

# Bismarck

## Airport

**DATE:** September 1, 2020  
**FROM:** Greg Haug, Airport Director  
**ITEM:** Consider actions for Wetland Phase 5 Project.



### REQUEST

Please place this item on the 9/8/2020 City Commission meeting agenda.

### BACKGROUND INFORMATION

Bismarck Airport has been working successive projects to remove wetlands to reduce wildlife attractants for more than 15 years. Previous phases have eliminated wetlands on the north end of the airport (approach end of Runway 13) and the north east corner of the airport (approach end of Runway 21). Wetland Phase 5 will remove wetlands starting from the south east corner of airport near the approach end of Runway 31 and include wetland removal and drainage improvements ending midfield near the Air Traffic Control Tower (Enclosure 1). The Board approved the design agreement with Kadrmas, Lee & Jackson (KLJ) for Phase 5 on February 19, 2019.

The four interconnected actions are needed to continue with the Wetland Phase 5 project. These items are:

- 1) Accept two grant offers from FAA: AIP No. 62 for \$6,381,629 and AIP No. 64 for \$6,026,218.
- 2) Receive and award construction bids and alternates as denoted on the bid tab enclosed.
- 3) Approve an Engineering Services Agreement with KLJ for Administration, Construction Inspection and Project Closeout.
- 4) Approve the project budget.

### ITEM 1

Based on guidance from the FAA, airport staff submitted two grant applications, AIP 62 for \$6,381,629.00 (Entitlement and CARES Act funding) and AIP 64 for \$6,026,218.00 (Discretionary funding). The total amount of funding (\$12,407,847) allows for award of specific work based on the FAA grant offer.

### ITEM 2

Not knowing how much funding would be approved for Bismarck this year, Airport staff and KLJ worked with the FAA this spring to determine how to breakout options for this bid, KLJ put together a bid package with a number of alternates that could be combined together that made sense from a constructability standpoint. Bismarck Airport opened bids Monday, June 15, 2020

at 4 PM (enclosure 2). Three general contractor bids and three electrical bids were received. The "basis of award" consisted of the base bid and one of the two base bid options for Schedule 1 and just the base bid for Schedule 2. Now after getting more fidelity from the FAA on what the grant funding will be, we packaged up the Base Bid with Option 2 and Additive Alternate A1 for Schedule 1 and the Base Bid for Schedule 2 to match the FAA funding offer.

KLE Construction LLC submitted the low general bid for Schedule 1. KLE's Base Bid with Option 2 and Additive Alternate A1 totals out at \$11,401,538, which is \$7,471 more than the engineer's opinion of probable costs of \$11,394,067 for these items. Edling Electric submitted the low electrical bid for Schedule 2. Edling's bid of \$112,700 was 42.2% lower than the engineer's opinion of probable construction cost of \$195,000.

Airport Staff recommends providing notice of award to General Contractor KLE Construction LLC, for Schedule 1, Division 1, Base Bid; Schedule 1, Division 1, Base Bid Option 2 and Schedule 1, Division 2, Additive Alternate A1 totaling \$11,401,538.00. Airport Staff recommends providing notice of award to Electrical Contractor Edling Electric, for Schedule 2, Division 1, Base Bid totaling \$112,700.00.

### ITEM 3

Airport staff had meetings with KLJ to establish a scope of work and tasks for the Wetland 5 project. The scope of work was submitted to FAA on April 20, 2020, after adjustments were approved. An independent fee review was solicited from TKDA to assist in negotiating the contract with KLJ. KLJ proposed a lump sum cost of \$1,603,916.81 for the engineering services work (Enclosure 3). Note that required sub consultant fees for Materials Testing, Electrical Engineering, Underground consultant, Survey and testing services (\$281,727.50) are added as a pass through to the KLJ contract and the Independent Fee Review. KLJ costs with sub consultants removed was \$1,322,189.31. Our Independent Fee Review done by TKDA calculated total Engineering Fees of \$1,314,483.16 with sub consultants and travel removed.

Overall, KLJ fees are 0.58% or \$7,706.15 more than the Independent Fee Review and are deemed to be reasonable. The total cost with sub consultants and expenses was \$1,603,916.81. Subsequent to the negotiations, FAA informed BIS Staff that grant funding would come in two grants and directed that a task be added to the agreement for work associated with closing a second grant. That task added \$19,479.94 for a total of \$1,623,396.75.

### ITEM 4

The project budget is at Enclosure 4.

### ADDITIONAL INFORMATION

Airport Staff applied for ND Aeronautics Commission funding and was recently awarded \$460,514.00 for Wetland Phase 5.

This work completes approximately 60% of the planned drainage improvements. Once we have consulted with the FAA the Board can expect Airport staff to return next year with an engineering agreement and construction bids for the remaining work in Phase 6.

## **RECOMMENDED CITY COMMISSION ACTION**

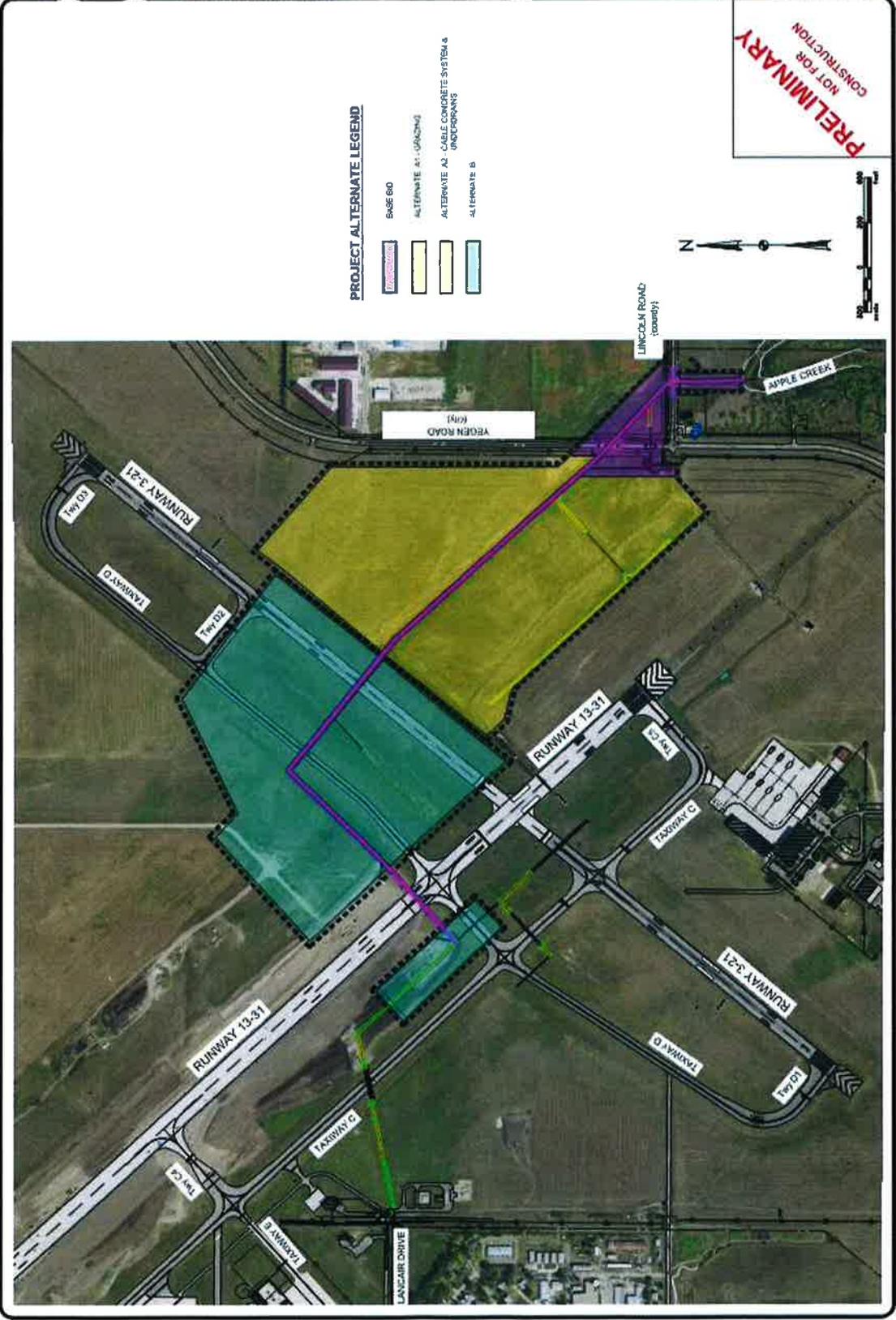
1. Accept and authorize the Mayor to sign two grant offers from FAA: 1) AIP No. 3-38-0003-62-2020 for \$6,381,629 and 2) AIP No. 3-38-0003-64-2020 for \$6,026,218.
2. Receive and award construction bids and alternates to the low bidders as described above and denoted on the bid tab enclosed.
3. Approve an Engineering Services Agreement with KLJ for Administration, Construction Inspection and Project Closeout.
4. Approve the Project Budget.

## **STAFF CONTACT INFORMATION**

Greg Haug, Airport Director, 355-1808 or [ghaug@bismarcknd.gov](mailto:ghaug@bismarcknd.gov)

Enclosures:

1. Project Diagram
2. Bid Tab
3. KLJ Engineering Services Agreement, Wetland Mitigation Phase 5 (Administration, Construction Inspection and Project Closeout)
4. Project Budget





### Bismarck Airport

Wetland Removal to Reduce Wildlife Attractants (Phase 5)

AIP #3-38-0003-062-2020 KLJ #1805-02200

Monday, June 15, 2020 4:00 P.M. CT

Bidder	Total Bid Schedule 1, Division 1 Base Bid	Total Bid Schedule 1, Division 1, Base Bid, Option 1	Total Bid Schedule 1, Division 1, Base Bid, Option 2	Total Bid Schedule 1, Division 2, Additive Alternate A1	Total Bid Schedule 1, Division 2, Additive Alternate A2	Total Bid Schedule 1, Division 2, Additive Alternate B	Total Bid Schedule 2, Division 1 Base Bid
Edling Electric Bismarck, ND	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	\$ 112,700.00
KLE Construction LLC Williston, ND	\$ 8,356,738.00	\$ 2,862,040.00	\$ 1,474,145.00	\$ 1,570,655.00	\$ 1,978,276.00	\$ 529,955.00	\$ 155,000.00
Minger Construction Co. Inc. Jordan, MN	\$ 10,772,381.95	\$ 2,850,351.20	\$ 1,792,789.40	\$ 724,194.00	\$ 1,720,658.15	\$ 540,383.30	\$ 124,000.00
Strata Corporation Grand Forks, ND	\$ 17,771,160.10	\$ 4,306,230.00	\$ 4,017,650.00	\$ 1,530,405.30	\$ 2,348,465.90	\$ 772,004.50	No Bid
<b>Engineer's Opinion of Construction Cost</b>	<b>\$ 7,305,481.20</b>	<b>\$ 1,630,680.00</b>	<b>\$ 1,395,905.00</b>	<b>\$ 2,692,681.00</b>	<b>\$ 2,779,290.00</b>	<b>\$ 851,720.00</b>	<b>\$ 195,000.00</b>

Costs shown are AS READ from the bid opening.



Denotes Awarded Amounts

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made this 8th of September, 2020, by and between the City of Bismarck, having an address of 2301 University Drive, P.O. Box 991, Bismarck, ND 58502, hereinafter referred to as the "OWNER", and KLJ Engineering LLC, having an address of 4585 Coleman Street, Bismarck, ND 58503, hereinafter referred to as the "ENGINEER".

WITNESSETH: That the OWNER and ENGINEER, for the consideration hereinafter named, agree as follows:

### I. GENERAL DESCRIPTION OF WORK TO BE PERFORMED.

The OWNER agrees to and hereby does retain and employ ENGINEER and ENGINEER agrees to perform Professional Services for the project at the Bismarck Airport, WHEREAS, the proposed project is described as follows:

- A. Removal of Wetlands to Reduce Wildlife Attractants (Phase 5)  
Construction Administration, Construction Observation and Project Closeout Report  
KLJ 1805-02200.3 Task 3 Construction Administration & Observation  
KLJ 1805-02200.14A Task 14A FAA AIP 062 Project Closeout Report  
KLJ 1805-02200.14B Task 14B FAA AIP 064 Project Closeout Report

The Project and those services to be performed hereunder are more particularly described in ATTACHMENT A, a part hereof, entitled "Detailed Scope of Services", and the anticipated level of effort is defined in ATTACHMENT B entitled "Hourly Rate and Cost Breakdown", both parts hereof.

### II. PERIOD OF SERVICE

Compensation for ENGINEER's services as provided elsewhere in this Agreement has been agreed to in anticipation of an orderly and continuous progress of ENGINEER's services through completion. In this regard, if the services covered by this Agreement have not been completed within 24 months of the date hereof, through no fault of ENGINEER, any lump sum or maximum payment amounts shall be equitably adjusted.

### III. COMPENSATION.

Compensation on this project shall be broken into separate and independent forms of compensation. The first form of compensation shall be lump sum compensation. The second form of compensation shall be cost plus fixed fee compensation. The third form of compensation shall be hourly rate compensation. Following the description of the compensation method below, a chart details the items which will be compensated on lump sum basis, cost plus fixed fee basis, and hourly rate basis. Generally speaking, those items compensated on a cost plus fixed fee are items that are currently not possible to be estimated accurately. These include, for instance, construction observation and project records phases, which are dependent upon the Contractor who is doing the construction work and the year in which it is constructed. Compensation under an hourly rate basis is typically used when the scope of services is open-ended, unknown and / or not definable. In this case, the ENGINEER shall only bill the cost and fixed fee that is used for that task. Previously audited overhead and general/administrative overhead at 193.73% shall apply to this agreement. The cost of facilities rate of 1.11% and fixed fee rate of 15% shall apply to this agreement.

A. Lump Sum Compensation.

For those work items specified below in the compensation table for lump sum payments, the OWNER shall compensate the ENGINEER for services a lump sum amount to cover all costs for completion of that work item. These costs shall include salary costs, overhead costs, direct non-salary expense, and all other expenses as defined within the latest edition of FAA Advisory Circular 150/5100-14.

The lump sum payment shall be based upon the hours and expenses provided within Attachment B that follow and shall include a fixed fee payment. The lump sum fee made for these items shall constitute full and total compensation for all of the work necessary to complete the individual items specified in the scope of services. Changes in the scope of services as defined at the time this contract is negotiated shall reflect an additional compensation as negotiated by the ENGINEER and the OWNER. Monthly payments for those items specified below shall be based upon the percentage of work completed to date.

The table below indicates those work items covered as a lump sum payment item, and the total cost or compensation for each of these individual items. ATTACHMENT B provides the justifications for the lump sum fees.

<b>Table A Lump Sum Compensation</b>	
Task Item	Total Compensation
Task 14A - FAA AIP 062 Project Closeout Report	\$70,687.65
Task 14B - FAA AIP 064 Project Closeout Report	\$19,479.94

All payments not made within 60 days of the date of the invoice shall be subject to 1.5% per month in interest fees.

B. Cost Plus Fixed Fee Compensation.

The OWNER shall compensate the ENGINEER for services on an actual cost plus a fixed fee basis. The actual costs will consist of salary costs, overhead expenses, and direct non-salary expenses as defined in the latest edition of FAA Advisory Circular 150/5100-14. All direct salary costs and expenses may be verified by auditing at the conclusion of this project. The fixed payment, based on the schedules in ATTACHMENT B, shall not vary from the maximum specified unless the overall scope of the project changes. The table below includes the description of services, the total estimated compensation for this service, and the fixed fee payment.

Payment to the ENGINEER shall be on a monthly basis as the work progresses.

<b>Table B Cost Plus Fixed Fee Compensation</b>		
Task Item	Fixed Fee Payment	Total Compensation
Task 3 - Construction Observation & Records - Base Bid	\$149,072.23	\$1,438,090.23
Task 3 - Construction Observation & Records - Alternate	\$12,181.57	\$95,138.93

All payments not made within 60 days of the date of the invoice shall be subject to 1.5% per month in interest fees.

C. Hourly Rate Compensation.

The OWNER shall compensate the ENGINEER for services on an actual cost plus overhead and fixed fee basis. The actual costs will consist of salary costs, overhead expenses, and direct non-salary expenses as defined in the latest edition of FAA Advisory Circular 150/5100-14. All direct salary costs and expenses may be verified by auditing at the conclusion of this project. The fixed fee shall be included in the hourly rate. The table below includes the description of services and the total estimated compensation for this service.

Payment to the ENGINEER shall be on a monthly basis as the work progresses. Refer to ATTACHMENT B for a detailed breakdown.

Table C Hourly Rate Compensation	
Task Item	Total Compensation
NA	NA

All payments not made within 60 days of the date of the invoice shall be subject to 1.5% per month in interest fees.

D. GENERAL

The total compensation for all agreement costs, based on the estimated costs put forth in Attachment B for Construction Observation and Records, FAA Project Closeout Report - Base Bid shall not exceed \$1,528,257.82. The fixed payment for all phases, based upon the estimated costs put forth in Table B for Base Bid shall be a lump sum amount of \$149,072.23.

The total compensation for all agreement costs, based on the estimated costs put forth in Attachment B for Construction Observation and Records, FAA Project Closeout Report - Base Bid plus Alternate shall not exceed \$1,623,396.75. The fixed payment for all phases, based upon the estimated costs put forth in Table B for Base Bid plus Alternate shall be a lump sum amount of \$161,253.80.

For any form of compensation listed above, the individual compensation amounts shall not exceed the maximum amount shown unless approved in writing by the OWNER.

IV. EXTRA WORK AND SERVICES NOT INCLUDED IN THIS CONTRACT.

If the ENGINEER is of the opinion that any services it has been directed to perform is beyond the Scope of this Agreement, or that the level of effort required significantly exceeds that estimated due to changed conditions and thereby constitutes extra work, they shall promptly notify the OWNER of that fact. Extra work, additional compensation for same, and extension of time for completion shall be covered by a Supplemental Agreement entered into by both parties, prior to proceeding with any extra work or related expenditures.

V. OWNER'S RESPONSIBILITY.

To permit ENGINEER to perform the services required hereunder, the OWNER shall supply in proper time and sequence, the following at no expense to ENGINEER.

- A. Cooperate with the ENGINEER in the approval of all plans and specifications, or should they disapprove of any part of said plans and specifications, shall make a decision timely in order that no undue expense will be caused the ENGINEER because of lack of decisions. If the ENGINEER is caused extra drafting or other expenses due to changes ordered by the OWNER after the completion and approval of the plans and specifications, the ENGINEER shall be equitably paid for such extra expenses and services involved.
- B. Pay publishing costs for advertisements of notices, public hearings, request for bids, and other similar items; shall pay for all permits and licenses that may be required by local, state or Federal authorities; shall secure the necessary land, easements, and right-of ways required for the project; and shall pay the costs of all material acceptance testing during the construction phase of the project performed by independent testing laboratories.
- C. Designate in writing, a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive instructions, receive information, interpret and define OWNER's policies with respect to ENGINEER's services.
- D. Furnish, as required for performance of ENGINEER's services (except to the extent provided otherwise in ATTACHMENT A), data prepared by or services of others, including without limitation, core borings, probings and subsurface explorations, hydrographic and geohydrologic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data not covered in ATTACHMENT A.
- E. Provide access to and make all provisions for ENGINEER to enter upon publicly- and privately-owned property as required to perform the work.
- F. Act as liaison with other agencies to carry out necessary coordination and negotiations; furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- G. Examine all reports, sketches, drawings, specifications and other documents prepared and presented by ENGINEER, obtain advise of an attorney, insurance counselor or others as OWNER deems necessary for such examination and render in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- H. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services or any defect in the work of Construction Contractor(s), ENGINEER's Consultants or ENGINEER.
- I. Initiate action, where appropriate, to identify and investigate the nature and extent of asbestos and/or pollution in the Project and to abate and/or remove the same as may be required by federal, state or local statute, ordinance, code, rule, or regulation now existing or hereinafter enacted or amended. For purposes of these General Provisions, "pollution" shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, alkalis, chemicals and hazardous or toxic waste. Hazardous or toxic waste means any substance, waste, pollutant or contaminant now or hereafter included within such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended.
- J. If ENGINEER encounters, or reasonably suspects that it has encountered, asbestos, or pollution, including soil contamination in the project area, ENGINEER shall cease activity in said area and

promptly notify the OWNER who shall proceed as set forth above. Unless otherwise specifically provided in ATTACHMENT A, the services to be provided by ENGINEER do not include identification of asbestos or pollution, including soil contamination and ENGINEER has no duty to identify or attempt to identify the same in the project area.

- K. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project and such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the monies paid under the construction contract.
- L. Provide such observation services (except to the extent provided otherwise in ATTACHMENT A) as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- M. Provide "record" drawings and specifications for all Existing physical plants or facilities which are pertinent to the Project.
- N. Provide written notice to ENGINEER when the project has been financially closed out by FAA.
- O. Provide other services, materials, or data as may be set forth in ATTACHMENT A.
- P. The OWNER shall agree to renegotiate the compensation should the project change appreciably from the original scope of work, a change in conditions, or additional work required by the ENGINEER. The renegotiated compensation will be based on the new project scope of work.
- Q. Provide all necessary information regarding its requirements as necessary for orderly progress of the work.

## VI. COMPLETION TIME.

The ENGINEER shall complete the task item assigned as per the schedule defined in the Detailed Scope of Services for that individual task.

## VII. TERMS AND CONDITIONS.

### A. Ownership of Drawings and Contract Documents.

1. Original documents, such as tracings, maps, basic survey notes and sketches, charts, computations, and other data prepared or obtained under the terms of the contract, are instruments of service and shall remain the property of the ENGINEER unless otherwise agreed to by both parties. Reproducible copies of this information, including electronic copies shall be made available to the OWNER upon request.
2. ENGINEER and OWNER shall retain an ownership and property interest in all final documents created pursuant to this Agreement and any Work Order hereunder (including the right of reuse by ENGINEER at the discretion of ENGINEER) whether or not the Project is completed. OWNER may make and retain copies of Service related documents for information and reference in connection with use on the subject project by OWNER and others. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the subject project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific

purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, ENGINEER's officers, directors, partners, employees, agents, or ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, agents, and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from such unauthorized reuse. Any verification or adaptation of the Documents for extensions of the subject project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

3. When a contract is for preliminary plans only, no commitment is implied that would constitute a limitation on the subsequent use of preliminary plans or ideas incorporated therein.
4. The ENGINEER shall provide the OWNER three (3) sets and the FAA each one (1) set of final approved plans and specifications. The ENGINEER shall provide sets of plans and specifications to bidders for a nominal cost during the bidding process. The Contractor awarded the contract shall be provided additional sets of plans and specifications as per the FAA General Provision Item 50-04. The ENGINEER shall provide reproducible copies of reports, specifications and plans (including electronic files in the form of PDFs and the software used to create the final documents) to the OWNER.

B. Standard of Care.

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.

C. Limitations of Responsibility.

In the event the OWNER requests ENGINEER to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to ENGINEER for review at least 15 days prior to the requested date of execution. ENGINEER shall not be required to execute any certificates or documents that in any way would, in ENGINEER's sole judgment, (a) increase ENGINEER's legal or contractual obligations or risks; (b) require knowledge, services or responsibilities beyond the scope of this Agreement; or (c) result in ENGINEER having to certify, guarantee or warrant the existence of conditions whose existence ENGINEER cannot ascertain.

D. Opinions of Probable Construction Cost.

Since the ENGINEER has no control over the cost of labor, materials or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, opinions of probable construction costs for the project(s) provided for herein are to be made on the basis of experience and qualifications and represent a best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids, change orders or the project construction cost will not vary from the prepared opinion of probable construction costs.

E. Termination.

This Agreement may be terminated by either party, by a seven days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If this Agreement is so terminated, the ENGINEER shall be paid as provided under compensation for work completed to date of termination.

F. Dispute Resolution.

In the event of a dispute arising out of or relating to the agreement or the services to be rendered hereunder, both parties hereby agree to (1) attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party, (2) if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by both parties, and (3) if the dispute or any issues remain unresolved after the first two steps, either party may seek to have the dispute resolved by a court of competent jurisdiction.

G. Successors and Assigns.

The OWNER and ENGINEER each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

H. Indemnification.

The ENGINEER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the ENGINEER's negligent performance of professional services under this Agreement and that of its sub-engineers or anyone for whom the ENGINEER is legally liable. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and sub-consultants (collectively, ENGINEER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER'S negligent acts in connection with the Project and the acts of its contractors, subcontractors or engineers or anyone for whom the OWNER is legally liable. Neither the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

I. Hazardous Materials.

The parties acknowledge that ENGINEER'S scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist engineers or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous

Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

J. Controlling Law.

This Agreement is to be governed by the law of the state in which the Project is located.

K. Construction Phase Services.

OWNER acknowledges that it is customary for the ENGINEER who is responsible for the preparation and furnishing of Drawings and Specifications and other construction related documents to be employed to provide professional services during the Bidding and Construction Phases of the Project, (1) to interpret and clarify the documentation so furnished and to modify the same as circumstances revealed during bidding and construction may dictate, (2) in connection with acceptance of substitute or equal items of materials and equipment proposed by bidders and contractor(s), (3) in connection with approval of shop drawings and same submittals, and (4) as a result of and in response to ENGINEER'S detecting in advance of performance of affected work inconsistencies or irregularities in such documentation. OWNER agrees that if ENGINEER is not employed to provide such professional services during the Bidding (if the work is put out for bids) and the Construction Phases of the Project, ENGINEER will not be responsible for, and OWNER shall indemnify and hold ENGINEER (and ENGINEER'S professional associates and consultants) harmless from, all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by OWNER or others. Nothing contained in this paragraph shall be construed to release ENGINEER (or ENGINEER'S professional associates or consultants) from liability for failure to perform in accordance with professional standards any duty or responsibility which ENGINEER has undertaken or assumed under this Agreement.

L. Compliance Requirements.

ENGINEER certifies that they are in compliance with all federal, state and local laws, regulations and orders including but not limited to those regarding non-discrimination, wages and hours, workers compensation and immigration and are not currently suspended or disbarred from working on federally funded projects. Failure of compliance may result in the cancellation of any OWNER agreement and exclusion from consideration for future agreements.

M. Insurance.

Throughout the duration of this Agreement, Engineer agrees to provide evidence of insurance coverages not less than the types and amounts specified in Attachment D.

N. Affirmative Action.

ENGINEER and any Subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

VIII. FEDERAL CONTRACT PROVISIONS.

If this Agreement is to be financed in part by Federal funds, certain federally-required, contract provisions must be incorporated. These federally-required, contract provisions, included as ATTACHMENT C, are hereby incorporated herein and made a part of this Agreement. The ATTACHMENT C incorporated is for a Non-Construction Contract.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

Owner City of Bismarck  
Signed \_\_\_\_\_  
Name Steve Bakken  
Title President, Board of City Commissioners  
Date \_\_\_\_\_

Attest \_\_\_\_\_  
Name Keith J. Hunke  
Title City Administrator

Engineer KLJ Engineering LLC  
Signed   
Name Mark Anderson, PE  
Title VP, Environment and Public Works  
Date 8-17-2020

Attest   
Name Tom Neigum, PE  
Title Project Manager

CERTIFICATION OF ENGINEER

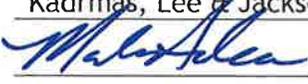
I hereby certify that I am the VP, Environment and Public Works (title) and duly authorized representative of KLJ Engineering LLC, whose address is 4585 Coleman Street, Bismarck, ND 58503, and that neither I nor the firm I here represent has:

- (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 ENGINEER) to solicit or secure this contract, or
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (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 ENGINEER) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract; except as here expressly stated (if any):

The undersigned firm certifies that it has not been convicted of bribery or attempting to bribe an officer or employee of the State of North Dakota, nor has the firm made an admission of guilt of such conduct which is a matter of record, nor has an official, agent, or employee of the firm committed bribery or attempted bribery on behalf of the firm and pursuant to the direction or authorization of a responsible official of the firm.

I acknowledge that this certificate is to be furnished to the Federal Aviation Administration of the United States Department of Transportation in connection with this contract involving participation of Airport Improvement Program (AIP) funds and is subject to applicable state and federal laws, both criminal and civil.

The undersigned firm certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal and by execution of this contract that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the undersigned firm or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

Engineer Kadrmaz, Lee & Jackson, Inc.  
Signed   
Name Mark Anderson, PE  
Title VP, Environment and Public Works  
Date 8-17-2020

Attest   
Name Tom Neigum, PE  
Title Project Manager



**Attachment A**  
**Detailed Scope of Services**  
**Removal of Wetlands to Reduce Wildlife Attractants (Phase 5)**  
**Construction Administration, Construction Observation and Project Closeout Report**  
**Bismarck Airport, Bismarck, North Dakota**  
**AIP Project # 3-38-0003-062-2020**  
**KLJ# 1805-02200.3, 1805-02200.14A, 1805-02200.14B**

#### EXECUTIVE SUMMARY

The Engineer is under an Agreement to complete the design of Removal of Wetlands to Reduce Wildlife Attractants (Phase 5), which will include design of the entire solution to drain the Central Airport Watershed as recommended in the Bismarck Airport Storm Water Analysis Report last revised in September 2018. It is currently anticipated that bidding and construction may be divided into two or three different phases / packages, depending on funding availability. This Agreement will only include the construction administration, construction observation, and project closeout services for the first phase. Subsequent Agreements will cover packaging the previously completed design, package specific construction safety phasing plans, specifications, bidding, and construction administration / observation services for those remaining phases.

#### PROJECT DESCRIPTION

**General.** The work is to occur at the Bismarck Airport in Bismarck, North Dakota, under the terms and conditions of the Agreement for Professional Services (Agreement) between the City of Bismarck (Owner) and KLJ (Engineer).

The federal work shall be performed and constructed under a Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant to the Owner. The Engineer shall perform the work under this Agreement with FAA Advisory Circulars and regulations that are current as of the date of this Agreement. Any changes to the FAA Advisory Circulars and regulations after the date of this Agreement shall be addressed per Section IV and Section V, Item P, of the Agreement.

For the Removal of Wetlands to Reduce Wildlife Attractants (Phase 5) project, the design elements to be constructed are shown in the accompanying drawing.

**Completion Time.** The Engineer shall complete the total contract within 180 days after final construction acceptance. Schedule and fee is based on FAA funding for the project being approved for construction in 2021. If funding does not become available for 2021 construction, timelines may be revised accordingly.

#### PROJECT ADMINISTRATION

**Project Scoping Meeting with Owner.** The Engineer shall attend one (1) meeting to discuss project scoping, FAA Pre-Application and airport capital improvements plan with the Owner at the Bismarck Airport. The Engineer staff attending the meeting shall include:

- Senior Project Manager

**Prepare Project Scope of Services and Schedule.** The Engineer shall prepare a Detailed Scope of Services based on the information obtained during the Owner Scoping Meeting. Engineer shall submit the Detailed Scope of Services and schedule to the Owner for review and make applicable modifications as agreed upon.

**Project Detailed Scope of Services Review with FAA.** The Engineer shall present the final Detailed Scope of Services for review and approval. It is anticipated that the Engineer and Owner shall meet with the FAA at the FAA Bismarck ADO or via teleconference to discuss each comment and provide feedback. The Engineer shall then

update the Detailed Scope of Services per applicable FAA comments, and then resubmit the Detailed Scope of Services to the Owner for review and comment.

**Engineering Detailed Scope of Services and Hour Negotiations.** Upon Detailed Scope of Services approval from the FAA, the Engineer shall prepare a detailed hour breakdown with the associated fees for review by the Owner.

**Independent Fee Document Preparation.** The Engineer shall prepare the appropriate documents for the independent fee review based on the completed fee negotiations. The Owner shall follow FAA AC 150/5100-14E.

**Agreement for Professional Services.** The Engineer shall compile the Agreement for Professional Services (Agreement), complete an internal review and execution of the Agreement for approval by the Owner.

**Prepare and Coordinate Subconsultant Agreements.** The Engineer shall prepare the appropriate contract documents and the execution of subconsultant agreements to support the agreed upon Detailed Scope of Services and the Engineer's Agreement with the Owner. The Engineer anticipates the following subconsultants will be utilized on the project:

- Surveying Subconsultant
- Geotechnical / Materials Testing Subconsultant
- Electrical Engineer Subconsultant
- Trenchless Design Subconsultant

## PROJECT MANAGEMENT

**Overall Project Management.** The Engineer shall provide project management services to manage the completion of the project within the conditions of this Agreement. Project management is crucial to the success of all projects; specifically, it is crucial to this project. The Engineer has identified Tom Neigum, PE as the Project Manager for the project. Project management is the discipline of planning, organizing, and managing resources to successfully meet this project's objectives and goals. It is the Project Manager's responsibility to notify the Owner of any issues, problems, or concerns regarding the project; the delegation of all activities to the project team; and handling all subconsultant coordination. In addition, if any items arise during the duration of the project that are outside this scope of work, the Project Manager shall address them with the Owner.

For this project, it is anticipated that project management will occur from the time the Grant Agreement is accepted (estimated July 2020) through the closeout period (estimated April 2022), a period of twenty-two (22) months.

**Project Startup Meeting.** The Engineer shall conduct an internal kickoff meeting with the Engineering staff consisting of the Engineering team members.

**Project Budget Setup.** The Engineer shall coordinate with the internal Accounting staff to establish the internal budgets.

**Bi-weekly Budget Review / Projections.** The Engineer shall review budgets and budget projections on a bi-weekly basis and coordinate any known issues with the Owner.

**Monthly Invoicing.** The Engineer and shall prepare monthly billings of project accounting.

**Periodic Internal Meetings.** The Engineer and lead staff members shall conduct a bi-weekly status meeting to review schedule and outstanding issues encountered. This shall occur from the time the Grant Agreement is accepted (estimated July 2020) through the closeout period (estimated April 2022), a period of twenty-two (22) months.

**Develop Quality Control Plan.** The Engineer shall develop a Quality Control Plan for the project. The plan shall include project instructions, milestone checking, and peer review procedures at each phase of the project.

**FAA Grant Coordination.** The Engineer shall prepare the FAA Pre-Application for Federal Assistance per FAA SOP guidance information for submittal.

**Monthly Status Reports.** The Engineer shall prepare and submit monthly status reports to the Owner noting project progress, issues encountered and action requirements by the Owner. This shall occur from the time the Grant Agreement is accepted (estimated July 2020) through the closeout period (estimated April 2022), a period of twenty-two (22) months.

**FAA Quarterly Reports.** The Engineer shall prepare and submit the quarterly FAA reports. This shall occur from the time the Grant Agreement is accepted (estimated July 2020) through the closeout period (estimated April 2022), a period of twenty-two (22) months.

**DBE Reporting.** The Engineer shall prepare a Disadvantaged Business Enterprise (DBE) quarterly and annual reporting forms as applicable to the project. The Owner has an approved DBE plan that shall be utilized for the project.

## **CONSTRUCTION ADMINISTRATION**

**Develop and Submit Environmental Checklist.** The environmental checklist was completed as part of a separate project. As a result, the Engineer has not included work on this item as part of this Detailed Scope of Services. If any changes occur that impact the environmental documentation for the project, the Engineer shall consult with the Owner and FAA.

**Coordination of Changes to FAA Owned Facilities.** Regarding the FAA owned facilities, the Engineer anticipates additional coordination with the FAA regarding work pertaining to the changes to their FAA owned facilities.

**Utility Coordination.** As part of the project design, the Engineer sent a letter to utility companies that may be impacted by the project. The Engineer also evaluated utility information provided by the utility companies and identified utilities which may require relocation or lowering as a result of the proposed project. Once the contractor has potholed the utilities as part of the project, the Engineer shall perform additional coordination with the utility companies to determine solutions to the impacted utilities.

**Quality Acceptance Construction Materials Testing.** The Engineer shall subconsult with a materials testing firm to provide the required quality acceptance testing. The Engineer shall coordinate the development of a contract between the Engineer and the materials testing firm.

**Prepare Construction Management Plan (if paving costs exceed \$500,000 in overall cost).** A Construction Management Plan is not required on this project. As a result, no effort has been included in the Detailed Scope of Services for this task.

**Prepare and Conduct Project Kickoff Meeting.** The Engineer shall facilitate a project kickoff meeting at the Airport. This meeting will occur in the fall of 2020 with the successful general and electrical contractors. The purpose of the meeting will be to inform all parties of expectations and set the stage for requirements leading up to construction, as well as define the work to be completed in the fall of 2020. The Engineer shall prepare the meeting agenda, facilitate the meeting and attend a post-meeting site visit at the Airport. The detailed discussion of the project to include:

- Roles and responsibilities
- Contractor's representatives
- Project communication
- Project schedule, including coordination of Yegen Road closure
- Contractor's work schedule
- Testing requirements
- Subcontractors
- Plans and Specifications
- Materials certification requirements
- Shop drawing requirements

- Submittal requirements
- Work to complete in 2020

It is anticipated the following staff members shall attend the meeting:

- Senior Project Manager
- Engineering Technician IV
- Associate Engineer
- Engineer In Training II
- Surveying Subconsultant
- Geotechnical / Material Testing Subconsultant
- Electrical Engineer Subconsultant
- Trenchless Design Subconsultant (via teleconference)

**Prepare and Conduct Pre-Construction Conference.** Conduct a preconstruction meeting at the Airport in the spring of 2021. The Engineer shall prepare the preconstruction agenda, facilitate the preconstruction conference and attend a post-meeting site visit at the Airport. The detailed discussion of the project to include:

- Roles and responsibilities
- Contractor's representatives
- Schedules
- Safety
- Security
- Testing requirements
- Resident Engineer's role
- Labor requirements
- DBE and Civil Rights
- Environmental and materials storage
- Plans and Specifications
- Materials certification requirements
- Shop drawing requirements

It is anticipated the following staff members shall attend the meeting:

- Senior Project Manager
- Engineering Technician IV
- Associate Engineer
- Engineer In Training II
- Surveying Subconsultant
- Geotechnical / Material Testing Subconsultant
- Electrical Engineer Subconsultant
- Trenchless Design Subconsultant

**Prepare and Conduct Pre-Phase Meetings.** Conduct a pre-phase meeting at the Airport. The Engineer shall prepare the pre-phase agenda, conduct the pre-phase conference and site visit at the Airport. The meeting shall be held before each phase commences. It is estimated that there will be up to two (2) pre-phase meeting. Note that with the exception of the Senior Project Manager and Electrical Engineer Subconsultant, time for the pre-phase meetings is included in each person's hours for construction observation.

**Shop Drawing / Certification Review.** Review Contractor shop drawings and certifications for compliance with the project plans and specifications for up to two (2) contracts. Issue the appropriate response to the Contractor.

- Estimate based on up to 2 reviews of 55 shop drawings (average of 1 hour each for review, response, and filing in project records)
- Estimate based on up to 2 reviews of 80 material certification submittals (average of 0.5 hour each for review, response, and filing in project records)

**Review Contractor Requests for Information (RFI) and Responses.** Review Contractor requests for information up to two (2) contracts. Coordinate with Owner staff as applicable and issue the written response to the Contractor.

- Estimate based on responses to up to 25 RFIs (average of 2 hours each for review, response, and filing in project records)

**Prepare Change Orders.** The Engineer shall prepare change orders for modifications to the Contractors work, payment or schedule as the issue arise during the construction phase for up to two (2) contracts. The Engineer shall also assist the Owner in obtaining approval from the FAA for the change order work.

- Estimate based on up to 10 change orders (average of 10 hours each for review, preparation, coordination, response, and filing in project records)

**Prepare Periodical Estimates.** The Engineer shall prepare periodical pay estimates based on the Contractor's completed and accepted work on the project at a frequency agreed upon by the Owner and the Contractor for up to two (2) contracts.

- Estimate based on up to 14 pay estimates (average of 6 hours each for review, preparation, coordination, response, and filing in project records)

**Project Records & Payrolls.** Maintain a record of all of the project documents and correspondence. Conduct a review of the Contractor and subcontractor payrolls for conformance with the project wage rates and regulations for up to two (2) contracts.

- Estimate based on 7 months of payroll records (average of 20 hours per month)

**Weekly Construction Progress Meetings.** The Engineer shall coordinate progress meetings on a scheduled agreed upon by the Owner and the Contractor. The Engineer shall prepare the progress meeting agendas, conduct the meetings and issue meeting minutes to the appropriate parties. The Engineer shall coordinate with the Owner on user attendees at the meeting based on the progress of the work. Also, the Engineer shall submit weekly FAA construction status reports to the Owner and Contractor.

- Estimate based on 25 weekly meetings
  - Senior Project Manager
  - Engineering Technician IV \*
  - Associate Engineer \*
  - Engineer In Training II \*
  - Engineer In Training I \*
  - Electrical Engineer (Subconsultant)
  - Trenchless Design Subconsultant (when on-site during microtunneling or pilot tube auger boring work is being performed on the project)
    - Note that the time for the Engineering Technician IV, Associate Engineer, Engineer In Training II, and Engineer In Training I for the weekly construction progress meetings is included in their hours for construction observation

**Conduct Substantial / Punchlist Inspection of Project.** The Engineer shall coordinate with the Owner and the Contractor to conduct a pre-final inspection with the parties and prepare the final inspection punchlist for up to two (2) contracts. The Engineer shall verify that punchlist items have been completed and recommend to the Owner acceptance of the work. Review O&M Manuals and any required training materials for completeness. It is anticipated the following staff members shall attend the meeting:

- Senior Project Manager
- Engineering Technician IV \*
- Associate Engineer \*
- Engineer In Training II \*
- Engineer In Training I \*
- Electrical Engineer (Subconsultant)

- Note that the time for the Engineering Technician IV, Associate Engineer, Engineer In Training II, and Engineer In Training I for the weekly construction progress meetings is included in their hours for construction observation

**Conduct Final Inspection of Project.** The Engineer shall coordinate with the Owner and the Contractor to conduct a final inspection meeting at the Airport for up to two (2) contracts. The Engineer shall follow-up on any new deficiencies that are identified or punchlist items that have not been satisfactorily corrected. It is anticipated the following staff members shall attend the meeting:

- Senior Project Manager
- Engineering Technician IV \*
- Associate Engineer \*
- Engineer In Training II \*
- Engineer In Training I \*
- Electrical Engineer Subconsultant
  - Note that the time for the Engineering Technician IV, Associate Engineer, Engineer In Training II, and Engineer In Training I for the weekly construction progress meetings is included in their hours for construction observation

**Subconsultant Coordination.** The Engineer shall coordinate the applicable subconsultant tasks to support the agreed Detailed Scope of Services and the Engineer's Agreement with the Owner.

**Analyzing Grades per FAA Requirement.** On this project, there won't be the need to analyze grades per the FAA requirements. As a result, no effort has been included in this Detailed Scope of Services for this task.

**P-154, P-160, P-304, P-401, P-501, P610, D-705 QA Analysis Forms.** On this project, there won't be the need to analyze grades per the FAA requirements. As a result, no effort has been included in this Detailed Scope of Services for this task.

**Tribal Monitoring Coordination.** It is anticipated that Tribal monitoring shall not be required during the construction activities. As a result, no effort has been included in this Detailed Scope of Services for this task.

**FAA Reimbursement Processing.** The Engineer shall prepare and coordinate the appropriate documentation required for the Owner to received reimbursement for project eligible costs through the Owner's FAA grant for up to two (2) contracts.

**Periodic Owner Meetings.** It is anticipated that the Engineer shall attend twenty-two (22) monthly Owner meetings to coordinate any issues with the Owner. It is anticipated the following staff members shall attend the periodic owner meetings:

- Senior Project Manager

**Periodic Agency Meetings.** It is anticipated that the Engineer shall attend twenty-two (22) monthly agency meetings to coordinate final design activities and issues with the Owner and Agencies. It is anticipated the following staff members shall attend the periodic owner meetings:

- Senior Project Manager

**FAA Flight Check Coordination.** For this project, FAA flight checks are not required as part of the project. As a result, the Engineer has not included work on this item as part of this Detailed Scope of Services.

## CONSTRUCTION OBSERVATION

**Construction Staking - General.** A Professional Land Surveyor shall utilize an estimated 30 hours to coordinate and supervise survey crews, prepare survey data, and prepare reports.

**Construction Surveying - Establish Project Control.** The Engineer shall provide control points and alignment data as required by the project specifications. It is estimated that 20 hours shall be required by a 2-person survey crew.

**Contractor Staking QA / QC - Slope Staking.** The Engineer shall provide verification survey activities as required by the project specifications. It is estimated that 3 hours (1 trip) shall be required by a 2-person survey crew.

**Contractor Staking QA / QC - Top of Subgrade Elevations.** The Engineer shall provide verification survey activities as required by the project specifications. It is estimated that 3 hours (1 trip) shall be required by a 2-person survey crew.

**Contractor Staking QA / QC - Top of Recycled Asphalt Pavement for Subgrade Stabilization.** The Engineer shall provide verification survey activities as required by the project specifications. It is estimated that 3 hours (1 trip) shall be required by a 2-person survey crew.

**Contractor Staking QA / QC - Top of Crushed Aggregate Base Course.** The Engineer shall provide verification survey activities as required by the project specifications. It is estimated that 3 hours (1 trip) shall be required by a 2-person survey crew.

**Contractor Staking QA / QC - Top of Hot Mix Asphalt Pavement.** The Engineer shall provide verification survey activities as required by the project specifications. It is estimated that 3 hours (1 trip) shall be required by a 2-person survey crew.

**Contractor Staking QA / QC - Storm Sewer.** The Engineer shall provide verification survey activities as required by the project specifications. It is estimated that 160 hours (20 trips) shall be required by a 2-person survey crew.

**Contractor Staking QA / QC - Finished Topsoil.** The Engineer shall provide verification survey activities as required by the project specifications. It is estimated that 6 hours (1 trip) shall be required by a 2-person survey crew.

**Contractor Staking QA / QC - Other.** The Engineer shall provide verification survey activities as required by the project specifications. It is estimated that 20 hours (4 trips) shall be required by a 2-person survey crew.

**Observation - Full Time and Periodic.** The Engineer shall provide full time construction observation for this project. It is estimated at this time that 150 working days be allowed for the project. If the actual construction time exceeds that estimate, additional construction observation time shall be required, and the Engineer's fee shall be equitably adjusted.

- For this project, it is anticipated that the contractor will be working on multiple items concurrently, such as the lift station, deep storm sewer system, manholes, culverts, geogrid and fabric, subbase, under drains, cable concrete, surface grading, milling of existing pavement, hot mix asphalt pavement, electrical, and other items. As a result, the Engineer anticipates the following personnel and their corresponding hours:
  - Senior Project Manager
    - 25 weeks at 10 hours per week
  - Engineering Technician IV
    - Anticipated responsibility would be to manage overall construction on-site
    - 150 days at 12 hours per day
  - Associate Engineer
    - Anticipated responsibility would be to perform full-time observation of deep pipe installation
    - 150 days at 12 hours per day

- Engineer In Training II
  - Anticipated responsibility would be to perform part-time observation of the lift station, microtunneling pits installation / cleanup, microtunneling / pilot tube auger boring, grading
  - 150 days at 12 hours per day
- Engineer In Training I
  - Anticipated responsibility would be to perform full-time observation of the drain tile and cable concrete installation
  - Base Bid
    - 36 days at 12 hours per day
  - Alternate
    - An additional 72 days at 12 hours per day
- Electrical Engineer Subconsultant
  - 20 weeks at 2 hours per week
- Trenchless Design Subconsultant
  - Senior Associate / Senior Consultant I
    - 26 Hours
  - Associate / Senior Project Manager
    - 180 hours
  - Engineer
    - 83 hours
  - Field Staff
    - 816 hours

Although the Engineer shall perform construction administration and observation on this project, the Contractor is responsible for the means and methods of construction. The Engineer has no control over the Contractor's work product.

## AERONAUTICAL SURVEY SERVICES

Aeronautical Survey Services are not required on this project. As a result, no effort has been included in the Detailed Scope of Services for this task.

## FAA PROJECT CLOSEOUT REPORT, AIP 3-38-0003-062-2020

**Overall Project Management.** The Engineer shall provide project management services to manage the completion of the project within the conditions of this Agreement. Project management is crucial to the success of all projects; specifically, it is crucial to this project. The Engineer has Tom Neigum, PE identified as the project manager for the project. Project management is the discipline of planning, organizing, and managing resources to successfully meet this project's objectives and goals. It is the project manager's responsibility to notify the Owner of any issues, problems, or concerns regarding the project; the delegation of all activities to the project team; and handling all subconsultant coordination. In addition, if any items arise during the duration of the project that are outside this Detailed Scope of Services, the project manager shall address them with the Owner.

The Engineer shall perform the following closeout items per the requirements of the FAA:

**Prepare Final Outlay and Acceptance Forms.** Prepare final outlay request for final grant payment and required acceptance forms.

**Prepare DBE Summary Report.** Prepare required FAA documentation regarding DBE participation on the project based on data obtained from the Contractor.

**Prepare Executive Summary.** The Engineer shall perform appropriate post-construction photographic documentation of the project and any adjacent properties that could have been affected by construction activities. The Engineer shall also prepare an Executive Summary of the project.

**Prepare Quantity Revision Summary.** Perform three-way check of all project costs and explanations of cost variations from plan.

**Prepare ALP Update.** An ALP Update is not required on this project. As a result, no effort has been included in the Detailed Scope of Services for this task.

**Exhibit A Update.** An Exhibit A Update is not required on this project. As a result, no effort has been included in the Detailed Scope of Services for this task.

**Prepare Record Drawings.**

- Prepare record construction plans and provide two (2) bound hard copy sets and three (3) electronic sets on CD in PDF and AutoCAD 2017 format to the Owner. One set of each shall be delivered to the Owner, City Engineering Department, and one electronic set to City GIS department. The set may be delivered to City Engineering and City GIS department by a mutually agreeable alternative electronic delivery means. For the record construction plans, there are approximately 160 plan sheets that will require updating.
- Deliver two (2) sets of Operation and Maintenance (O&M) Manuals as provided by the Contractor.

**Update City of Bismarck GIS Map.**

- Update the City of Bismarck GIS Map for the Owner to reflect revisions based on this project.
- Provide one (1) PDF version of the utility map base drawing to the Owner.

**Update Owner Utility Maps.**

- Update the Owner's Utility Maps (approximately 21 plan sheets) to reflect revisions based on this project. The Engineer shall also provide the FAA an overall drawing of the utilities on the airport.

**Prepare Closeout Report Document.**

- Prepare summaries of all test results on materials installed as required and final testing report.
- Once FAA has approved the Closeout Report, the Engineer shall provide one (1) copy to the Owner.

**Prepare and Submit NDAC Pavement History Update.** A NDAC Pavement History Update is not required on this project. As a result, no effort has been included in the Detailed Scope of Services for this task.

**Coordination of FAA Reimbursable Agreement Closeout.** For this project, there isn't an FAA Reimbursable Agreement. As a result, the Engineer has not included work on this item as part of this Detailed Scope of Services.

**FAA PROJECT CLOSEOUT REPORT, AIP 3-38-0003-064-2020**

**Overall Project Management.** The Engineer shall provide project management services to manage the completion of the project within the conditions of this Agreement. Project management is crucial to the success of all projects; specifically, it is crucial to this project. The Engineer has Tom Neigum, PE identified as the project manager for the project. Project management is the discipline of planning, organizing, and managing resources to successfully meet this project's objectives and goals. It is the project manager's responsibility to notify the Owner of any issues, problems, or concerns regarding the project; the delegation of all activities to the project team; and handling all subconsultant coordination. In addition, if any items arise during the duration of the project that are outside this Detailed Scope of Services, the project manager shall address them with the Owner.

The Engineer shall perform the following closeout items per the requirements of the FAA:

**Prepare Final Outlay and Acceptance Forms.** Prepare final outlay request for final grant payment and required acceptance forms.

**Prepare DBE Summary Report.** Prepare required FAA documentation regarding DBE participation on the project based on data obtained from the Contractor.

**Prepare Executive Summary.** The work effort for this task is included in the FAA Project Closeout Report for AIP 3-38-0003-062-2020. As a result, no additional effort has been included under this closeout for this task.

**Prepare Quantity Revision Summary.** Perform three-way check of all project costs and explanations of cost variations from plan.

**Prepare ALP Update.** An ALP Update is not required on this project. As a result, no effort has been included in the Detailed Scope of Services for this task.

**Exhibit A Update.** An Exhibit A Update is not required on this project. As a result, no effort has been included in the Detailed Scope of Services for this task.

**Prepare Record Drawings.** The work effort for this task is included in the FAA Project Closeout Report for AIP 3-38-0003-062-2020. As a result, no additional effort has been included under this closeout for this task.

**Update City of Bismarck GIS Map.** The work effort for this task is included in the FAA Project Closeout Report for AIP 3-38-0003-062-2020. As a result, no additional effort has been included under this closeout for this task.

**Update Owner Utility Maps.** The work effort for this task is included in the FAA Project Closeout Report for AIP 3-38-0003-062-2020. As a result, no additional effort has been included under this closeout for this task.

**Prepare Closeout Report Document.**

- Prepare summaries of all test results on materials installed as required and final testing report.
- Once FAA has approved the Closeout Report, the Engineer shall provide one (1) copy to the Owner.

**Prepare and Submit NDAC Pavement History Update.** A NDAC Pavement History Update is not required on this project. As a result, no effort has been included in the Detailed Scope of Services for this task.

**Coordination of FAA Reimbursable Agreement Closeout.** For this project, there isn't an FAA Reimbursable Agreement. As a result, the Engineer has not included work on this item as part of this Detailed Scope of Services.

## **OWNER'S RESPONSIBILITIES**

**Project Representative.** The Owner shall designate a Project Representative with authority to administer the Engineer's Agreement. All requests for information or a decision by the Owner on any aspect of the work shall be directed to the Owner's Project Representative.

**Submittal Reviews.** The Owner shall review submittals by the Engineer and provide prompt decisions and responses to questions in order to minimize delay in the progress of the Engineer's work. The Owner shall also be responsible for coordination of timely responses by Agencies.

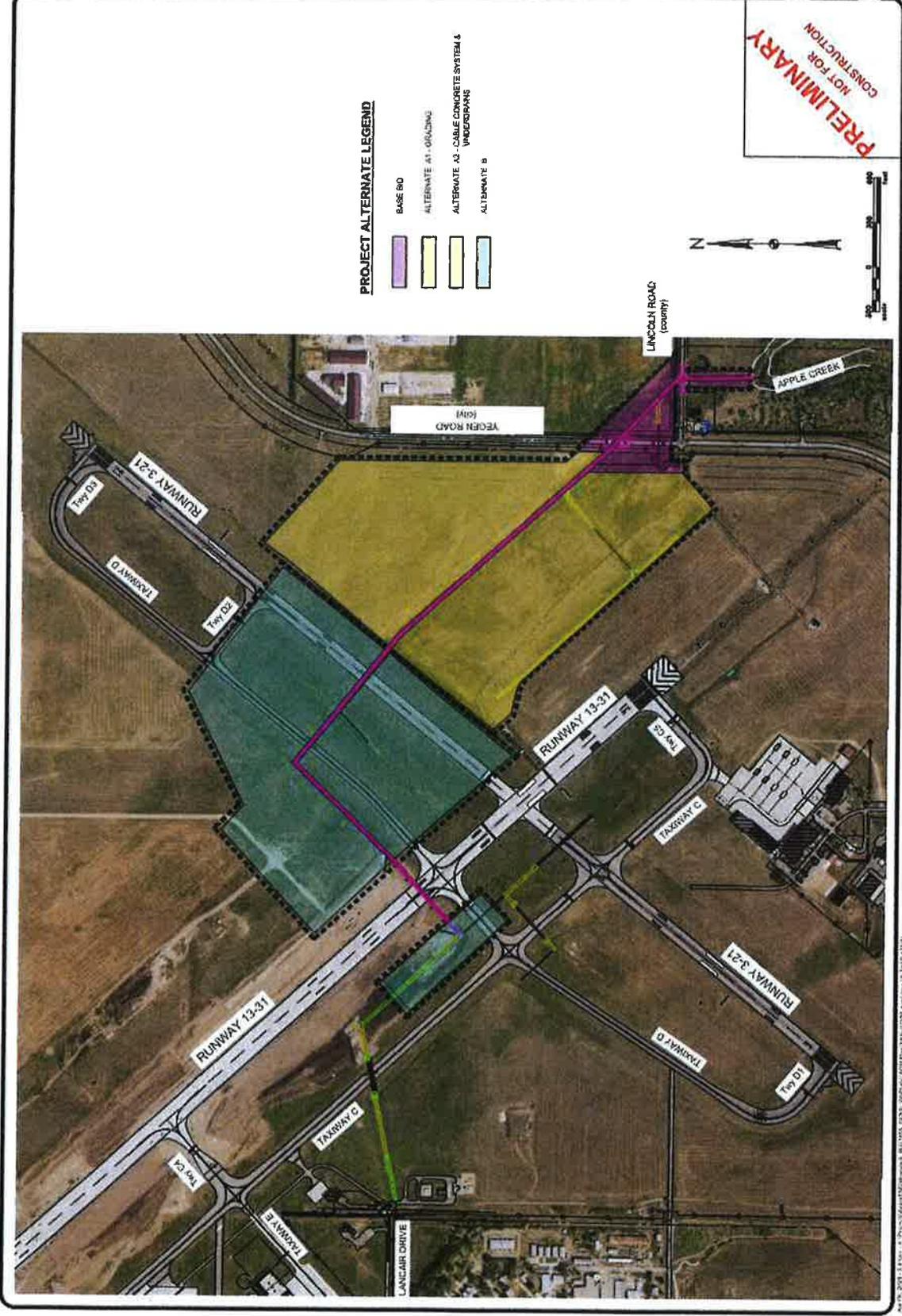
**Outlay Reviews.** The Owner shall review and approve outlays and other information submitted by the Engineer in a prompt manner.

**Historical Information.** The Owner shall furnish the Engineer one copy of as-built drawings, maps, records, surveys, reports, preliminary designs, utility locates, etc. that are pertinent to the project.

**Agreement Between Owner and Contractor.** The Owner shall provide a legal review of the Agreement Between Owner and Contractor template that is provided by the Engineer to make sure that it complies with local, state, and federal law.

**DBE Plan.** The Owner has an approved DBE Plan and shall make determinations on accomplishments and participation.

**Coordination with Utility Companies and FAA Technical Operations Personnel.** The Owner shall assist the Engineer in coordination with applicable utility companies and FAA Technical Operations.





PHASE: Construction Administration / Construction Observation - Base Bid  
 Estimate based on 150 working days

KLJ Title	Principal Engineer	Senior Project Manager	Engineering Technician IV	Associate Engineer	Engineer in Training II	Engineer in Training I	CAD Technician II	Environmental Planner III	Senior Technical Advisor	Project Assistant II	Project Controls Specialist I	Senior Project Manager	Engineer	Associate Engineer	Engineer	Task Direct Labor Cost
<b>Project Administration (Task 3.1)</b>																
Project Scoping Meeting with Owner																
Meeting Preparation			1													\$ 76.00
Participate in Meeting (including travel)			1													\$ 76.00
Prepare and File Meeting Minutes			1													\$ 76.00
Prepare Project Detailed Scope of Services and Schedule			8									4	1	1		\$ 993.00
Project Detailed Scope of Services Review with FAA																
Meeting Preparation			1													\$ 76.00
Participate in Meeting (including travel)			2													\$ 152.00
Prepare and File Meeting Minutes			1													\$ 76.00
Engineering Detailed Scope of Services and Hour Negotiations	1		4													\$ 369.00
Independent Fee Document Preparation			2								1					\$ 188.00
Agreement for Professional Services	1		1							2	1					\$ 227.00
Prepare and Coordinate Subconsultant Agreements			4							8	8	2				\$ 944.00
																\$ -
																\$ -
<b>Subtotal</b>																<b>\$ 3,253.00</b>
<b>Project Management (Task 3.2)</b>																
Overall Project Management			44						4	4	1	1				\$ 3,857.00
Project Startup Meeting			1													\$ 137.00
Project Budget Setup			1													\$ 320.00
Bi-Weekly Budget Review / Projections (44 estimated)			44								44					\$ 5,478.00
Monthly Invoicing (22 months estimated)			22							22	11					\$ 2,618.00
Periodic Internal Meetings (44 meetings estimated)			22	22	22	22	22					11	11	11	11	\$ 7,106.00
Develop Quality Control Plan			1		4											\$ 220.00
FAA Grant Coordination			2													\$ 324.00
Monthly Status Reports (22 months estimated)			22							4	2					\$ 1,947.00
FAA Quarterly Reports (8 estimated)			4							11						\$ 404.00
DBE Reporting			2							8						\$ 352.00
																\$ -
<b>Subtotal</b>																<b>\$ 22,763.00</b>
<b>Construction Administration (Task 3.3)</b>																
Develop and Submit Environmental Checklist																
Coordination of Changes to FAA Owned Facilities			8	24												\$ -
Utility Coordination			24	80	16			16		4						\$ 1,688.00
Quality Acceptance Construction Materials Testing			2	4								8				\$ 6,548.00
Prepare Construction Management Plan (If paving costs exceed \$500,000 in overall cost)																\$ 940.00
Prepare and Conduct Project Kickoff Meeting																\$ -
Meeting Preparation			2	4	4	2		2								\$ 648.00
Participate in Meeting (including travel)			4	4	4	4		2		2						\$ 760.00
Prepare and File Meeting Minutes			1	1	2	1				1						\$ 251.00
Prepare and Conduct Pre-Construction Conference																\$ -
Meeting Preparation			2	4	4	2		2								\$ 648.00
Participate in Meeting (including travel)			4	4	4	4										\$ 760.00
Prepare and File Meeting Minutes			1	1	2	1				1						\$ 251.00
Prepare and Conduct Pre-Phase Meetings (2 estimated)																\$ -
Meeting Preparation			4					2								\$ 410.00
Participate in Meeting (including travel)			8							2						\$ 608.00
Prepare and File Meeting Minutes			4													\$ 354.00
Shop Drawing Review (55 estimated)			55		25					10			10	5	5	\$ 6,185.00
Certification Review (80 estimated)			40		15					10			5	5	5	\$ 4,460.00
Review Contractor Requests for Information (RFI) and Responses (25 estimated)			20		10					5			5	5	5	\$ 2,635.00
Prepare Change Orders (10 estimated)			60							10	10		10	5	5	\$ 6,025.00
Prepare Periodical Estimates (14 estimated)			42							14	14		7	7	7	\$ 4,613.00
Project Records and Payrolls (7 months estimated)			28							112						\$ 4,928.00
Weekly Construction Progress Meetings (25 estimated)																\$ -
Meeting Preparation			25													\$ 1,900.00
Participate in Meeting (including travel)			50													\$ 3,800.00
Prepare and File Meeting Minutes			25							25						\$ 2,525.00
Conduct Substantial / Punchlist Inspection of Project (1 estimated)																\$ -
Meeting Preparation			1							1						\$ 101.00
Participate in Meeting (including travel)			4													\$ 304.00



PHASE: Construction Administration / Construction Observation - Base Bid  
Estimate based on 150 working days

KLJ Title	Principal Engineer	Senior Project Manager	Engineering Technician IV	Associate Engineer	Engineer In Training II	Engineer In Training I	CAD Technician II	Environmental Planner III	Senior Technical Advisor	Project Assistant II	Project Controls Specialist I	Senior Project Manager	Engineer	Associate Engineer	Engineer	Task Direct Labor Cost
Prepare and File Meeting Minutes		1								1						\$ 101.00
Conduct Final Inspection of Project (1 estimated)																\$ 101.00
Meeting Preparation		1								1						\$ 101.00
Participate in Meeting (including travel)		4														\$ 304.00
Prepare and File Meeting Minutes		1								1						\$ 101.00
Subconsultant Coordination (4 Subconsultants)		16								16		8				\$ 2,224.00
Analyzing Grades per FAA Requirement																\$ -
P-304 CTB, P-401, P-403, P-501 QA Analysis Forms																\$ -
Tribal Monitoring Coordination																\$ -
FAA Reimbursement Processing (22 months)		22								66	44					\$ 4,906.00
Periodic Owner Meetings (22 estimated)																\$ -
Meeting Preparation		22														\$ 1,672.00
Participate in Meeting (including travel)		44														\$ 3,344.00
Prepare and File Meeting Minutes		11									11					\$ 1,232.00
Periodic Agency Meetings (22 estimated)																\$ -
Meeting Preparation		44														\$ 3,344.00
Participate in Meeting (including travel)		44														\$ 3,344.00
Prepare and File Meeting Minutes		11									11					\$ 1,232.00
FAA Flight Check Coordination																\$ -
																\$ -
																\$ -
																\$ -
																\$ -
<b>Subtotal</b>																<b>\$ 73,247.00</b>
<b>Construction Observation (Task 3.4)</b>																
Construction Surveying - Provide Data to Subconsultant		8					16									\$ 1,056.00
Observation - Full Time and Periodic		250	1800	1800	1800	432										\$ 238,024.00
Aeronautical Survey Services																\$ -
																\$ -
																\$ -
<b>Subtotal</b>																<b>\$ 239,080.00</b>
Total Hours	2	1084	1948	1912	1836	454	38	4	4	373	163	33	49	39	31	
Hourly Rate	\$65.00	\$76.00	\$45.00	\$36.00	\$33.00	\$32.00	\$28.00	\$37.00	\$76.00	\$25.00	\$36.00	\$76.00	\$45.00	\$36.00	\$45.00	

Direct Labor Total	\$	338,343.00
Indirect Labor Total (1.9373 Overhead Rate)	\$	655,471.89
Direct and Indirect Labor Total	\$	993,814.89
Fixed Fee (15%)	\$	149,072.23
Cost of Facilities (1.11%)	\$	3,755.61

Subtotal \$ 1,146,642.73

Expenses				
Air Charter		per trip @		trips
Per Diem		per day @		days
Vehicle Usage	\$ 20.00	per day @	486	days \$ 9,720.00
Materials and Supplies				
Other Expenses				
		Materials Testing Subconsultant - Terracon (Task 3.10)		\$ 45,696.00
		Electrical Engineering Subconsultant - Apex Engineering (Task 3.11)		\$ 12,000.00
		Underground Subconsultant - Brierley Associates (Task 3.12)		\$ 177,541.50
		Survey Subconsultant - Holly Beck Surveying (Task 3.13)		\$ 46,490.00

Expenses Total \$ 291,447.50

**Construction Administration / Construction Observation - Base Bid Total Cost \$ 1,438,090.23**

Attachment B  
 Bismarck Airport  
 Bismarck, North Dakota  
 KLJ #1805-02200.3 and 1805-02200.14, AIP #3-38-0003-062-2020 and AIP #3-38-0003-064-2020  
 Hourly Rate and Cost Breakdown



PHASE: Construction Administration / Construction Observation - Base Bid plus Alternate  
 Estimate based on 150 working days

KLJ Title	Principal Engineer	Senior Project Manager	Engineering Technician IV	Associate Engineer	Engineer in Training II	Engineer in Training I	CAD Technician II	Environmental Planner III	Senior Technical Advisor	Project Assistant II	Project Controls Specialist I	Senior Project Manager	Engineer	Associate Engineer	Engineer	Task Direct Labor Cost
<b>Construction Observation (Task 3.4)</b>																
Observation - Full Time and Periodic						864										\$ 27,648.00
<b>Subtotal</b>																\$ 27,648.00
Total Hours	0	0	0	0	0	864	0	0	0	0	0	0	0	0	0	
Hourly Rate	\$65.00	\$76.00	\$45.00	\$36.00	\$33.00	\$32.00	\$28.00	\$37.00	\$76.00	\$25.00	\$36.00	\$76.00	\$45.00	\$36.00	\$45.00	

Direct Labor Total	\$	27,648.00
Indirect Labor Total (1.9373 Overhead Rate)	\$	53,562.47
Direct and Indirect Labor Total	\$	81,210.47
Fixed Fee (15%)	\$	12,181.57
Cost of Facilities (1.11%)	\$	306.89
<b>Subtotal</b>	\$	<b>93,698.93</b>

Expenses					
Air Charter		per trip @		trips	
Per Diem		per day @		days	
Vehicle Usage	\$ 20.00	per day @	72	days	\$ 1,440.00
Materials and Supplies					

Expenses Total \$ 1,440.00

Construction Observation - Alternate Subtotal	\$	95,138.93
Construction Administration / Construction Observation - Base Bid Subtotal	\$	1,438,090.23

**Construction Administration / Construction Observation - Base Bid plus Alternate Total Cost \$ 1,533,229.16**

Attachment B  
 Bismarck Airport  
 Bismarck, North Dakota  
 KLJ #1805-02200.3 and 1805-02200.14, AIP #3-38-0003-062-2020 and AIP #3-38-0003-064-2020  
 Hourly Rate and Cost Breakdown



PHASE: **FAA Project Closeout Report**  
 FAA AIP 3-38-0003-062-2020

KLJ Title	Senior Project Manager	Engineering Technician IV	Associate Engineer	Engineer in Training II	CAD Technician II	Senior Technical Advisor	Project Assistant II	Project Controls Specialist I	GIS Analyst II							Task Direct Labor Cost
Overall Project Management	16					2		2								
Prepare Final Outlay and Acceptance Forms	2		4	8			8	8								\$ 1,440.00
Prepare DBE Summary Report							8									\$ 1,048.00
Prepare Executive Summary	1		1	24												\$ 200.00
Prepare Quantity Revision Summary	1		1	8			8									\$ 904.00
Prepare ALP Update																\$ 576.00
Exhibit A Update																\$ -
Prepare Record Drawings (160 plan sheets estimated)	4	40	4		320											\$ -
Update City of Bismarck GIS Map		12														\$ 11,208.00
Update Owner Utility Maps (21 estimated)		2			42				32							\$ 1,500.00
Prepare Closeout Report Document	16						60									\$ 1,266.00
Prepare and Submit NDAC Pavement History Update																\$ 2,716.00
Coordination of FAA Reimbursement Agreement Closeout																\$ -
																\$ -
																\$ -
																\$ -
																\$ -
<b>Subtotal</b>																\$ -
																\$ 20,858.00
Total Hours	40	54	10	40	362	2	84	10	32	0	0	0	0	0	0	
Hourly Rate	\$76.00	\$45.00	\$36.00	\$33.00	\$28.00	\$76.00	\$25.00	\$36.00	\$30.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	

Direct Labor Total	\$	20,858.00
Indirect Labor Total (1.9373 Overhead Rate)	\$	40,408.20
Direct and Indirect Labor Total =	\$	61,266.20
Fixed Fee (15%)	\$	9,189.93
Cost of Facilities (1.11%)	\$	231.52
<b>Subtotal</b>	\$	<b>70,687.65</b>

Expenses				
Air Charter	per trip @		trips	
Per Diem	per day @		days	
Materials and Supplies				
Other Expenses				

Expenses Total \$ -

**FAA Project Closeout Report Total Cost \$ 70,687.65**

**Attachment B**  
**Bismarck Airport**  
 Bismarck, North Dakota  
 KLJ #1805-02200.3 and 1805-02200.14, AIP #3-38-0003-062-2020 and AIP #3-38-0003-064-2020  
 Hourly Rate and Cost Breakdown



PHASE: FAA Project Closeout Report  
 FAA AIP 3-38-0003-064-2020

KLJ Title	Senior Project Manager	Engineering Technician IV	Associate Engineer	Engineer In Training II	CAD Technician II	Senior Technical Advisor	Project Assistant II	Project Controls Specialist I	GIS Analyst II							Task Direct Labor Cost
Overall Project Management	16					2		2								
Prepare Final Outlay and Acceptance Forms	2		4	8			8	8								\$ 1,440.00
Prepare DBE Summary Report							8									\$ 1,048.00
Prepare Executive Summary																\$ 200.00
Prepare Quantity Revision Summary	1		1	4			4									\$ 344.00
Prepare ALP Update																\$ -
Exhibit A Update																\$ -
Prepare Record Drawings (160 plan sheets estimated)																\$ -
Update City of Bismarck GIS Map																\$ -
Update Owner Utility Maps (21 estimated)																\$ -
Prepare Closeout Report Document	16						60									\$ -
Prepare and Submit NDAC Pavement History Update																\$ 2,716.00
Coordination of FAA Reimbursement Agreement Closeout																\$ -
																\$ -
																\$ -
																\$ -
<b>Subtotal</b>																\$ -
																\$ 5,748.00
Total Hours	35	0	5	12	0	2	80	10	0	0	0	0	0	0	0	
Hourly Rate	\$76.00	\$45.00	\$36.00	\$33.00	\$28.00	\$76.00	\$25.00	\$36.00	\$30.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	

Direct Labor Total	\$	5,748.00
Indirect Labor Total (1.9373 Overhead Rate)	\$	11,135.60
Direct and Indirect Labor Total =	\$	16,883.60
Fixed Fee (15%)	\$	2,532.54
Cost of Facilities (1.11%)	\$	63.80
<b>Subtotal</b>	\$	19,479.94

Expenses				
Air Charter		per trip @		trips
Per Diem		per day @		days
Materials and Supplies				
Other Expenses				

Expenses Total \$ -

FAA Project Closeout Report Total Cost \$ 19,479.94

Total Cost - Construction Observation and Records, FAA Project Closeout Report - Base Bid	\$	1,528,257.82
Total Cost - Construction Observation and Records, FAA Project Closeout Report - Base Bid plus Alternate	\$	1,623,396.75

## Federal Contract Provisions

### Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors

#### A1 ACCESS TO RECORDS AND REPORTS

2 CFR § 200.333

2 CFR § 200.336

FAA Order 5100.38

#### ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

#### A2 AFFIRMATIVE ACTION REQUIREMENT

41 CFR part 60-4

Executive Order 11246

#### NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

#### Timetables

Goals for minority participation for each trade: 0.4%

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is State of ND, Burleigh County and City of Bismarck.

### **A3 BREACH OF CONTRACT TERMS**

2 CFR § 200 Appendix II(A)

#### **BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the Consultant or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Consultant must correct the breach. Owner may proceed with termination of the contract if the Consultant fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

## A4 CIVIL RIGHTS - GENERAL

49 USC § 47123

### GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to 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 disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

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

## A5 CIVIL RIGHTS – TITLE VI ASSURANCE

49 USC § 47123

FAA Order 1400.11

### 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 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession 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.

### 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:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, 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, 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 Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities 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.
5. **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.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the 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.

#### TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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 USC § 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 USC § 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 USC § 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 USC § 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

## **A6 CLEAN AIR AND WATER POLLUTION CONTROL**

2 CFR § 200, Appendix II(G)

### **CLEAN AIR AND WATER POLLUTION CONTROL**

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

## **A7 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

2 CFR § 200, Appendix II(E)

### **CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

#### **1. Overtime Requirements.**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

#### **2. Violation; Liability for Unpaid Wages; Liquidated Damages.**

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

#### **3. Withholding for Unpaid Wages and Liquidated Damages.**

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

#### **4. Subcontractors.**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

## **A8 DEBARMENT AND SUSPENSION**

2 CFR part 180 (Subpart C)

2 CFR part 1200

DOT Order 4200.5

### **CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT**

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

### **CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

## **A9 DISADVANTAGED BUSINESS ENTERPRISE**

49 CFR part 26

### **DISADVANTAGED BUSINESS ENTERPRISES**

#### Information submitted as a matter of bidder responsibility:

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in its commitment within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)

- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
- 5) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the City of Bismarck to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

**Contract Assurance (§ 26.13) –**

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (§26.29)** – 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 contractor receives from City of Bismarck. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's 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 City of Bismarck. This clause applies to both DBE and non-DBE subcontractors.

## **A10 DISTRACTED DRIVING**

Executive Order 13513

DOT Order 3902.10

### **TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

## **A11 ENERGY CONSERVATION REQUIREMENTS**

2 CFR § 200, Appendix II(H)

### **ENERGY CONSERVATION REQUIREMENTS**

Consultant and Sub-consultant agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201*et seq.*).

## **A12 EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

2 CFR 200, Appendix II(C)

41 CFR § 60-1.4

41 CFR § 60-4.3

Executive Order 11246

### **EQUAL OPPORTUNITY CLAUSE**

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising

the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency 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 with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS**

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:

- (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
- (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing

it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally), the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

### **A13 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

29 USC § 201, et seq

#### **FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

### **A14 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

31 USC § 1352 – Byrd Anti-Lobbying Amendment

2 CFR part 200, Appendix II(J)

49 CFR part 20, Appendix A

## **CERTIFICATION REGARDING LOBBYING**

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **A15 PROHIBITION of SEGREGATED FACILITIES**

41 CFR § 60

### **PROHIBITION OF SEGREGATED FACILITIES**

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and

housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

## **A16 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

29 CFR part 1910

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **A17 TAX DELINQUENCY AND FELONY CONVICTIONS**

Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), and similar provisions in subsequent appropriations acts.

DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

### **CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

#### **Certifications**

- 1) The applicant represents that it is ( ) is not ( ✓ ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is ( ) is not ( ✓ ) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

## Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

## Term Definitions

**Felony conviction:** Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

## A18 TERMINATION OF CONTRACT

2 CFR § 200 Appendix II(B)

FAA Advisory Circular 150/5370-10, Section 80-09

### TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## TERMINATION FOR DEFAULT (PROFESSIONAL SERVICES)

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party 7 days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:

1. Perform the services within the time specified in this contract or by Owner approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project; or
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the Project for more than 180 days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the

Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## **A19 TRADE RESTRICTION CERTIFICATION**

49 USC § 50104

49 CFR part 30

### **TRADE RESTRICTION CERTIFICATION**

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or

3) who incorporates in the public works project any product of a foreign country on such USTR list. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

## **A20 VETERAN'S PREFERENCE**

49 USC § 47112(c)

### **VETERAN'S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

**Attachment D**  
**Insurance Coverage levels**

1. Throughout the duration of this Agreement, ENGINEER agrees to provide evidence of insurance coverages not less than the types and amounts specified below.
  - a. Workers' Compensation: Statutory
  - b. Employer's Liability
    - 1) Each Accident: \$1,000,000
    - 2) Disease, Policy Limit: \$1,000,000
    - 3) Disease, Each Employee: \$1,000,000
  - c. General Liability
    - 1) General Aggregate: \$2,000,000
    - 2) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
  - d. Excess Umbrella Liability
    - 1) Each Occurrence: \$5,000,000
    - 2) General Aggregate: \$5,000,000
  - e. Automobile Liability
    - 1) Combined Single Limit (Bodily Injury and Property Damage):
      - a) Each Accident \$1,000,000
  - f. Professional Liability
    - 1) Each claim made \$2,000,000
    - 2) Annual Aggregate \$4,000,000
  - g. Other conditions (specify):
    - 1) Commercial General Liability policy will be endorsed to add the City of Bismarck, its employees, officers, agents and contractors as additional insureds.
    - 2) Certificates evidencing required insurance shall be provided to the City of Bismarck upon execution of the agreement and prior to commencement of services or work.
    - 3) Certificates shall provide not less than 30 days notification to the City of Bismarck prior to cancellation or material change in coverage.

### AIRPORT PROJECT BUDGET

Date: September 8, 2020

<b>Number</b>	<b>AIP 62 &amp; 64</b>	<b>Description</b>	<b>Wetland Removal to Reduce Attractants (Phase 5)</b>
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<b>Scheduled Start</b>	<b>Sep 20</b>	<b>Scheduled End</b>	<b>Dec 21</b>
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**Project Construction Contracts**

<u>Project Construction Contracts</u>	<u>Amount</u>
1. KLE Construction LLC. (General Phase 5)	\$ 11,401,538.00
2. Edling Electric (Electrical Phase 5)	\$ 112,700.00
<b>Total Construction Contracts</b>	<b>\$ 11,514,238.00</b>

<u>Engineer, Testing and Misc. Contracts</u>	<u>Amount</u>
1. KLJ - Construction Observance, Administration, Close Out, and Testing (Phase 5)	\$ 1,623,916.81
2. Public Utility Relocation (Phase 1)- Estimated	\$ 70,000.00
3. Ducks Unlimited Wetland Credits	\$ 45,100.00
4. Wetland Mitigation Monitoring	\$ 55,494.91
<b>Total Engineer, Testing and Misc. Contracts</b>	<b>\$ 1,794,511.72</b>

<b>Administration</b>	<b>\$ 20,124.28</b>
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<b>Sub Total</b>	<b>\$ 13,328,874.00</b>
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<u>Project Funding</u>		<u>Amount</u>
FAA Grant:	AIP 62	\$6,381,629.00
	AIP 64	\$6,026,218.00
State Grant:	\$ 460,514.00	
Airport Funds:	\$ 460,513.00	
<b>Total Funding (without contingencies)</b>		<b>\$ 13,328,874.00</b>

CONTINGENCIES	10%	<b>\$1,332,887.40</b>
OTHER COSTS		
<b>TOTAL PROJECT COST</b>		<b>\$14,661,761.40</b>

Note: