repairs, or to make such improvements or changes in the Leased Premises of the building as **LANDLORD** may deem proper, upon giving reasonable notice to **TENANT**. The right of entry reserved in the immediately preceding sentence shall not be deemed to impose any greater obligation on **LANDLORD** to clean, maintain, repair or change the Leased Premises than is specifically provided in this Lease. The **LANDLORD**, its agents or representatives may at anytime in case of emergency enter the Leased Premises and do such acts as **LANDLORD** may deem proper to protect the Leased Premises, the building or any occupants of the building. **LANDLORD** understands that any documents or client information obtained by observation or otherwise will remain confidential if observed during such times of entry.

ARTICLE 8
ALTERATIONS

8.01 **TENANT** will not make any improvements, alterations of or additions to the Leased Premises without the written approval of **LANDLORD**, and all improvements, alterations, additions or changes which may be made by either of the parties upon the Leased Premises, except moveable furnishings and equipment, shall be the property of **LANDLORD**, and shall remain upon and be surrendered with the Leased Premises, as part thereof, at the termination of the Lease or any extension thereof. In connection with any alterations, additions, improvements or changes, **LANDLORD** reserves the right to require that prior to the commencement of such alterations, **TENANT** shall furnish **LANDLORD** with assurances, including such bonds as **LANDLORD** deems necessary, that the contemplated alterations, additions, improvements or change will be completed according to plan and will be paid for. **TENANT** will not permit any mechanics, laborers or material man's liens to stand against the Leased Premises or the building for any labor or material furnished to, or for the account of **TENANT**, or claimed to have been so furnished in connection with any work performed or claimed to have been performed in, on or about the Leased Premises.

ARTICLE 9
SIGNS

9.01 **TENANT** shall permit no signs to be placed outside the Leased Premises unless approved in writing by the Renaissance Zone Authority Board acting as the Downtown Design Review Committee, except what is presently on the building.

ARTICLE 10
RULES & REGULATIONS

10.01 **TENANT** shall use the Leased Premises and the public areas in the building in accordance with such rules and regulations as may from time to time be made by **LANDLORD** for the general safety, comfort and convenience of the owners, occupants and tenants of the building, and shall cause **TENANT'S** customers, employees and invitees to abide by such rules and regulations.

ARTICLE 11
ASSIGNMENT OF LEASE

11.01 The **TENANT** shall not assign or sublet the whole or any

part of this Lease or the Leased Premises without the consent of the **LANDLORD**, but if such consent to assignment is given in writing by the **LANDLORD**, the **TENANT** shall be released from all the performances of this Lease for all **TENANT** obligations arising from and after the date of such assignment. Neither this Lease nor any interest therein, nor any estate thereby created, shall pass to any trustee in bankruptcy, or any assignee for the benefit of creditors, or by operation of law.

ARTICLE 12
FIRE OR OTHER CASUALTY

13.01 In the event of a partial or total destruction of the Leased Premises during the term hereof from any cause, **LANDLORD** shall with reasonable diligence repair the same, provided, however, that in the event **LANDLORD** in its sole and absolute discretion elects to not repair the Premises, Landlord may terminate this lease. In the event, **LANDLORD** shall elect to repair the Leased Premises, this Lease shall not terminate, but **TENANT** shall be entitled to a reduction of rent during any period of time that any significant portion of the Leased Premises are untenable, such reduction to be calculated in the proportion that the untenable portion of the Leased Premises bears to the entire leased premises. **LANDLORD** shall not be responsible to **TENANT** for damage to, or destruction of any furniture, equipment or improvements of **TENANT**, or other changes made by **TENANT** in, on or about the Leased Premises.

ARTICLE 13
INDEMNITY

13.01 Each party shall be responsible for claims, losses, damages and expenses which may arise out of the wrongful or negligent acts or omissions of that party or its agents, employees, or representatives, acting within the scope of their employment, in the performance of this Lease.

ARTICLE 14
INSURANCE

14.01 **LIABILITY INSURANCE.** The **TENANT** shall maintain liability insurance on the Leased Premises in the amount of not less than \$1,000,000 per individual and \$2,000,000 per occurrence. Tenant shall deliver appropriate evidence of coverage to the **LANDLORD**, if requested, as proof that adequate liability insurance issued by companies reasonably satisfactory to the **LANDLORD** is in force. **LANDLORD** shall be notified in

writing in advance prior to any termination of the Tenant's insurance policies.

14.02 **TENANT** shall provide property insurance to cover its fixtures and contents in an amount it deems appropriate.

ARTICLE 15
WAIVER OF SUBROGATION

15.01 Notwithstanding anything in this Lease to the contrary, if the building is damaged or destroyed by fire, or and extended coverage risk, **LANDLORD**, its agents, employees, representatives and invitees are hereby released from any liability by reason thereof to the extent of insurance proceeds realized by **TENANT** as a result of such damage or destruction. In no event shall any such release be applicable if to do so would work in contravention of any requirement in an applicable policy of insurance to the effect that if the insured waives subrogation, coverage is or may be void.

ARTICLE 16
EMINENT DOMAIN

16.01 If the entire building is taken by eminent domain, this Lease shall automatically terminate as of the date of taking. If a portion of the building is taken by eminent domain, **LANDLORD** shall have the right to terminate this Lease by giving written notice thereof to **TENANT** within ninety (90) days after the date of taking. If a portion of the Leased Premises is taken by eminent domain and this Lease is not thereby terminated, **LANDLORD** shall, at its expense, restore the Leased Premises, exclusive of any improvements or other changes made to the Leased Premises by **TENANT**, to as near the condition which existed immediately prior to the date of taking as reasonably possible, and rent shall abate during such period of time as the Leased Premises are untenable, in the proportion that is untenable portion of the Leased Premises bears to the entire Leased Premises. All damages awards for the taking under the power of eminent domain, whether for the whole of a part of the Leased Premises, shall belong to, and be the property of, **LANDLORD**, whether such damages shall be awarded as compensation for diminution in value to the Leased Premises provided, however, that **LANDLORD** shall not be entitled to any award made to **TENANT** for loss of business, fair value of, and cost removal of stock and fixtures. The term "eminent domain" shall include

the exercises any similar governmental power and any purchase or other acquisition in lieu of condemnation.

ARTICLE 17
[reserved]

ARTICLE 18
DEFAULT OF TENANT

18.01 The following events shall be deemed to be events of default by **TENANT** under this Lease:

- (1) **TENANT** shall fail to pay any installment of the rent hereby reserved and such failure shall continue for the period of ten (10) days after written demand therefore shall have been made by **LANDLORD**.
- (2) **TENANT** shall fail to comply with any term, provision, or covenant of this Lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to **TENANT**.
- (3) **TENANT** shall desert or vacate any substantial portion of the Leased Premises. Assignment or subletting by **TENANT** shall be considered as an act of default.
- (4) **TENANT** shall fail to pay any property tax or possessory interest tax as required by this Agreement, prior to the tax becoming delinquent.

ARTICLE 19
BREACH OF LEASE

19.01 In case of breach, the non-breaching party will have available to it all remedies provided under North Dakota law.

ARTICLE 20
SUBORDINATION

20.01 **TENANT** accepts this Lease subject and subordinate to any mortgage or mortgages now a lien upon the Leased Premises. This Lease shall also be subject and subordinate to the lien of any other mortgage, which may at any time hereafter be or become a lien on the Leased Premises. **TENANT** shall at all times hereafter, on demand, execute any instruments, releases other

documents that may be required by any mortgages for the purpose of subjecting this Lease to the lien of any such mortgage.

ARTICLE 21
WAIVER OF COVENANTS

21.01 Failure of **LANDLORD** to insist, in any one or more instances, upon strict performance of any term, covenant or condition of this Lease, or to exercise any option herein contained shall not be construed as a waiver, or a relinquishment for the future, of such term, covenant, condition or option, but the same shall continue and remain in full force and effect. The receipt by **LANDLORD** of rent with knowledge of a breach in any of the terms, covenants or conditions of this Lease to be kept or performed by **TENANT** shall not be deemed a waiver of such breach, and **LANDLORD** shall not be deemed to have waived any provision of this Lease unless expressed in writing and signed by **LANDLORD**.

ARTICLE 22
RENTAL PAYMENT AND NOTICE

22.01 Each provision of this Lease or any of the applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing, or delivery of any notice or the making of any payment by **LANDLORD** to **TENANT** or with reference to the sending, mailing, or delivery of any notice or the making of any payment by **TENANT** to **LANDLORD** shall be deemed to be complied with when and if the following steps are taken:

- A. All rent and other payments required to be made by **TENANT** to **LANDLORD** hereunder shall be payable to **LANDLORD** in Bismarck, North Dakota, at the address set forth in Article 3, or at such other address as **LANDLORD** may specify from time to time by written notice delivered in accordance herewith.
- B. All payments required to be made by **LANDLORD** to **TENANT** hereunder shall be payable to **TENANT** at the address set forth below, or at such other address within the continental United States as **TENANT** may specify from time to time by written notice delivered in accordance herewith.
- C. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered

when deposited in the United States Mail, postage prepaid Registered or Certified Mail, Return Receipt Requested, or when deposited with an overnight courier for next business day delivery, addressed to the parties hereto at the respective addresses set out opposite their names below, or at such other addresses as they have therefore specified by written notice delivered in accordance herewith.

LANDLORD: UNIVERSITY OF MARY
GREGORY VETTER
7500 UNIVERSITY DRIVE
BISMARCK, ND 58504

TENANT: CITY OF BISMARCK
KEITH J. HUNKE
PO BOX 5503
BISMARCK ND 58506-5503

ARTICLE 23
TAXES

23.01 **TENANT** agrees to pay all lawful property or possessory interest taxes or other taxes which, during the term hereof or any extension as provided for herein, may become a lien or which may be levied or charged by the State, County, City or other tax-levying body upon Leased Premises, the operations of **TENANT**, or upon any taxable interest acquired by the **TENANT** by this Lease, as well as all taxes on the taxable property, real or personal, owned by the **TENANT** in or about the Leased Premises. Nothing herein shall prevent **TENANT** from protesting, through due process, any taxes levied. Upon any termination of this Lease, all taxes then levied or liens upon any of said property or taxable interest therein, shall be paid in full without proration by the **TENANT** forthwith, or as soon as a statement thereof has been issued by the tax collector, if termination occurs during the interval between the attachment of the lien and issuance of statement.

ARTICLE 24
TENANT TO SURRENDER PREMISES

24.01 Upon the expiration or termination of the term of this Lease, **TENANT** shall, at its expense:

- (1) Remove **TENANT'S** goods and effects and those of all persons claiming under

- (2) Quit and deliver up the Leased Premises to **LANDLORD**, peaceably and quietly, in as good order and condition as the same were in on the date the term of this Lease commenced or were thereafter placed in by **LANDLORD** and/or **TENANT**, reasonable wear and tear excepted.

ARTICLE 25
SHOWING PREMISES

25.01 **LANDLORD** shall have the right to show the Leased Premises for leasing at all reasonable times after notice of cancellation given by either party to this Lease.

ARTICLE 26
MISCELLANEOUS

26.01 There are no understandings or agreements not incorporated in this Lease except as may be provided in a written addendum signed and accepted by both parties. This is a North Dakota contract and shall be construed according to the laws of North Dakota. The captions in this lease are for convenience only and are not a part of this Lease. The covenants and agreements herein shall as fully and completely bind the heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto as if they had been specifically mentioned in each of said covenants and agreements. If any provision in this Lease should for any reason be adjudged invalid or illegal, that provision shall be deemed omitted here from and shall not invalidate any other provision of this Lease and the remainder hereof shall remain in full force and effect.

26.02 The **LANDLORD** shall provide 39 assigned parking spaces for the **TENANT'S** use in the parking lot adjacent to the Leased Premises at no additional charge.

This Lease Agreement is dated effective as of the date and year first above set forth.

University of Mary

By: _____

Its: _____

City of Bismarck

Attest: _____

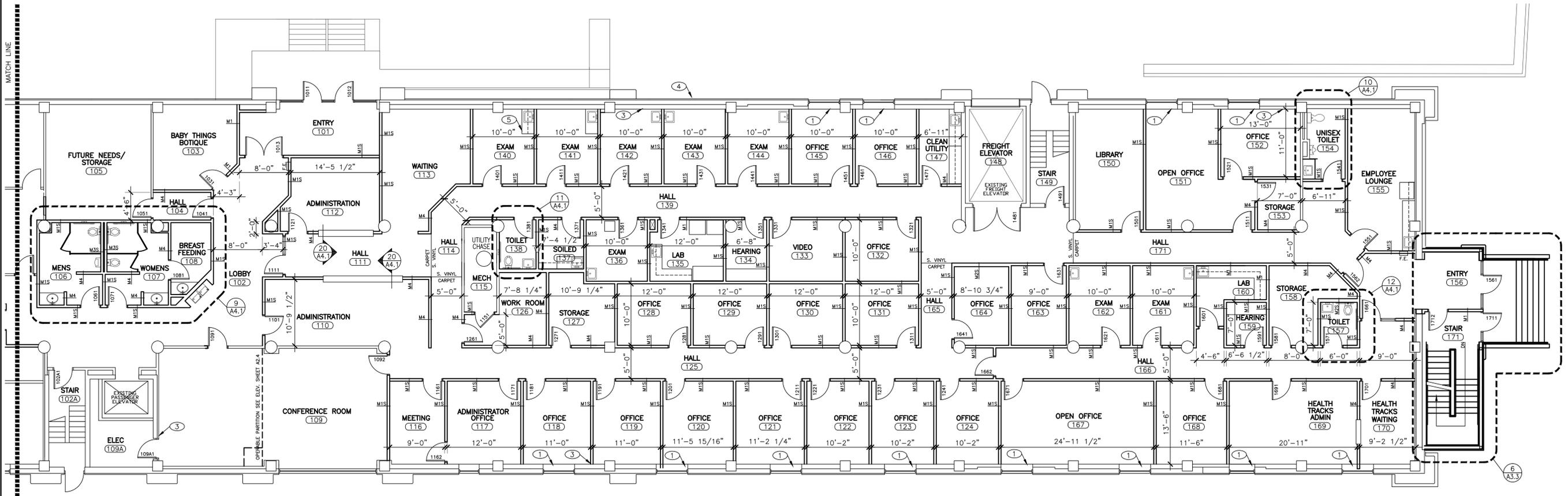
Keith J. Hunke
City Administrator

By: _____

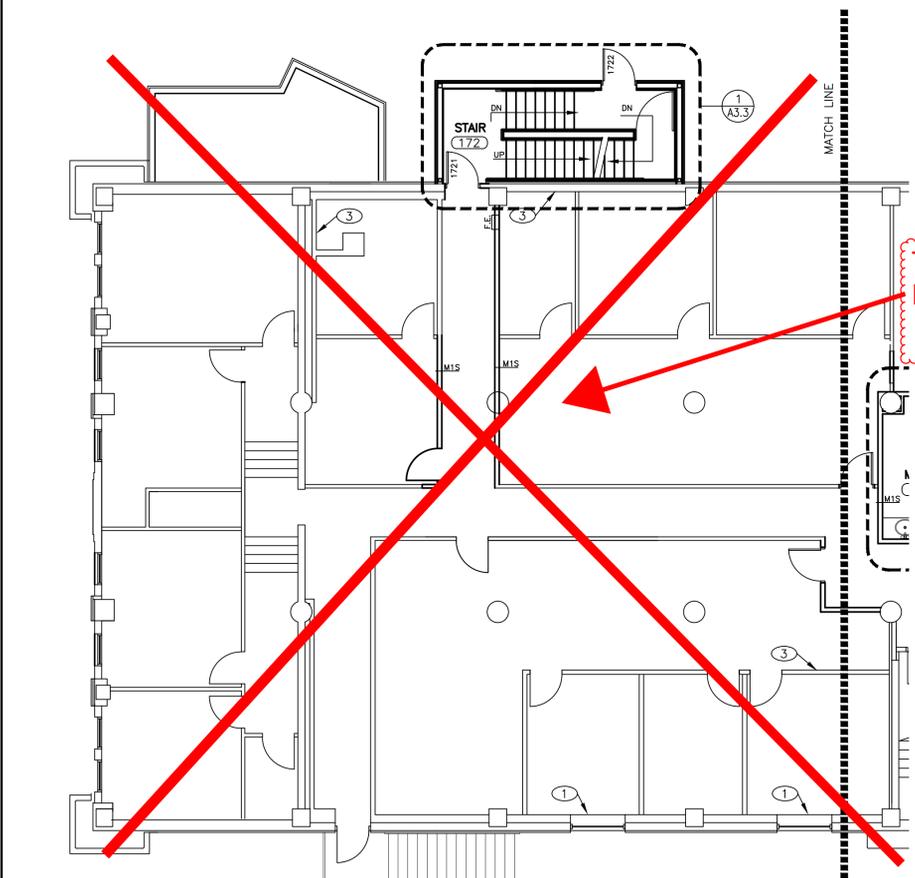
Steve Bakken,
President, Bismarck City
Commission

EXHIBIT A

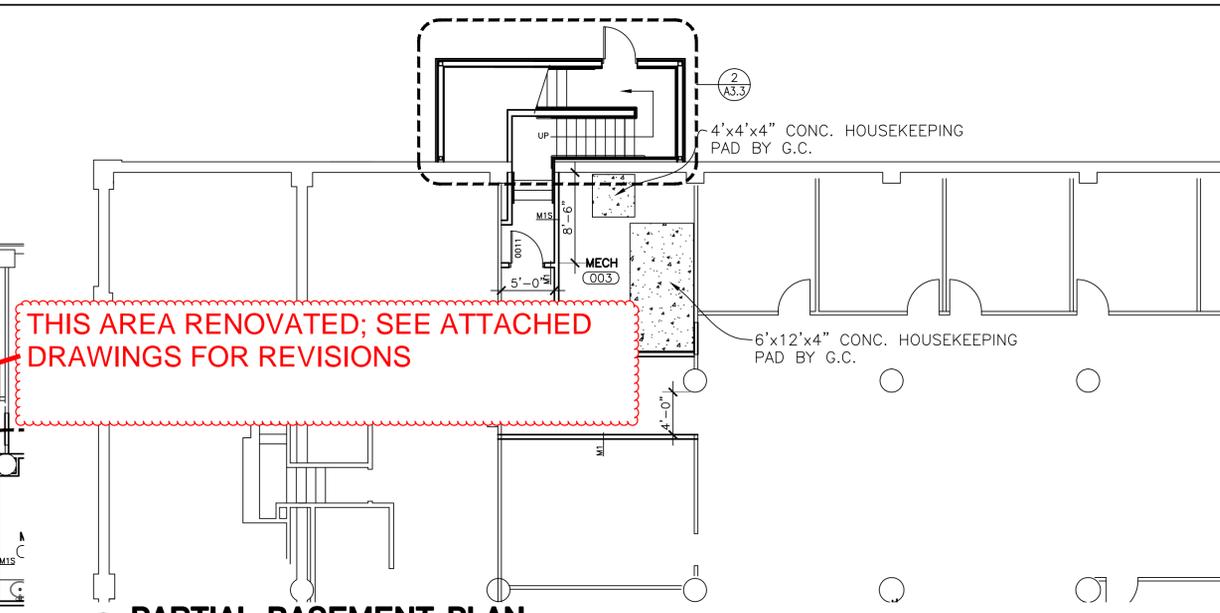
Attached



1 FIRST FLOOR PLAN - SECTION A
 SCALE: 1/8" = 1'-0"



2 FIRST FLOOR PLAN - SECTION B
 SCALE: 1/8" = 1'-0"



3 PARTIAL BASEMENT PLAN
 SCALE: 1/8" = 1'-0"

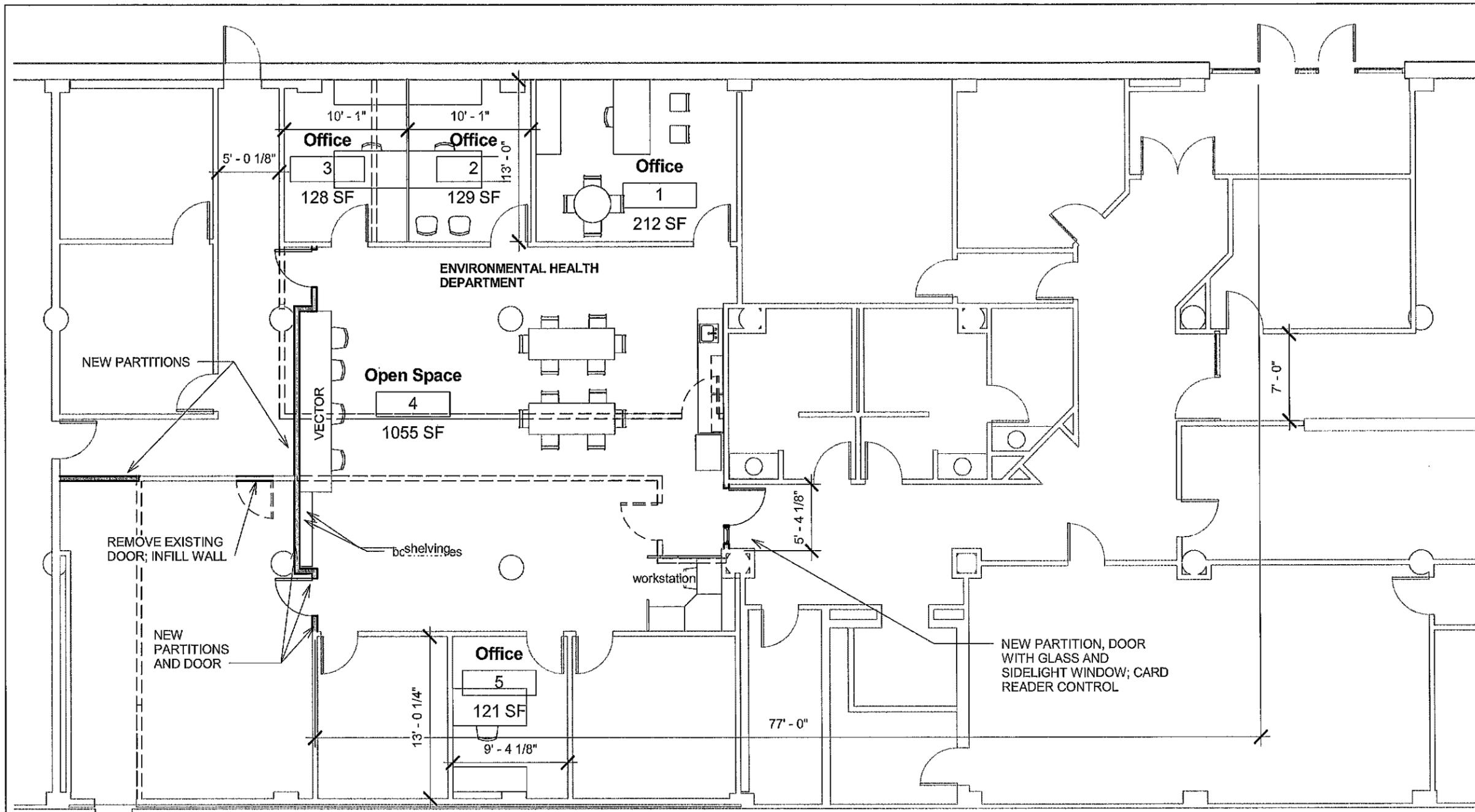
WALL TYPES

<p>M1 / M1S <small>"S" INDICATES 3" SOUND ATTEN. BLANKET</small></p>	<p>M2 / M2S <small>"S" INDICATES 3" SOUND ATTEN. BLANKET</small></p>	<p>M3 / M3S <small>"S" INDICATES 3" SOUND ATTEN. BLANKET</small></p>	<p>M4 / M4S <small>"S" INDICATES 3" SOUND ATTEN. BLANKET</small></p>
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THIS AREA RENOVATED; SEE ATTACHED DRAWINGS FOR REVISIONS

CONSTRUCTION NOTES

- KEYED NOTES:**
- REPAIR WALL AND PROVIDE NEW PLASTIC LAMINATE WINDOW SILL SEE DTL. 11/A2.5
 - FURNISH AND INSTALL CUBICAL TRACK AND CURTAIN SEE SPEC SECTION 12650
 - PATCH AND FINISH GYPSUM BOARD WALL AFTER E.C. HAS REMOVED ELECTRICAL PANEL
 - PATCH AND REPAIR EIFS WHERE MECHANICAL AND ELECTRICAL ITEMS HAVE BEEN REMOVED
 - OWNER FURNISHED CABINET AND SINK, NEW UPPER CABINETS



Floor Plan Main Level Environmental Health

Plan - Option 6

1
1/8" = 1'-0"



City of Bismarck
Public Works

Public Health
Security Renovation

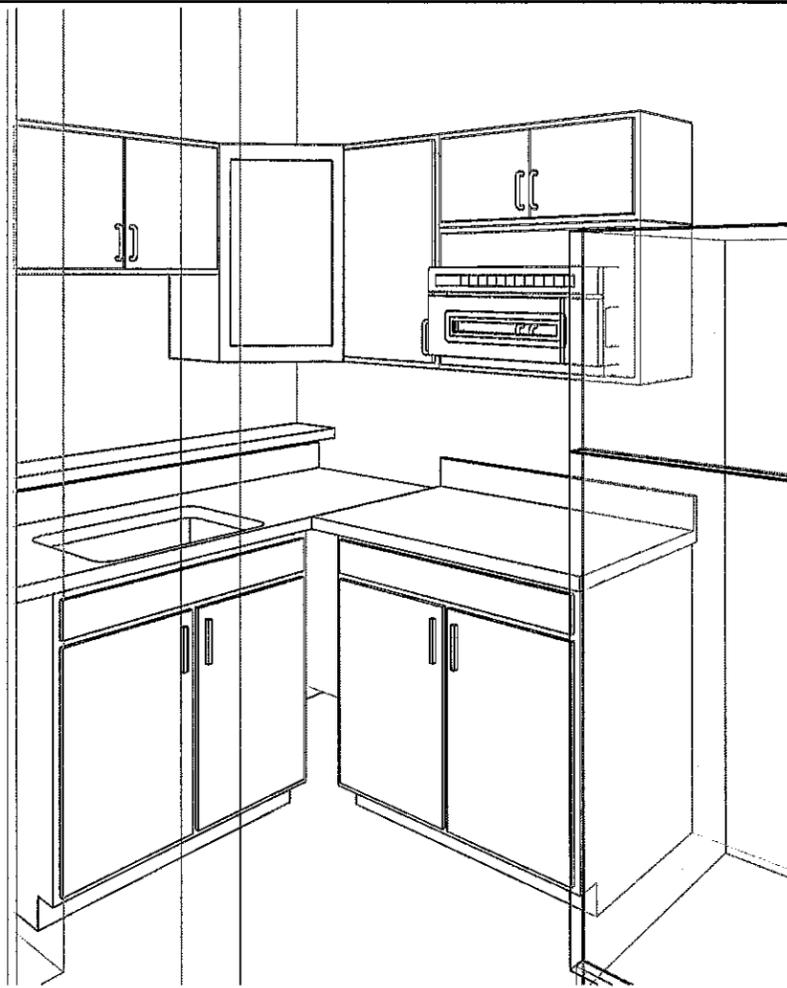
No.	Description	Date

Main Floor Plan

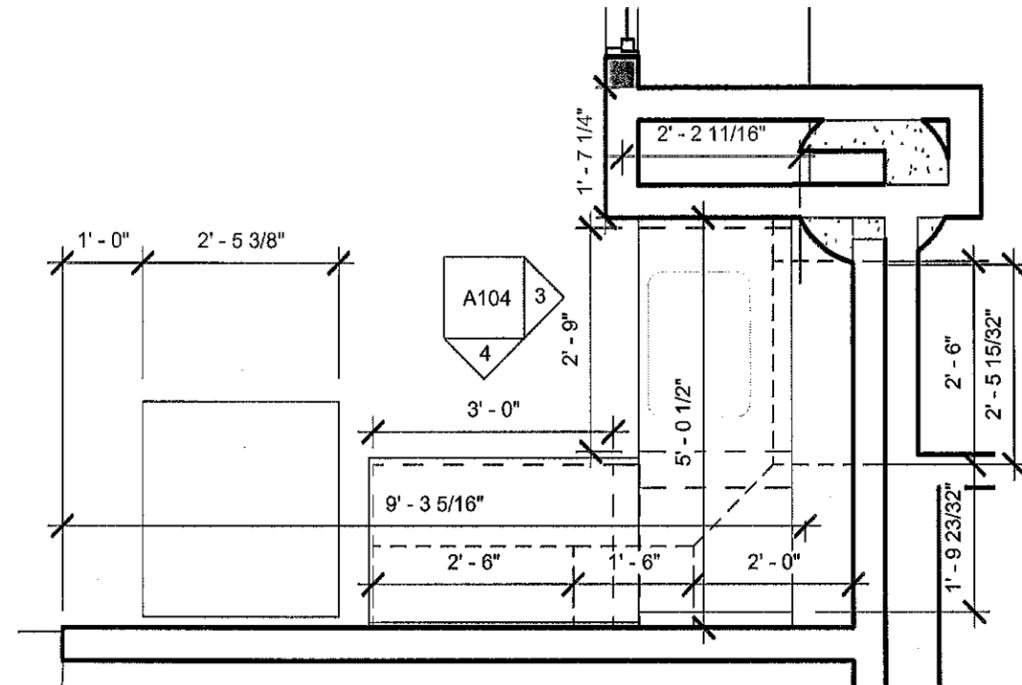
Project number	Project Number
Date	May 5, 2015
Drawn by	LEW
Checked by	LEW

A101

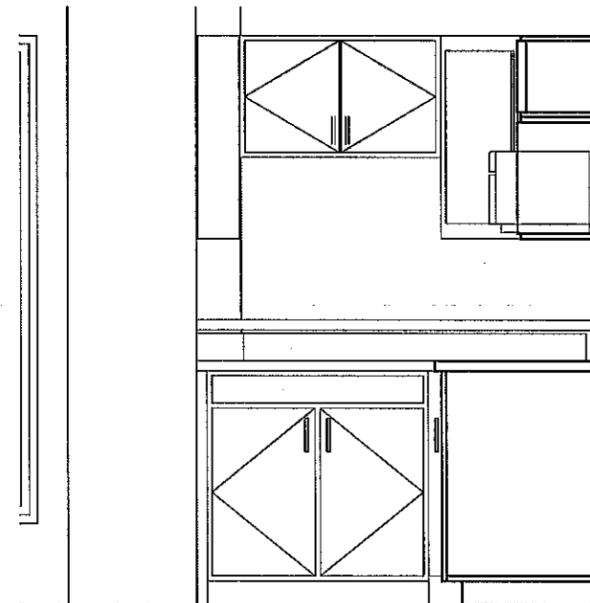
Scale 1/8" = 1'-0"



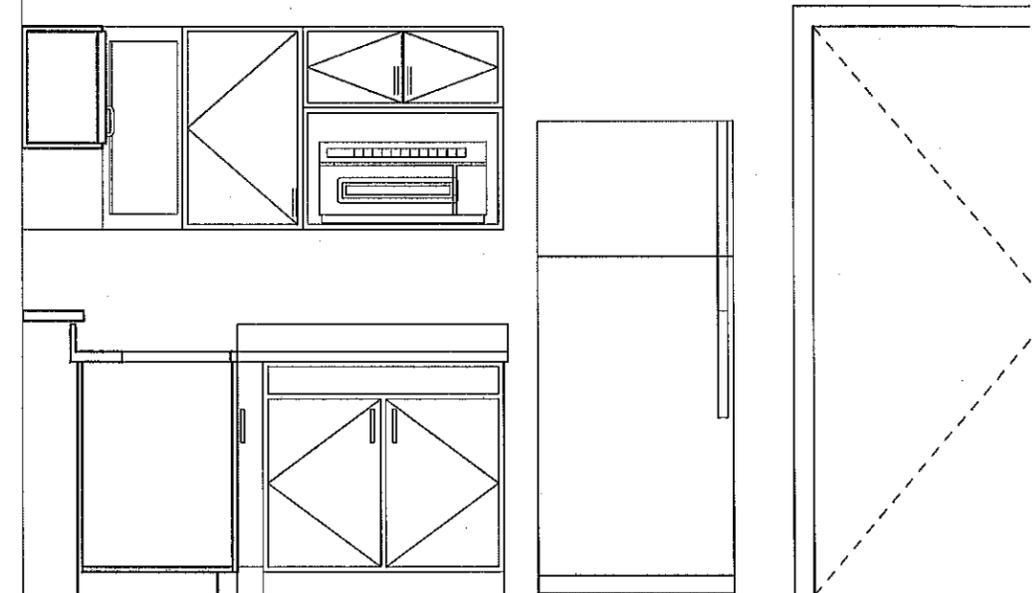
① 3D View 1



② Kitchenette Plan
1/2" = 1'-0"



③ Elevation 1 - d
1/2" = 1'-0"



④ Elevation 4 - a
1/2" = 1'-0"



City of Bismarck
Public Works

Public Health
Kitchenette

No.	Description	Date

Kitchenette Plan

Project number	Project Number
Date	January 14, 2016
Drawn by	LEW
Checked by	LEW

A104

Scale 1/2" = 1'-0"